

**CITATION:** *McNeil v Chief Executive Officer, Public Safety Business Agency* [2016] QCAT 45

**PARTIES:** Melissa Jane McNeil  
(Applicant)  
v  
Chief Executive Officer, Public Safety Business Agency  
(Respondent)

**APPLICATION NUMBER:** CML178-15

**MATTER TYPE:** Childrens matters

**HEARING DATE:** 16 October 2015

**HEARD AT:** Brisbane

**DECISION OF:** **Member Goodman**

**DELIVERED ON:** 2 February 2016

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. The respondent's decision to issue a negative notice is set aside.**
- 2. A positive notice is to be issued to the applicant.**

**CATCHWORDS:** Blue Card – where applicant has a history of arson and incarceration – where applicant has a history of alcohol misuse – where applicant now abstinent from alcohol – where no “serious offence” - not an exceptional case in which it would not be in the best interests of children to issue a Blue Card.

*Working with Children (Risk Management and Screening) Act 2000*  
*Queensland Civil and Administrative Tribunal Act 2009*

**APPEARANCES:**

**APPLICANT:** Ms McNeil appeared in person

**RESPONDENT:** Ms Kylie Heath represented the respondent

### **REASONS FOR DECISION**

- [1] Ms McNeil applied for a Blue Card so that she is able to assist in her local community centre, and ultimately to work in the community service sector. The respondent refused her application and Ms McNeil has applied to QCAT to review that decision.
- [2] Ms McNeil has a criminal history. She was convicted of the following relevant charges:
- a) 6/10/10 – commit public nuisance; assault or obstruct police officer – offences committed 24/08/10
  - b) 6/12/10 – unauthorised dealing with shop goods; common assault – offences committed 1/11/10
  - c) 6/12/10 – failure to appear in accordance with undertaking
  - d) 10/3/11 – commit public nuisance – offence committed 19/2/11
  - e) 23/11/11 failure to appear in accordance with undertaking
  - f) Arson – structure or building (2 counts) – offence committed 21 or 22/4/11.
- [3] On 27 July 2012 Ms McNeil was sentenced to imprisonment for 4 years and 6 months in relation to the arson convictions. She was released in August 2014 and is on parole until January 2017. It is a condition of her parole that she abstain from alcohol and attend AA meetings.

### **Offences of 2010**

- [4] Ms McNeil stole five bottles of soft drink from a store and when approached by a staff member she swung her bag at the victim. She later swung punches at the victim (some connected) and attempted to bite him. She was non-compliant and verbally abusive with police and attempted to bite an officer.

### **Offences of April 2011**

- [5] Ms McNeil was residing in a caravan park with her then partner. After arguing with co-residents she set fire to two caravans in the park. Both were occupied at the time. The caravans were destroyed and the owners lost significant possessions. There was no loss of life or serious physical injury as a result of her actions.
- [6] Ms McNeil's convictions are for offences other than "*serious offences*" as that term is defined in the legislation. Accordingly, Ms McNeil must be granted a Blue Card unless I am satisfied that this is an exceptional case in which it would not be in the best interests of children to issue a Blue Card.

- [7] Should a Blue Card be issued, it is unconditional and transferable – Ms McNeil could use it to enter into any field of child related occupation - and is not limited to currently intended use.
- [8] Ms McNeil provided written and oral evidence. She is now 43 years old. She was adopted at birth into a supportive family. She struggled at school and recalls being bullied. After leaving high school at 16 years of age she began work and soon fell pregnant. Her eldest child was born when Ms McNeil had just turned 17. Shortly after she was introduced to alcohol and drugs.
- [9] She moved with her parents and young daughter to America where she met and married an American man who was a drug user and alcoholic. She took drugs and drank heavily with her husband. They moved back to Brisbane but the marriage broke down after two years. Ms McNeil says that she still has not recovered from her husband's suicide several years later.
- [10] Ms McNeil worked casually as a cleaner, carer and in a nursing home until her second child was born in 2002. She continued to drink and relapsed into heavy drinking despite several attempts at rehabilitation. She lost her licence for drink driving.
- [11] Ms McNeil recalls that her life “went out of control” about a year after her eldest daughter left home to live and work overseas as a teenager in around 2006. Her drinking significantly worsened from around 2008 when she began to experience ongoing physical and sexual abuse. Her parents asked her to leave their home and she lived on the streets and in shelters and with whoever would take her in. She continued to drink while medicated for depression and panic attacks. She says that the combination turned her into a “monster” and acknowledges that her behaviour was appalling. She suffered blackouts, panic attacks and had “the shakes” every morning. It was during this period that her criminal history arose.
- [12] Ms McNeil provided quite graphic evidence of her experiences during this time. She describes herself as an alcoholic who was constantly and repeatedly abused in all her relationships, leading to homelessness. Her drinking was at its worst around 2010 when she was subjected to significant abuse at the hands of the men in her life.
- [13] Ms McNeil experienced severe domestic violence. She says that at the time she was drinking and accepted whatever treatment she received so as to have a roof over her head. She has undergone counselling regarding this history while in jail. She says that she would never return to an abusive relationship again.
- [14] In 2010 Ms McNeil was known to police as a person with an alcohol addiction, and who was erratic and unpredictable. She had a history of self-harming and violence towards police (including trying to bite police).

- [15] In April 2011 Ms McNeil was living with her violent partner (who was subsequently jailed for assaulting her). They had moved to a caravan park following a period living in hostels. After falling behind with rent in their own caravan, they moved into a caravan with two other people. She was being beaten regularly by her partner and felt worthless. She says that she was not herself back then. She had recently had her clothes stolen and had nothing left. Ms McNeil says that she had been drinking heavily that day and set fire to the caravan of a person who lived in the same caravan park. She had been arguing with the occupant of the caravan who had been the cause of arguments between her and her partner. She says that she doesn't know why she set the caravan alight. She says that she was angry and didn't really think about the possibility that the fire would spread through the caravan.
- [16] On the same evening she set fire to another caravan after arguing with the owner. She says that she threw some burning paper into the caravan but panicked when the caravan itself caught on fire. She says that she didn't intend for it to "go that far" and hadn't thought through the consequences at the time. Ms McNeil acknowledges that she had thought about burning a caravan for some weeks before the arson.
- [17] Ms McNeil pleaded guilty to the arson charges.
- [18] Ms McNeil recalls prison as a place that "saved" her. She states that she became sober and remorseful and used her time to study and learn as much as she could. She says that she was determined to be a better person and have skills and strategies that she could use when she was released. She completed study while in jail, and since her release has completed a Certificate III in Community Service. She plans to continue with further study.
- [19] Ms McNeil says "*My plan is to keep achieving, to make the most of my life. This is my second chance, to be a better person and enjoy the good things in life.*" She says that she holds deep remorse, guilt and shame for her past actions.
- [20] Ms McNeil has not drunk alcohol since entering prison and attends AA meetings regularly. She has completed the KNIT program (a life skills programme to assist her in dealing with family and life relationships and participation in the community). Ms McNeil says that the KNIT program has assisted her with problem solving, making good choices, being mindful, being aware of things from the past and how to deal with them, and changing the way she is thinking. She plans to continue to work in the field of community service. She takes medication as prescribed by her doctor.
- [21] Ms McNeil was released from prison on 14 August 2014. Notes from her probation and parole officers show that her parole is subject to a number of conditions, most significantly abstinence from drugs and alcohol. On 1 October 2014 it was noted "*Substance abuse, namely alcohol misuse, is considered a criminogenic need. It is noted there are a number of*

*underlying factors (eg relationship issues, a lack of coping skills, and mental health) as the cause to her alcohol misuse.*” It was recommended that Ms McNeil complete substance misuse courses and continue to attend AA meetings and engage with her GP for support. Ms McNeil’s history of domestic violence victimisation was noted, as was her completed Women’s Journey group work and her links with DV Connect and Sisters Inside – no further referrals were considered necessary. Ms McNeil’s ongoing attendance at AA meetings is confirmed by the material provided.

- [22] Following her release Ms McNeil returned to live with her parents, who had visited her weekly in prison. Ms McNeil’s mother provided evidence that Ms McNeil has a new attitude to life since her release – she has reconnected with her siblings and has happily reunited with her younger child who stays with her at least two days a week. She has an unstructured co-parenting arrangement with the child’s father which works well for all. Mrs McNeil says *“It is now three years Melissa has been sober and a new mature, thoughtful, caring woman has emerged. She now has good friends and has no association with her old life”*.
- [23] Mrs McNeil supports Ms McNeil’s application. She says that Ms McNeil’s life was previously in turmoil but she has turned it completely around. Her attitude is now mature and focused and her life has direction. She lives at home with Ms McNeil and trusts her completely (she couldn’t when she was drinking). She is sure that Ms McNeil will maintain a sober life as she would not jeopardise the life she has built up and would not risk going back to jail.
- [24] Ms McNeil says that she is highly motivated to improve her life and to never let her parents and children down again. She has made some contact with her eldest daughter, who is an adult with a successful career overseas, and is hoping that she will be able to spend time with her in the future. She says *“I am not the person I was, I believe I have made significant changes in my life enabling me to be mindful, focus, gain a more mature, positive and respectful attitude to myself and others... I have the support of my family, friends, medical team and the local community. I have become a contributing member of society and want to help others”*.
- [25] She has had opportunities to return to her old group of friends but has not done so.
- [26] Ms McNeil has a long history of anxiety and depression. These conditions are treated with medication and she considers that they are now “under control”.
- [27] Ms McNeil’s psychologist Ocker Farquharson provided a report dated 11 March 2015. He advised that Ms McNeil was referred to him on 18 October 2011. She presented with alcoholism, suffering domestic violence, and living on the streets. The conditions were treated with cognitive behaviour therapy and her life made a “radical turn-around” after she was incarcerated. She used her time in jail to work and take self-

improvement courses. Since release, she has impressed her parole officers with her good behaviour, high levels of personal organisation and general positive progress. Mr Farquharson states that Ms McNeil *“has been persistent during the past two years to turn her back on her past.”*

[28] Ms McNeil indicated that she has developed strategies to ensure that she does not return to her previous life. She says that she is not the same person that she was. She says that she:

- a) Has a strong commitment to never returning to drinking alcohol or to her previous lifestyle;
- b) Is no longer lonely or isolated. She has close friends who are like family to her;
- c) Surrounds herself with good people who don't drink alcohol – friends and family and others associated with the community centre where she volunteers. She also has support from her parole officer, people from TAFE, AA contacts, her GP and psychologist, and from members of a singing group she has jointed;
- d) Spends her spare time visiting friends, playing bingo, singing and volunteering at her local community centre;
- e) Has a positive outlook and a plan for a better life– her mind is clear and she sees all the good things in life;
- f) Used the opportunities that she had in jail to better herself and ensure that she will never return to being the person that she was;
- g) Employs strategies to deal with difficult times. If she is annoyed or feeling down, she goes to the gym, attends an AA meeting, helps set up at an OpShop where she volunteers, or concentrates on her TAFE studies;
- h) If she encounters problems she changes things and tries to think of alternative ways to approach the problem. She stays away from “bad” situations;
- i) Applies herself to learning how to deal with anxiety and depression through engagement with the KNIT programme;
- j) Is beginning to rebuild her relationship with her eldest daughter;
- k) Is strong and determined never to return to her previous life;
- l) Feels good about herself and is happy. If she were to feel the symptoms of anxiety or depression return, she would talk to her GP, her parents or to her psychologist. She would go for a walk, practise her breathing techniques, do puzzles and watch movies;
- m) Would never return to drinking as that would risk her relationship with her family.

[29] Ms McNeil indicated that the triggers for her drinking at the time of the arson offences were her homelessness, domestic violence and history of sexual assault. She states that at the time she was in a toxic spiral and

couldn't see a way out. The hostels in which she lived had been bad places – full of angry and traumatised people.

[30] Dr Hands, Ms McNeil's GP, provided evidence by telephone. He advised that:

- a) Ms McNeil has a past diagnosis of anxiety disorders and depression but there have been no signs of those conditions for several years;
- b) She is prescribed medication to treat anxiety and depression and the medications are controlling her symptoms;
- c) She is an appropriate person to work with children in all areas, including foster and kinship care if that was applicable;
- d) She has attended five hiking activities that he has organised this year and has acted appropriately at all time;
- e) He has not conducted any particular formal assessments of her suitability for child related employment;
- f) She freely contacts and talks to him on any subject that bothers her and he is confident that she will do that if she begins to deteriorate in the future.

[31] Colleen Bensen provided evidence. Ms Bensen has a diploma in counselling, a certificate in community service and disabilities, and a diploma in mental health. She has 25 years experience working in the community centre where she met Ms McNeil in May 2015. She says that:

- a) Ms McNeil volunteers three days a week at the community centre. She assists by setting up for meetings and bingo, helping with food, helping with the newsletter and with anything else that needs doing. The centre works like a family network and there is always someone available to help;
- b) Ms McNeil has completed the 10 week KNIT programme twice and is enrolled to complete a third block to reinforce her learning. The programme covers: how to change behaviour with practise; models of communication; styles of love; strategies to deal with anger management and aggressive behaviour, grief and loss, stages of parenting and conflict management. The course is run by a psychotherapist and counsellor and participants have mentors.
- c) Ms McNeil has called her at times when she is upset. She has demonstrated an ability to problem solve when upset by for example going for a walk.
- d) She has worked closely with Ms McNeil and supports her application for a Blue Card. She is fully aware of her history. Ms McNeil has built up very good support systems with her family and those at the community centre.
- e) The changes Ms McNeil has made to her life are sustainable. She has a strong focus on where she wants to go and is determined

never to go back. She has developed skills and strategies to support herself.

- [32] The respondent submits that Ms McNeil's actions in burning down the caravans were premeditated and that there is no independent evidence that she was intoxicated at the time of the offences.
- [33] In determining whether this is an exceptional case in which it would not be in the best interests of children for Ms McNeil to be issued with a Blue Card, I have taken into account the matters required by the legislation<sup>1</sup>, and have weighed up the protective and risk factors.

## **RISK FACTORS**

- a) Ms McNeil has a history of alcoholism, drug use and violence, including setting fire to two caravans that were occupied at the time. The arson offences were extremely dangerous acts and could easily have resulted in serious injury to others.
- b) Ms McNeil continues to deal with her history of sexual and physical abuse, and the loss of her former husband by suicide.
- c) Ms McNeil has a very long history of alcohol abuse. She has previously attempted to stop drinking permanently, but has relapsed.
- d) The arson offences were committed relatively recently (April 2011), and she was released from prison in August 2014 – less than two years ago. While Ms McNeil has maintained her sobriety to date, there is always a risk that she will return to drinking, particularly once she is no longer subject to her current bail conditions. Her ability to permanently abstain from drinking (and from reoffending) has not been tested due to the relatively short time since her release from prison. She has demonstrated erratic, out of control and destructive behaviour when drinking.
- e) When Ms McNeil was drinking she left her child in the care of her parents, and of the child's father, acknowledging that she was not in a state to care for her. Should Ms McNeil return to drinking, there is no doubt that she would be unsuitable to care for children.

## **PROTECTIVE FACTORS**

- f) Ms McNeil has been sober for some three and a half years. She continues to attend AA meetings and is committed to a life of sobriety.
- g) Ms McNeil is addressing the factors that she believes led to her offending behaviour – she is living at home, has formed a supportive relationship with her family, has a close and supportive network around her and is not drinking. She has positive plans for the future and has begun the study path to live a healthy and productive career and life.

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<sup>1</sup> S226 *Working with Children Act 2000*



- h) Ms McNeil used her time in jail to reflect on her life and to make a commitment to turn her life around. She took practical steps while in jail to learn as much as she could by completing courses offered to her, and has continued with that commitment since her release.
  - i) Ms McNeil wants to build a future involving service to the community and an abstinence from alcohol. There is no evidence to suggest that Ms McNeil has any ongoing social issues when sober. She receives appropriate medical treatment for her anxiety and depression and those conditions do not cause ongoing symptoms.
  - j) Ms McNeil's psychologist, her mother, her doctor and her parole officer are all in agreement that her criminal behaviour was in the context of alcohol misuse. Underlying factors which triggered her drinking included relationship issues, a lack of coping skills, and poor mental health. Ms McNeil herself agrees with this assessment and has taken steps to deal with her drinking behaviour and also the underlying causes. She attends AA and has an ongoing relationship with her psychologist and GP, she has completed courses to develop her life skills and ability to cope with difficulties, she has rebuilt positive relationships with family members, she has formed close and supportive relationships with friends at the neighbourhood centre where she volunteers. She studies at TAFE. She is highly motivated to avoid returning to drinking or to jail or to damaging any of the relationships she has developed in recent years.
- [34] While Ms McNeil remains sober and adherent to her medication regime, she is functioning as a useful and positive community member. When she is drinking alcohol she has shown herself to be unstable and destructive towards herself and others.
- [35] There is of course a risk that she will return to drinking. It is impossible to say with certainty that she will not. Ms McNeil has, however, done all that has been recommended to help her maintain her sobriety.
- [36] I am satisfied that the protective factors in this case are strong and the identified risk factors are insufficient to satisfy me that this is an exceptional case in which it would not be in the best interests of children for Ms McNeil to be issued with a Blue Card.
- [37] The decision under review will be set aside and a Blue Card will be issued to Ms McNeil.

## **NON-PUBICATION ORDER**

- [38] Ms McNeil lodged an application for an order that confidential information not be published on the website (it appears that she refers to the QCAT / Supreme Court website, where decisions are published and referred to).

The respondent seeks a non-publication order to prevent the identification of children.

[39] Proceedings in QCAT are not the subject of non-publication orders except in limited circumstances set out in the legislation.<sup>2</sup>

[40] The application was not supported by submissions that satisfy the statutory requirements. There are no children identified in this decision. Accordingly, the application for a non-publication order is refused.

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<sup>2</sup> s66 QCAT Act 2009