

**CITATION:** *Chanas v Chief Executive Officer Public Safety Business Agency* [2016] QCAT 48

**PARTIES:** Michael William Chanas  
(Applicant)  
v  
Chief Executive Officer Public Safety Business Agency  
(Respondent)

**APPLICATION NUMBER:** CML 275 -15

**MATTER TYPE:** Children's matters

**HEARING DATE:** 4 March 2016

**HEARD AT:** Southport

**DECISION OF:** **Member Mc Donald**

**DELIVERED ON:** 1 April 2016

**DELIVERED AT:** Southport

**ORDERS MADE:** **The decision is confirmed.**

**CATCHWORDS:** Whether an exceptional case, domestic violence, repeat offences.

**APPEARANCES:**

**APPLICANT:** Michael William Chanas

**RESPONDENT:** Ms Paula Hughes

## REASONS FOR DECISION

- [1] Mr Chanas was issued a negative notice for a blue card 18 September 2015. The respondent determined that Mr Chanas case was an exceptional case where it would not be in the best interests of children for him to be issued a blue card.
- [2] Mr Chanas' relevant criminal history relates to repeated breaches of an interstate domestic violence order which sought to protect one particular

complainant. The circumstances of the offences arise over a six month period in 2014 when the applicant was living in another state. At the time of his offences Mr Chanas was aged 54 years of age. The violence restraining order was issued on the basis of an “*imagined relationship*” between Mr Chanas and the complainant.

- [3] Mr Chanas has asked the Tribunal to review the decision of Chief executive officer of the Public Safety Business Agency to issue a negative notice.
- [4] The Tribunal must apply the relevant provisions of the *Working with Children (Risk Management and Screening Act) 2000*, hereafter “the Act”.
- [5] Section 8 of this Act requires the welfare and best interests of children to be the paramount consideration in reviewing this decision. The Act is made to protect children and decision making is guided by this legislative object.
- [6] Section 221 of the Act requires that where an offence other than a serious offence has been committed the Tribunal must issue a positive notice unless it is satisfied that an exceptional case exists where it would not be in the best interest of children to issue a blue card. The term exceptional case is not defined in the legislation and case law confirms that whether each case is an exceptional case depends on the facts of each specific matter. The *Commissioner for Young People and Child Guardian v Maher* establishes that an exceptional case is a question of fact and degree, and sets up a process of balancing risk and protective factors as a framework to consider the relevant facts.<sup>1</sup> An exceptional case must however be “beyond the ordinary circumstances reasonably expected to occur”<sup>2</sup> and considered in the context of the legislation and the interests of the persons whom it is designed to protect.<sup>3</sup>
- [7] Where a person is convicted of an offence, the Tribunal must consider the factors specified at section 226 of the Act as part of the determination as to whether an exceptional case exists.
- [8] Section 226(2) requires the Tribunal to consider whether the offence is a conviction or charge. Mr Chanas has four convictions for breach of domestic violence restraining orders. The offence is not a serious offence as defined in the Act but the legislation requires the Tribunal consider the nature of all offences in a person’s criminal history. The offences were committed in the period from May 2014 – August 2014, when Mr Chanas was aged 54 years. The offences are only recent and committed when he was a mature aged man. These facts weigh heavily as risk factors.
- [9] The Tribunal also is required to consider the nature of the offence and its relevance to employment that involves or may involve children. Each of

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<sup>1</sup> [2004]QCA 492

<sup>2</sup> *In the Marriage of Sandrk* (1991) 104 FLR 394 at 399-400

<sup>3</sup> *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492.

the four offences relate to breaches of the restraining order protecting one particular female complainant. On four occasions following the issue of the Restraining order, Mr Chanas breached the order by attending her home or place of work, trying to speak with complainant.

- [10] Mr Chanas informed the Tribunal that he regretted the events that had occurred in relation to these offences. He said it had changed his life, and he had had to move away. He indicated it had changed other people's lives also and resulted in the loss of his employment and volunteer position with the Coastguard. He explained the circumstances around the friendship he had initiated with the complainant. He indicated he had met her and her sister near the river picking up rubbish and she had invited him to join them for a sausage sizzle. He said following this he was informed of her address by his supervisor at the local supermarket where he worked and would go to her house to offer her out of date food that was being disposed of. He agreed that on approximately 30 occasions prior to the order being made he attended her home. He noted that she had a four year old son living with her. He considered that she had issued some confusing messages about her availability to be in a relationship with him. He had believed that she had indicated that although she was married, she wanted some form of intimate relationship with him. He said she had done this in words and actions. He said that he must have misinterpreted these signs and he now regrets them. One sign that he now understands may have been misinterpreted was that she wore a bikini top under her shirt, which he considered at the time may have suggested her availability, even if it had been contrary to her words. He told the Tribunal that he had difficulties understanding women's communications and their real intent. He referred to this as the "language of ladies" and the non verbal "cues" they offer. He claimed that since the misunderstandings related to these offences, he is conservative in his interpretation and takes no action upon these cues he receives. He said in relation to these offences he believed that the complainant liked him and wanted to pursue a relationship. He now appreciates that he interpreted her communications the wrong way.
- [11] He explained in relation to the first offence, he had not been near the complainant for 5 months from the date the order was made, but on that occasion in May 2014, he had approached her at her home because he had lost his job at the community service where he worked due to the restraining order. He wanted to engage her to ask her to remove the order, but when she told him to leave he did without hesitation.
- [12] On the second occasion of breach, he said he attended the complainant's house after hearing from work colleagues that people considered a violence restraining order to be "*the same as marriage*". He said they suggested it would be alright to go to see her, so he did. The police record indicates he attended with flowers. Contemplating his friends comments at the hearing, he agreed that was "*odd*" at the time and regretted it had occurred.

- [13] On the third occasion, he was walking to the complainant's house on his way home and he called out to her from the footpath. He asked if she wanted to talk. He said she did not complain, but he had "turned himself in".
- [14] On the fourth occasion he went to her workplace to talk with a friend of the complainant who knew the circumstances. He said he wanted to talk to her about the situation, despite the condition in the order that he could not go to her workplace.
- [15] He said that in retrospect, he could see that the complainant probably felt threatened and afraid, but she thought she may have some compassion to lift the order so he could return to his employment. He said he relied on advice of other people that he can now see was misguided and states that he made a mistake in doing so. Mr Chanas' written submissions includes a copy of a letter dated 9 February 2014. He states in this letter: "I admire and respect ladies in general and in particular (the complainant). I have always been respectful of their feelings and left when they asked me to leave. Despite this stated respect he went on to breach this order and disrespect clear boundaries on four occasions over the ensuing 7 months. Mr Chanas remarked that he believed that he was doing the right thing but misread the situation.
- [16] The Court had made a suspended imprisonment order in August 2014 following three previous breaches. Despite this, he again breached the order in August 2014. There was no threat, violence or malice in his actions but the Tribunal notes a pattern of harassing conduct, and a failure to respect the personal boundaries of the complainant, who identified feeling extremely stressed by his unwanted contact. The Tribunal considers this pattern of conduct is concerning should Mr Chanas work with children where it is essential to understand and demonstrate respect for boundaries to ensure their emotional safety. Mr Chanas has also demonstrated disregard for the law in these repeat offences, and in this way provides a poor role model to children.
- [17] The Penalty the court has imposed is also relevant factor as to whether an exceptional case exists. In the first instances, the court penalised Mr Chanas for his conduct through issuing fines, good behaviour bonds, and a suspended sentence, the latter being subsequently breached. The suspended sentence has not deterred Mr Chanas from re-offending. Mr Chanas informed the Tribunal that the Court recommended that he leave the locality where the complainant resided or risk a period of imprisonment. Mr Chanas has taken action on that recommendation in the circumstances where there has been a pattern of difficulties controlling his conduct.
- [18] The Tribunal must also consider anything else relevant to the commission of the offence that is reasonably considered to be relevant. In determining the ex-parte application for the violence restraining order on 16 January 2014, the Magistrate Sharratt referred to Mr Chanas having an "*imagined relationship*" with the complainant. He considered Mr Chanas' conduct fits

the definition in the Western Australian domestic violence legislation of an imagined relationship - where one person believed there was a relationship and the other disagreed. This of itself raises the Tribunal's concerns about Mr Chanas' judgement on questions of relationship boundaries. Such matters must be precisely understood when one works with children who rely on adults to be very clear where such personal boundaries lie.

- [19] The circumstances of the offences in Mr Chanas' criminal history are all subject to the same violence restraining order. Mr Chanas has stated to the Tribunal that he consented to the Restraining order so that the complainant could feel safe. Despite this, on four occasions in the months which followed, he disregarded this order and approached her. The Tribunal notes the order of 16 January 2016 an interim order, and that the consent order is dated 24 January 2014. The judgement of Magistrate Sharratt, upon the interim order, noted that the complainant was extremely stressed by Mr Chanas' unwanted attention, and she felt extremely uncomfortable by his conduct. The repetitive nature of his conduct concerns the Tribunal, raising questions about Mr Chanas' ability to control his actions, despite the complainant's emotional state and his stated willingness to make her feel safe.
- [20] Mr Chanas gave the Tribunal a picture of his life story. He indicated that he moved to a caravan park in Northern New South Wales one and a half years ago. He has three pets and attends Tafe undertaking Certificate 4 in Community Services. He would like ultimately to be a counsellor and considers he is driven by a strong sense of justice. He has a job in a local school where he undertakes 5 hours paid gardening work and a further two hours in a volunteer capacity. These, together with his Centrelink Austudy payments are his income source. He enjoys walking his dog and going to the beach for leisure. He is not in a relationship, there being 22 years since his previous relationship. He thought he made friendships easily, although had a sparse social network with family his primary support. He said at Tafe he is careful not to overstep boundaries with people generally since the recent offences. He said he has asked people to have a coffee with him, but he does not have regular contacts in this way. He has befriended a gentleman at time that has been in prison. He said he had a psychologist that he sees approximately each month who helps him to interpret "signals" that women issue. He stated that he had been seeing the psychologist for a year, but his evidence to the Commission in November 2015 was that he had was not receiving counselling at that time. He said counselling offered him someone to talk with about his views and being socially isolated it was a practice he sought to continue. He stated that he asked his psychologist, to provide the Tribunal with a report about his suitability to work with children, but she had not done so.
- [21] He said that he had taken steps through this counselling to assist him with interpreting communications. He said that people misinterpret him and

have a “different reaction” and often don’t understand him. He remarked that his intentions were always good.

- [22] As an example of cues from females that cause him confusion he indicated that a woman he knew kept yawning at him during classes. He said he asked someone what this may mean and was told “*it means is time for bed*”. He was unsure whether this was in a sexual or non sexual way. He said since the events of 2014, he is now cautious about how he interprets non verbal communication and does not take action upon it.
- [23] He spoke of a previous diagnosis for depression for which he was effectively treated on three occasions. He finds counselling more beneficial than medication in dealing with depression.
- [24] Mr Chanas submits that he has made mistakes but made decisions based on information that he had. He considers that he is an optimistic person has personal integrity and does not have an agenda. He checks himself by asking himself if he is doing the rights thing and keeps himself on track in this way.
- [25] In support of his application, Mr Chanas called on the evidence of the Ms Jacqui Mc Allum, Principal of the school where he works and volunteers in the gardens. Ms Mc Allum told the Tribunal that she had known Mr Chanas in a professional capacity since 30 January 2015. He came to volunteer at the school initially for a six month period, and subsequent to this was offered casual work which he has undertaken since then. She personally interacts with him two to three times each week when he reports to her after performing his role. She had understood that the offences under scrutiny related to apprehended violence order and restrictions had been placed on his employment as a result. She had not been aware that they were repeat offences, although Mr Chanas had provided her with the Respondent’s full statement of reasons. She said she had been surprised to learn of the offences because it did not seem to be consistent with characteristics she had observed in Mr Chanas during the time she has known him. She considered that he had a reliable character and had supported his applications in relation to the New South Wales employment screening processes. Ms Mc Allum said she had no reason not to support his application. She stated that she had been informed that he had a blue card in Queensland, and that this had influenced her decision to support his application through New South Wales screening processes. She said she had not directly observed him with children, because contact with children was not in his role. She has observed no concerning behaviour, noting Mr Chanas is a reliable and hard working employee. She was unable to think of any weaknesses. She described him as friendly and amicable.
- [26] The Respondent submitted that there were risk and protective factors existed in this case but that the risk factors weighed heaviest.
- [27] The Respondent notes the Protective factors the Respondent as follows: Mr Chanas had described regret for the offences and understands why

they would cause concern. The Respondent noted that Mr Chanas thought he was doing the right thing, but misinterpreted communications. They note he is increasingly cautious in misinterpreting messages since these events have occurred.

- [28] The Respondent notes that his work, voluntary work and study indicate that he is a contributing member of society. Further the Respondent identifies that Ms Mc Allum speaks highly of Mr Chanas, but has not observed him interact with children.
- [29] The Respondent identified risk factors including the recency of the four convictions. They noted that the convictions related to a person 22 years younger than him, and involved an “imagined relationship” which the caused the complainant distress due to repetitive stalking. The respondent submitted that over a 15 month period, Mr Chanas demonstrated a wilful disregard for the personal boundaries of the complainant, and this demonstrated difficulties with self control and judgement. She noted that this harassment occurred in the presence at times of the complainant’s four year old son.
- [30] The Respondent argued that Mr Chanas’ responses in cross examination give rise to concerns about his insight into the offences. While regret had been expressed, regret has previously been communicated in February 2014, prior to the four occasions of the offences. Concerns about Mr Chanas’ judgement were demonstrated in his being unclear about the meaning of a yawn. The Respondent noted argued that his interpretation of non verbal social cues appears to be significantly different to mainstream interpretation. The respondent referred to examples of the women wearing bikini top under the shirt interpreted as availability for a relationship; and he had thought that an angry face had meant that the complainant had been interested in him. In the absence of a report from the psychologist, there was no independent evidence of his insight into the offences, or of protective strategies used to reduce risk or manage triggers. The Respondent submitted that insufficient time had elapsed since these offences.
- [31] The Respondent argued that minimal weight should be placed upon the evidence of Ms Mc Allum who had not seen Mr Chanas with children, and had not prior to the hearing realised that his offences were repeat offences. The Respondent also argued that Mr Chanas may have an approval to work in New South Wales but that the evidence is this is subject to review. Irrespective of this Queensland is not bound by decisions made in another state.
- [32] The Tribunal concurs with each of the Respondent’s submissions. Mr Chanas’ offences are recent and demonstrate a serious disregard for personal boundaries and indications of distress from the complainant. Mr Chanas’ responses to questions about social cues gave the Tribunal reason for concern about his judgement. He has demonstrated repeated inability to control his conduct in relation to these incursions, even despite potentially serious custodial consequences. These offences are very

recent, and were committed when Mr Chanas was a mature aged man. While he has given evidence he respects women, his actions are in contradiction to his words, identified in a repeated failure to observe personal boundaries. In the absence of independent psychological evidence the Tribunal considers there are risks associated with this presentation and these features of his personality that have given rise to the offences.



[33] Since the risk factors substantially outweigh the protective factors in this matter, the Tribunal considers that this is an exceptional case where it is not in the best interests of children to issue a positive notice. The decision of the Chief Executive of the Public Safety Business Agency is confirmed.