

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Hamilton v Director-General, Department of Justice and Attorney-General* [2019] QCAT 138

PARTIES: **JOHN ROBERT HAMILTON**
(applicant)
v
DIRECTOR-GENERAL, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL
(respondent)

APPLICATION NO/S: CML252-18

MATTER TYPE: Children's matters

DELIVERED ON: 20 May 2019

HEARING DATE: 3 May 2019

HEARD AT: Rockhampton

DECISION OF: Professor Ashman, Member

ORDERS: **The decision of the Director-General, Department of Justice and Attorney-General that John Robert Hamilton'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.**

CATCHWORDS: FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – blue card – where Applicant breached Domestic Violence Orders – where Applicant was imprisoned for assault and deprivation of liberty – where the Applicant sought the cancellation of a negative notice – where the decision of the Respondent was set aside and replaced with a decision that there is no exceptional case

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 20, s 24

Working with Children (Risk Management and Screening) Act 2000 (Qld), s 221, s 226(2)

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

APPEARANCES &
REPRESENTATION:

Applicant: Self-represented

Respondent: Legal representative for the Department of Justice and Attorney-General

REASONS FOR DECISION

- [1] On 8 August 2017, the applicant applied for the issue of a blue card under the sponsorship of Central Queensland University. The applicant sought a blue card to enable him to work in health, counseling, and support services including disability services in which children might be involved. On review of the application, Blue Card Services acquired information that the applicant had been charged and convicted with a number of offences over the period 1991 to 2005 including contravention of Domestic Violence Orders, obstructing police officers in the performance of their duties, and assault.
- [2] On 4 January 2018 and 22 January 2018 the Principal Legal Office, Blue Card Services wrote to the applicant seeking any response to the documentation that Blue Card Services had received following enquiries at the Queensland Police Service. On 10 August 2018, the Director, Blue Card Services rejected the application.
- [3] On 30 August 2018, the applicant filed an application at the Tribunal seeking a review of the Director's decision. He sought the reconsideration of the negative notice issued under the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* ('the Act') to enable consideration of his eligibility for a blue card.
- [4] The purpose of the Tribunal's review is to consider whether the applicant's history and current circumstances constitute an exceptional case and to produce the correct and preferable decision.¹ The Tribunal may confirm or amend the Director's decision, set it aside and substitute its own decision, or set it aside and return it to the Director-General, Department of Justice and Attorney-General for reconsideration.²
- [5] The term, 'exceptional case', is not defined in the Act. Whether a case is exceptional or not is determined by having regard to the legislative intention of the Act. The decision must be consistent with the Act's objects that include promoting and protecting the rights, interests, and wellbeing of children in Queensland and in accord with the principle that the welfare and best interests of a child are paramount. In the course of a review, the Tribunal must consider the totality of the applicant's background and his present situation.
- [6] Blue cards are given without condition so if the applicant were to be issued with a blue card, he could work in any area of child-related employment, whether supervised or not.
- [7] In summary, when determining the correct and preferable decision, the Tribunal needs to be satisfied on the balance of probabilities that an exceptional case exists, or that it does not exist. Any prejudice or hardship that the applicant has experienced, or would experience, by not holding a blue card is irrelevant when

¹ *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 20.

² *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 24.

considering the case. In addition, it is irrelevant whether children might obtain some benefit by interacting with, or having access to, him.

- [8] The Tribunal begins by outlining the written and oral submissions of the Director, Blue Card Services, then the applicant's written and oral submissions. Following that will be a summary of the character references given on behalf of the applicant. Finally, the reasons for the Tribunal's decision will be outlined.

The Director-General's written submission

- [9] The Director, Screening Services Unit provided a copy of the Reasons for denying the applicant's positive notice. The bundle of documents also contained Queensland Police Service records, a medical and psychological report, and four references provide by the applicant attesting to his good character.

- [10] The Director's Reasons for the finding that an exceptional case existed are based primarily on the applicant's charges and convictions. These are summarised as follows:

- (a) hinder and resist police (January 1992, hinder stuck out; resist fine of \$100);
- (b) assault occasioning bodily harm x 2 and unlawful assault (November 1992, fined \$1,500, 3-year good behaviour bond and probation requiring psychiatric or psychological counselling);
- (c) breach of Domestic Violence Order (April 1997, no conviction recorded, 2-year probation);
- (d) assault or obstruct police (October 1997, convicted and fined \$100);
- (e) breach of Domestic Violence Order (November 1998, convicted and fined \$500);
- (f) wilful damage and breach of Domestic Violence Order (July 1999, damage convicted and fined \$150 with \$150 restitution, DVO convicted 4-months imprisonment suspended 18 months);
- (g) breach of Domestic Violence Order x 2 (September 1999 and October 1999, convicted 4-months imprisonment, suspended sentence activated);
- (h) breach of Domestic Violence Order (November 2004, convicted 4-months imprisonment, suspended for 2 years);
- (i) breach of Domestic Violence Order (October 2004, convicted and fined \$300);
and
- (j) assault occasioning bodily harm x 2, threats, deprivation of liberty, breach suspended sentence (April 2005, convicted with 3-year probation and undergo psychiatric and psychological treatment, imprisonment 18 months suspended for 5 years after serving 6-months imprisonment, terms of imprisonment served concurrently).

- [11] The Director refers to 19 charges or convictions that involved violence and an incident when the applicant was a taxi driver and assaulted two passengers who

sought to avoid paying the fare. As apparent from the above list, the Director continued that the several offences attracted penalties including fines, good behaviour periods, probation, and terms of imprisonment. She notes the court's concerns about the violence against the taxi passengers and the need for the applicant to receive psychological treatment.

[12] The Director raises a number of concerns that led to her decision:³

- (a) The applicant's charges and convictions relate to ongoing violent and harassing behaviour, and domestic violence. The evidence suggests to her serious concerns about the applicant's eligibility to work with children and young people or provide an appropriate role model for those who might be in his care.
- (b) There were three domestic violence orders issued between 1997 and 2004 that were breached on 12 occasions. It is likely that children who were living with the applicant's former partner were exposed to violent and/or threatening incidents. The applicant breached the DVOs regardless of police intervention and suspended term of imprisonment suggesting that he is unable to respond to relationship stressors and unable, or unwilling, to address his aggression.
- (c) The 2005 incident involved the assault of an intoxicated person (one of the taxi passengers) and assault and deprivation of liberty of the second passenger. The offences occurred in the course of the applicant's employment. The convicting Judge noted significant disrepute to the taxi industry as a result of the offences and that the applicant could have addressed the fare evasion through other, more appropriate procedures.
- (d) The Director notes two protective factors. First, the character references provided with the blue card application present a view of a person who has undergone significant changes in behaviour and attitudes. She states, however, that these do not outweigh the significant risk factors. Second, she notes that the applicant has undertaken rehabilitation, says that he is able to resolve conflict and anger in an appropriate manner, and there has been no offending over the previous 12 years.
- (e) Despite these two protective factors, the Director refers to the psychologist report by Mr Chris Holt prepared in 2006 in response to sentencing at that time. Mr Holt recommended the continuation of treatment for anger management. Without further information about the applicant's treatment program, the Director states that she is unable to set aside the risk of recidivism despite the 15 years since the last offence.
- (f) The Director states that the applicant's submissions reflect a 'total failure to take responsibility for his actions and show [sic] no insight at all into the very serious nature of his protracted and ongoing offending between 1997 and 2006. In particular the applicant blamed the complainants for his offending in 2005 and portrayed himself as a victim. The applicant also showed no insight at all into the very serious psychological harm he caused to at least one of the

³ I have combined several of the Director's bullet points when they refer to the same issues.

complainants and the emotional harm likely experienced by the other complainants [sic].⁴

- (g) Finally, the Director draws attention to the transfer of a blue card to any child-related regulated employment or business.

[13] The Director concluded that she was not satisfied that the issue of a blue card is in the best interest of children.

[14] On the late afternoon prior to the hearing, the Tribunal received additional 160 pages of material from the Department attached to an application for an extension of time for compliance with the Tribunal's Direction 1 of 6 March 2019. This included two copies of various documents including a part transcript of a District Court hearing, protection orders, Transitional Support Services Needs Assessment and Plan, and parole documents. I have perused these documents. They do not add significantly to the evidence already provided.

[15] On the morning of the hearing, the Tribunal also received a document entitled 'Respondent's Outline of Submissions'. This document outlines the relevant law and rehearses the applicant's various charges and convictions contained in material already provided. In brief, therein the Department acknowledges five protective factors: the support of the applicant's wife, the applicant's engagement in Mr Holt's psychological counselling, the duration between the applicant's last offence and the application, the applicant's identification of the triggers that led to his offending behaviour, and the applicant's remorse, regret, and insight into his offending.

[16] The document also lists risk factors that are largely the same as contained in the Director's Reasons. For completeness of the evidence, these include: a criminal history spanning 13 years; the violent nature of the offences and the gaps in time between the offences suggest that the applicant has not addressed the triggers; the negligible effect of the applicant's involvement with the criminal justice system; allegations of controlling behaviour that would be of concern if children were involved; allegations that a child was present during an incident of domestic violence; the applicant's minimisation of his actions and presenting himself as a victim; and the role that the applicant's now wife might have had in one violent incident; the lack of impact of counselling and therapy on the applicant's behaviour; no evidence that Mr Holt was aware of the Department's reasons for rejecting the applicant's application; and the transferability of the blue card once issued.

[17] The Department concluded that the risk factors constitute an exceptional case and it would not be in the best interest of children to issue a blue card.

[18] In her evidence to the Tribunal, the Department's legal representative raised issues that she considered warranted clarification during the hearing. These emanated from the applicant's criminal history and convictions, the behaviour that constituted the offences and the offending parties, and the applicant's ability to manage his anger and the impact of therapy. The Department wished to clarify the applicant's insight into his offending, the triggers that precipitated the offences, and the skills and strategies that the applicant now possesses to detoxify those triggers.

⁴ See the Department's submission on BCS-18.

- [19] After taking all oral evidence,⁵ the legal representative was invited to make a closing statement. She made six points. The applicant had not fully described the triggers that led to the violent behaviour. He stated that there was much talk about political correctness suggesting that his evidence was what he believed the Tribunal wanted to hear. She drew attention to perceived contradictions when he said that he did not judge others because of their behaviour but made a disparaging comment about a relative. She noted that the applicant's lung condition should not be considered as a factor that might limit any future aggression as aggression can be perpetrated in many ways. She reiterated that the Tribunal's decision must relate to what is in children's best interest.
- [20] The Tribunal now turns its attention to the applicant's submissions.

The applicant's written and oral submissions

- [21] The application for a review of the Director-General's decision contains only the Director's Reasons. Therein, the applicant states that he fully accepted the inappropriateness of his transgressions and took full responsibility for all. He states that he has attended counselling, classes and instruction on responding effectively to anger, engaged in cognitive behaviour therapy, and has practiced appropriate strategies in his daily life. He has not reoffended for a significant time. He states that he is committed to the safety and wellbeing of children and young people and would treat them with respect and understanding at all times to provide a positive and supportive environment where learning and skill development is encouraged and facilitated.
- [22] On 5 December 2018, the applicant provided additional material. This bundle of documents includes six character references, Mr Holt's psychology reports dated 3 October 2006, his letter of 1 October 2007, and further letter of 10 September 2018. There is also a brief statement relating to the circumstances surrounding his court appearances, a national police certificate, a letter from his specialist regarding his physical/medical conditions (chronic obstructive pulmonary disease—COPD) and multiple related documents, a 3-page life story, and notations relating to his performance in health service learning modules in the Allied Health/Health Service Assistant/School of Nursing, Midwifery and Social Science course
- [23] In his submission relating to his convictions he refers to his obsession with money and the stress and fatigue he was experiencing at the time of the 1992 to 2004 incidents. He writes that he attended Relationship Australia courses, counselling, and sought religious assistance at the time all of which assisted in controlling his selfish, over-bearing personality, and stress. After the 2006 incidents, he attended counselling with Mr Holt. He states that he realises that a life of accumulating money and selfishness, and violence is wrong and has learned techniques and strategies to change his life. He states he is remorseful for past actions and hopes for society's forgiveness.
- [24] And in his personal statement he writes concerning the breached a DVO taken out against him by his second wife. 'I realise now it was my fault to try to continue a relationship that was never going to work. I accept fully, my fault in regard to abuse and violence.' And in regard to the fare evasion incident, 'I fully accept that it was

⁵ No witnesses were called.

my fault in not choosing the right way to have dealt with this issue. While in jail I tried to do as much counselling, classes on relationships and anger management as I could to try to turn the corner on my past controlling and violent behaviours.’⁶ After this he engaged with Mr Holt, which the applicant describes as a breakthrough. He learned about cognitive thought patterns and how to address his emotions in a different way. He states that the trigger points were greed, threats to his financial security, being put down, putting the family down, and selfishness. The applicant said, ‘I chose the wrong ways to deal with these issues’, and has employed a range of coping strategies over the past almost 14 years.

- [25] During the hearing, the applicant made an opening statement. He said that he accepted culpability for the changes and convictions. He stated that there is little defence for his behaviour.
- [26] The applicant was then invited to give evidence under affirmation. The Tribunal took the initiative in the questioning with the Department’s legal representative seeking qualifications or asking additional questions.
- [27] The applicant was asked why he needed a blue card. He explained that CQU required him to hold a blue card so that he could participate in practicum placements associated with his surgical assistant course. Consequently, he has been unable to complete the course.
- [28] He was asked to explain his aggressive patterns of behaviour over the two relevant periods in his life. He explained that his early years were strongly influenced by his father’s obsession with money and he was required to work in his father’s bookmaking business in which acquiring money was the primary concern. This merged into a way a life in which he was driven to success, with success being equal to the accumulation of money facilitated by greed, anger, and ignorance.
- [29] He reported that his first wife was also driven by money and possession but this relationship eventually broke down and they divorced. He described his second wife as being very protective of her children and they developed a pattern of disharmony that led to incidents of domestic violence, with both partners contributing to the escalation of emotions. This led to a domestic violence order against the applicant, his breach of the order via telephone calls seeking to establish a harmonious relationship and, ultimately, the marriage broke down.
- [30] The applicant began a third (de facto) relationship. At this time both he and his partner drove taxis. His quest remained the accumulation of money that he believed would lead to stability. It was not long before this relationship was also characterised by friction, physical aggression initiated by both partners, and eventually a further domestic violence order, and a breach of that order. At least one of the issues was the attendance by both drivers at the same taxi ranks that constituted a breach of the DVO along with telephone calls from the applicant in regard to the sale of joint property. The applicant challenged the legal representative’s allegation in police evidence that he had attempted to strangle his partner. He stated that this did not occur. He argued that it was an allegation, one

⁶ These quotes appear on p. 2 of the document dated 21/9/2018 entitled *Life story of John Robert Hamilton*.

reported to the police only, and was untested in court. He stated, however, that in his court appearances, for expediency, he chose not to challenge the accusation made.

- [31] On several occasions during the giving of this evidence the applicant acknowledged his responsibility for his aggressive behaviour, and expressed remorse for its occurrence.
- [32] The most significant incidence of violence was the assault/deprivation of liberty of taxi passengers who sought to evade paying the applicant for a taxi fare. He explained that at the time, he was in a relationship with a lady who is now his spouse of over 10 years. He explained that he had been working very long hours in full-time (casual) employment during the day and driving a taxi for most of the night. This had occurred over a long period and he stated that the assault was a consequence of 'snapping' due to exhaustion. At the conclusion of this evidence, the applicant repeated that he acknowledges the seriousness of his behaviour and that the victims (notably the woman whom he took to his home) would have been fearful of further violence.
- [33] The applicant said that his partner was surprised when he arrived home with the woman. He explained to her what had happened, and she then drove the woman to her accommodation. He stated that he understood the severity of the crime and was ashamed of it.
- [34] When asked about his relationship with children, the applicant reported that he has very positive relationships with his own two children, his stepchildren, and grandchildren. He was asked to describe a situation in which children were becoming a nuisance and related a situation at a beach when the children started his jet ski without permission. He said that he simply told one of the boys to turn off the motor and disable the fuel line. He said that he no longer gets angry when there are disagreements or when others behave in inappropriate ways as he has learned how to communicate effectively using cognitive behaviour therapy techniques and these are now fully integrated into his mindset (through perception, judgment, reasoning, empathy, and forgiveness).
- [35] He was asked about allegations made in the police material that children had been present and that he had threatened them. He rejected the allegation saying that to his knowledge no children had been involved in any violent incident. When there were arguments, the partners removed themselves from the children, in one case to a granny flat. He accepted that children might have heard heated conversations but he was not convinced that this had occurred. He denied threatening the 17-year-old son of one of his partners. He stated that when situations became very heated, she would gather the children and leave the house. He denied another accusation that he had let down the car tyres belonging to one of the partner's children.
- [36] When asked about parenting practices he stated his strong disapproval of corporal punishment. He said that he had seen children being smacked by their parents and found this completely unacceptable.
- [37] The Tribunal sought information about the applicant involvement in counselling and therapy, notably with Mr Holt.⁷ He said that he was always open with Mr Holt, did

⁷ The Tribunal attempt to invite Mr Holt to give evidence at the hearing. A voice message at Mr Holt's practice stated that he was on leave and his practice was closed for a week beyond the hearing.

not hide anything from him, and had three updating sessions in September 2018. He confirmed that Mr Holt read the Director's Reasons when he was invited to provide a report of his current emotional state and the success of the therapy.

- [38] The applicant said that his life has completely changed through the use of anger management and the thinking process skills that he had learned. He continued that he is committed to the truth and honesty but accepts that others may not be. When involved in such a situation he simply lets it pass without confrontation.
- [39] He also spoke about group sessions he attended in the early 2000s that focused on drinking and violence. He said that these were not especially useful and felt disconnected from the purpose of the program as those participating tended to talk only about their drinking and aggression rather than focusing on strategies to deal with the behaviours. Despite that he attended every week for three months. The applicant stated that he rarely drinks, at most perhaps once in three months. He acknowledged two occasions when he drank during the period of the charges. This occurred subsequent to the arguments with a partner and was not a cause of the argument or violent behaviour.
- [40] The Tribunal provided an opportunity for the applicant to respond to the legal representatives closing comments. He stated that he had tried to explain the factors that he believed led to the various charges and convictions. He stated that his comments about political correctness should not imply that he was being dishonest with the Tribunal but simply 'tells it as he sees it.' He said that his medical condition is very debilitating and life threatening. He said that he uses the various strategies Mr Holt taught him and these had changed his life.

Character references

- [41] As indicated, there was no evidence taken from witnesses other than the applicant. There are six written reference from friends and two from the applicant's wife.
- [42] CiH writes on 20 September 2018 that she has known the applicant for 12 years and is now married to him. She states that he has made a commitment to their relationship and readily shares the work and responsibilities that come with such a long-term relationship. She reports his attitude to conflict in these terms, 'If it's not important, let it go' as that diffuses disagreements. In the home, they talk it out. The relationship is cooperative, affectionate, sincere, stable, and supportive.
- [43] In a second statement on 8 January 2018, CiH continued that she is aware of her husband's criminal history and of the positive impact that the psychologist has on his life. She reiterates that he has become a caring and loving man who demonstrates patience, courtesy, respect for others, and keenly aware of his past behaviour and convictions. She writes that at all times, the applicant is a loving father and grandfather and during the time of his work in the taxi industry, he carried children and adults who had physical impairments and intellectual disabilities. At no time have there been issues with their own children or others. She concludes that the applicant appreciates the bad choices that were made but believes that he is capable of working with children.
- [44] MH is the applicant's mother. She writes on 14 January 2018 that she is very proud of how her son has turned his life around. She is aware of his criminal history and

believes that he is capable of working in a hospital situation now that his perspective on life has changed. She states that he interacts well with children, they love and respect him, and this is reflected in his work earlier in his life with apprentices and trade assistants.

- [45] ChH is the applicant's accountant who has been a family friend for 30 years. She wrote on 15 January 2018 that the applicant has been a successful businessman and has always shown great enthusiasm for his work. She states that in 2006 she saw a complete change in the applicant through his counseling that led him to become more mature, respectful, and patient. He is now a mature gentleman who values his loved ones and friends. He has four children and eight grandchildren and his behaviour toward them is loving and patient. When the applicant ran a news agency he employed four or five paperboys and six junior shop assistants who he taught valuable personal and employment skills. In his mechanical workshop he had two young apprentices whom he trained to be fine mechanics, and in the coalmines he advised and trained many young, inexperienced trade assistants. ChM says that the applicant has made mistakes in the distant past but she believes that he has grown and learnt from those times.
- [46] PW wrote on 17 January 2018 that he has known the applicant for two years across the period of the illness and death of the applicant's father. During that time he found the applicant to be a thoughtful and caring person who is trying to better himself in learning new skills to achieve a stable and secure employment for himself. He suggests that the applicant would be a trusted and loyal part of a team if given the opportunity to prove himself in that role.
- [47] Finally, on 10 January 2018 JA wrote that he has known the applicant as a work and family friend since the applicant was an apprentice in the mid-1970s. They have remained friends. JA says that the applicant was punctual and honest in his dealings when he worked for JA and observed the applicant when raising his children. He never saw anything but a great deal of caring by a protective father who maintains a close relationship with his daughter and son. He has witnessed no wrongdoings with children. He ends, 'They are good honest living people.'

The Tribunal's decision

- [48] The Tribunal acknowledges the circumstances under which the Director judges if an exceptional case exists. The Tribunal has an advantage of viewing the original documents and submissions that led to the Director's decision but also additional material provided to the Tribunal by both the applicant and respondent.
- [49] As it was for the Director, the Tribunal's decision is to determine what is in the best interest of children, and whether it would be in their best interests for the applicant to be involved with them in regulated employment situations. The basis of this decision is whether the applicant's circumstances constitute an exceptional case. At the conclusion of the hearing and being privy to all of the information provided to the Tribunal, the Department's legal representative expressed the view that an exceptional case still existed. The Tribunal will, therefore, address the key issues in this matter.

The applicant's criminal history and insight into his behaviour

- [50] There is no question that the applicant has had several, significant engagements with the criminal justice system in two periods over 12 years beginning when he was in his late 30s.⁸ It is also acknowledged that the applicant's involvement with the criminal justice system did not appear to have been discouraged by charges, convictions, or incarceration. This would suggest that he did not possess the strategies to address the situations that prompted aggressive behaviour and further offences.⁹ In the applicant's written and oral submissions, he acknowledged his unjustified and unwarranted actions that led to those convictions. He also expressed his contrition—his remorse and regret that these events occurred—insisting that they will never recur.
- [51] The Tribunal notes the Director's contention in [12](f) that the applicant shows a 'total failure to take responsibility for his actions.' The Tribunal does not agree. There is no evidence to support this statement, indeed, the opposite is suggested based upon the applicant's oral evidence. Furthermore, the Tribunal has a contrary view to the Director's in [12](f) that the applicant shows 'no insight at all into the very serious nature of his protracted and ongoing offending between 1997 and 2006' and the legal representative's comment that the applicant does not appreciate the triggers that led to his violent behaviour.¹⁰ Evidence suggests the opposite.
- [52] The applicant clearly described the nature of the relationships he had with this first two wives and his de facto partner. These were relationships driven on his part by an obsession with generating wealth and on his partners by their failure to appreciate his (mainly) financial contributions to those relationships and residual emotions from his childhood that undermined his self-confidence and self-concept. He also attributed the escalation of the events that led to his aggression jointly to his and his partners' behaviour and his unwillingness to walk away. As for the fare evasion incident, the applicant noted his exhaustion from very long working hours, his knowledge of the many incidents of violence perpetrated against taxi drivers by passengers, and his reluctance to allow these passengers to avoid paying. He accepts that his behaviour was unacceptable and that if such a situation ever reoccurred he would simply walk away from it.
- [53] As for the Director's further comment in [12](f) concerning the applicant's blame of the complainants for his offending and the harm that his behaviour caused. Such statements could be perceived as deflecting responsibility. However, as mentioned above, many times in written and oral evidence the applicant admits that he acted improperly and recognises the harm that he would have caused to others.

The applicant's behaviour management strategies and support network

- [54] The Director questioned the effectiveness of the applicant's counselling and treatment by Mr Holt.¹¹ During oral evidence, the applicant spoke about two aspects of his treatment: his participation in a Men's group focussing on alcohol and aggression in mid-2007 and his sessions with Mr Holt across the period October 2006 to July 2007. The applicant reported that he found the first process of minimal

⁸ Expressed in [12](a).

⁹ Expressed in [12](b) and [12](c).

¹⁰ See [19].

¹¹ Expressed in [12](d) and [12](e).

value but the second changed his life. Mr Holt taught him a range of strategies based in cognitive behaviour therapy principles, and he has practiced those strategies persistently over the past 12 years. He reported that he had a further three sessions with Mr Holt in September 2018.

- [55] In regard to the legal representative's implication that the applicant was telling the Tribunal what it wanted to hear, the Tribunal does not share this view. The applicant was open, candid in his comments, and fully acknowledged his unacceptable behaviour in the periods 1992 to 1999 and 2004 to 2006. His explanation of his motivations at those times and the dynamics in his relationships are fair-minded. This does not mean that they were without flaw or beyond criticism.
- [56] Of primary relevance to the Tribunal's decision is the applicant's risk to children should he be issued with a blue card and work in supervised and unsupervised situations. His circumstances, in age, health, employment, and his family are vastly different to those that existed between 1992 and 2006. He is no longer a young man. He is 58 years old. He had a serious pulmonary condition and, by his own omission, very much overweight. He is currently unemployed but hopes to gain qualifications that would lead to employment in the health industry. He is in a stable marriage and the character referees concur that he is a mature, respectful, and considerate man.
- [57] All but one of the applicant's referees have known him for over a decade. Not all indicated their awareness of his criminal history. Those who are aware of his transgressions continue to have trust in him, recognise the changes that he has made in his life, and see no danger to his involvement with children. Of significance is Mr Holt's letter to Blue Card Services of 10 September 2018 in which he writes on p. 2, 'Mr Hamilton has made strong, positive progress since I assessed and treated him in 2006/2007. He is not currently suffering from any psychological or psychiatric illness as defined by the ... (DSM-V). In fact, he is stable, focused and goal directed [sic]. He continues to have special treatment for his COPD. I support Mr Hamilton's application for a Blue Card. I consider him to be minimal risk of further offending. Mr Hamilton applies an effective range of coping strategies and has continued his development and growth with study and personal development programs. The prognostic indicators for him are good. He has the support of his partner. He has maintained his current level of functioning now for over 12 years and has resolved his previous issues appropriately.'
- [58] The Department was concerned that Mr Holt may not have been privy to the Director's Reasons for denying the issue of a blue card. Apparently he did.
- [59] The Tribunal has no evidence before it that the applicant has directly acted aggressively toward any children. There are allegations. That is accepted. It is also accepted that children might have been affected by the adults' behaviour during any number of mutually aggressive incidents between the applicant and his partners but there is no evidence that verifies such an allegation. The Tribunal finds that the risk of any such future event is low.
- [60] It is now over 13 years since the applicant's last infraction. He has a rich and supportive network of friends and family with whom he can confide and a psychologist if additional support is needed. All evidence from those who know the applicant well refer to his positive relationships with children. The treatment for his aggression and for dealing with the emotional triggers to the events that occurred in

the two earlier period of his adulthood are reported as successful. Significantly, Mr Holt wrote, 'I support Mr Hamilton's application for a Blue Card. I consider him to be minimal risk of further offending.'

Conclusion

- [61] In coming to a decision, the Tribunal acknowledges the principle for reviewing child-related employment decisions, namely, the welfare and best interests of a child is paramount. The preamble to the Act refers to the promotion and protection of the rights, interests, and wellbeing of children in Queensland.
- [62] The Director determined that the applicant's case is exceptional such that it would not be in the best interest of children to issue a positive notice and blue card. There is a range of authorities that supports the view about what constitutes an exceptional case. In the *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492, the Queensland Court of Appeal endorsed an approach that balanced the relevant risk and protective factors arising from the circumstances of the particular case. This approach is adopted by the Director-General and by the Tribunal in numerous decisions.
- [63] The submissions made by the Director-General mount a case that the risk factors outweigh the protective factors. The Tribunal finds that there is scant evidence to support that conclusion at this point in the applicant's life or to substantiate the risk factors on which the Director-General's case relied. The applicant's life has changed markedly since 2007 and this is supported by the psychologist's professional assessment and the comments by the applicant's referees who attest to the his good character and supportive nature with children.
- [64] On the basis of the applicant's current circumstance, the Tribunal does not consider this matter to be an exceptional case as proposed by the Director-General.

The order

- [65] The order of the Tribunal is as follows: The decision of the Director-General, Department of Justice and Attorney General 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* is set aside and replaced with the Tribunal's decision that this is not an exceptional case.