

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *ML v Director-General, Department of Justice and Attorney-General* [2020] QCAT 376

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

APPLICATION NO/S: CML032-20

MATTER TYPE: Childrens matters

DELIVERED ON: 8 October 2020

HEARING DATE: 11 September 2020

HEARD AT: Toowoomba

DECISION OF: Professor Ashman, Member

ORDERS: **The decision of the Director-General, Department of Justice and Attorney-General that ML’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 was charged with drug offences – where the Applicant’s sentence was suspended with conditions – 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*

APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: G Carrington for the Department of Justice and Attorney-General

## REASONS FOR DECISION

- [1] On 21 March 2019, the applicant applied for the issue of a blue card to satisfy the requirements of her employer, a child protection service. On review of the application, Blue Card Services acquired information that the applicant had been convicted of non-serious offences as set out in the *Working with Children (Risk Management and Screening) Act 2000* (Qld) ('the Act'). On 14 January 2020, the Director, Blue Card Services rejected the application.
- [2] On 22 January 2020, the applicant filed an application at the Tribunal seeking a review of the Director's decision that an exceptional case existed in which it would not be in the best interest of children for a positive notice to be issued to the applicant.
- [3] 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.<sup>1</sup> In undertaking the review, 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.<sup>2</sup>
- [4] The Act does not define the term "exceptional case". Whether a case is exceptional is determined by considering the circumstances of the case, having regard to the legislative intention of the Act. In the course of this review, the Tribunal must consider the totality of the applicant's circumstances and must be consistent with the Act's objects that include promoting and protecting the rights, interests, and wellbeing of children in Queensland and in accordance with the principle that the welfare and best interests of a child are paramount. The Tribunal must also consider the intent of the *Human Rights Act 2019* (Qld).
- [5] Blue cards are given without condition so if the applicant were to be issued with a blue card, she could work—under supervision or not—in any area of child-related employment.
- [6] In summary, in determining the correct and preferable decision, the Tribunal needs to be satisfied on the balance of probabilities that an exceptional case does or does not exist. Any prejudice or hardship that the applicant might have experienced—or would experience—by not holding a blue card, is irrelevant when considering the case. In addition, whether children might derive some benefit by interacting with, or having access to, her is also irrelevant.
- [7] I will begin by outlining the written and oral submissions of the Director, Blue Card Services, then the applicant's written and oral submissions. Following that I will summarise the evidence given by referees and also witnesses who appeared at the hearing. Finally, I will outline the reasons for the Tribunal's decision.

### **The Director-General's written submissions**

- [8] The Director, Blue Card Services lodged a bundle of documents in support of her decision. The bundle includes, but is not limited to: a statement of reasons outlining the basis of her decision; a copy of the applicant's blue card application; Northern Territory Police, Fire and Emergency Services reports relating to charges,

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

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

convictions, and various directions to the applicant subsequent to her court appearance; and references supporting the applicant's application.

- [9] The Director's reasons for her determination of the exceptional case were primarily related to the applicant's convictions in the Darwin Supreme Court originating in early 2017. The applicant was charged and convicted of possessing a commercial quantity of a Schedule 1 drug and the possession of less than a trafficable quantity of Schedule 2 dangerous drug. The 12-month imprisonment sentence for the first conviction was suspended with conditions being applied, and the conviction for the second offence was without penalty.
- [10] Following her review of the application and relevant material, the Director noted risk factors, which I summarise below.
- (a) The Director expressed the view that drug use and engagement in drug related activities raises concerns about the applicant's eligibility to hold a positive notice and blue card. She questioned the applicant's ability to provide a protective environment for children placed in her care and to present an appropriate role model.
  - (b) The quantity of drugs found in the applicant's possession raises concerns about the extent of her drug use and the considerable negative effects of those drugs in an employment environment.
  - (c) The applicant's admission of drug use raises concerns about the proliferation of dangerous drugs in the community and the impact of those drugs on others including children and that her use of such drugs to relieve back pain suggests that she has been unable to seek appropriate medical treatment; instead, she resorted to self-medication using harmful substances and, therefore, there are concerns about the applicant's ability to make appropriate decisions in her best interest and in others'.
- [11] The Director also writes, "I commend the applicant on seeking professional assistance with regards to her mental [sic] health and drug related issues." She continues to outline a number of courses and programs in which the applicant engaged over the period following her conviction. She also refers to positive references from former work colleagues. She continues, however, that the applicant's involvement in those activities do not "sufficiently mitigate the risk factors outlined in this assessment [i.e., the decision document]." And while the Director also notes the applicant's considerable experience in the child protection industry, this also is not considered sufficient to mitigate potential risks.
- [12] Finally, the Director draws attention to the lack of any conditions that can be placed on the issue of a blue card in regard to the applicant's involvement with children.
- [13] Consequently, the Director determined that the issue of a blue card was not in the best interest of children and young people at this time.
- [14] In her opening submission, the Department's legal representative referred to the applicant's drug use and self-medication with illegal substances and the recency of the applicant's convictions. There were still concerns over the sufficiency of the applicant's rehabilitation, the complexity of her mental health conditions, her insight into her mental health and drug use, whether she could respond appropriately to triggers that might lead to a return to drug use and offending, and the degree to which her friendship and professional network might mitigate a relapse.

- [15] The legal representative also provided a written submission approximately halfway through the hearing. Approaching one-half of that 27-page document was devoted to a description and interpretation of the relevant legislation and the Tribunal's responsibility.
- [16] The remaining material suggests a number of anomalies in the applicant's record of her life history along with the following issues:
- (a) The applicant's offences are relevant to working with children as they related to self-medication for post-traumatic stress disorder and back pain that were experienced when the applicant was working in a child protection agency. All factors associated with the offences have an impact on the broader community and specifically have the potential to place children at risk.
  - (b) The applicant's material and other submissions draw attention to the complexity of the applicant's mental health conditions. The applicant admits to binge drinking and refers to the use of dangerous substances as escapism, that is, ways of coping with personal stressors also experienced within her employment setting at the time.
  - (c) The respondent holds the view that the applicant's offences occurred despite having undertaken treatment under mental health professionals in or around the time of her conviction.
  - (d) The applicant has not followed recommendations to engage in long-term therapeutic interventions with a psychologist qualified in eating disorders and Dialectical Behaviour Therapy.
  - (e) The applicant has not accurately reported her alcohol and drug use to counsellors and psychologists, raising concerns about their conclusion about successful rehabilitation.
  - (f) The applicant admits that she continues to use alcohol, but as a social drinker.
  - (g) The health report by MS (reported below) required by the Tribunal does not detail findings on the applicant's insight, stating only that the applicant has insight and her current self-management involves only non-mainstream or alternative therapies.
  - (h) The applicant's mental health has affected her work in child protection when her mental health issues existed and was also a user of alcohol and drugs.
  - (i) The applicant minimises her mental health history and drug and alcohol use, thus suggesting a lack of insight.
  - (j) The respondent finally draws attention to the transferability of a blue card to any child-related employment setting.
- [17] The Tribunal now turns its attention to the applicant's submissions.

#### **The applicant's written and oral submissions**

- [18] The applicant made several submissions via affidavits. The first was lodged at the Tribunal as part of her application for this review. It included correspondence from the Director of the applicant's former employer terminating her appointment, documents relating to a domestic violence order in which the applicant is named as

the protected person, a report from a counsellor and references and descriptions of counselling and therapeutic programs in which the applicant has participated.

- [19] A later affidavit provided a personal history. By way of a summary, it is sufficient to say that she was sexually exploited from an early age and this led to promiscuity. Her school years were not pleasant and she left home at around age 15 years. During her early adult years she was subject to emotional and physical abuse by partners that accumulated into social and emotional responses characterised by binge drinking, bulimia, post-traumatic stress disorder, fatigue, chronic back pain, and drug use. She was also subject to bullying in her work environment. These various factors eventually led to the drug related charges, convictions, and the suspended sentence and ultimately to a change in her life trajectory. She is now married and with her husband moved to Queensland where she found employment in a child protection service similar to her earlier career employment.
- [20] The applicant outlined her involvement in formal counselling and rehabilitation programs and a commitment to increased self-awareness through alternative self-development that provided insight and strategies for dealing with stress and anxiety that also included physical and creative outlets.
- [21] In her opening statement, the applicant drew attention to the court transcript in which the Chief Justice provided reasons for the sentence imposed upon conviction. She stated that His Honour took into consideration a range of positive attributes, that she was not drug dependent and she was not in possession of the drugs in order to sell them for profit. He took account of her mental health and negative experiences during her youth, and her attempt—since offending—to manage and rebuild her life to some degree in terms of employment and mental state that boded well for successful rehabilitation. The applicant also drew attention to the supportive relationship and positive reports from the Community Corrections officers who met with her on a regular basis during the period of the suspended sentence.
- [22] The applicant stated that her addiction was bulimia that originated from her childhood through to adulthood experiences including sexual abuse and domestic violence. Alcohol and drug use was self-medication. She stated that she has now established self-care strategies through a suite of counselling and self-awareness programs and had recently completed a course dealing with domestic violence. She said that she was committed to a career in the social services area.
- [23] The applicant gave evidence under an affirmation and responded to a wide-ranging conversation with the Tribunal and responded to questions from the Department's legal representative. The Tribunal's questions addressed: the origins of her drug and alcohol use; her life situation from about 2014 and up until the time of her offences; mental assessments undertaken; and the type and form of rehabilitation/self-development programs in which she has participated. She was invited to report on the success of those programs, the mechanisms and strategies she has developed to protect against relapse including the social and professional supports she has in her present life, why she chose child safety as a career, and her hopes for the future if she receives—or does not receive—a blue card.
- [24] In regard to drug and alcohol use, the applicant said that she started drinking alcohol in her early teenage years largely as a result of the behaviour of those in her friendship group at the time. In her teenage years she began binge drinking that continued up to about 2015. She said that her consumption of alcohol did not affect her employment performance although she occasionally missed days. She

acknowledges that she lost her driver's licence as a result of a drink-driving conviction around 2014 and also lost her job.

- [25] She began using illicit drugs in 2015 again via social contacts.
- [26] The applicant reported that she did not seek counselling for her drinking and drug use in 2015, but did so in 2018. She stated that the earlier counselling sessions suggested that the origin of her drinking and drug use was her life circumstance (i.e., situational), which she acknowledges might have been true at the time.
- [27] Access to non-prescription drugs allowed her to self-medicate to relieve the symptoms of PTSD and the significant back pain she was experiencing. She had begun counselling for PTSD in 2015 but those sessions largely focused on its origin, sexual abuse by her brother. She stated that counselling did not address any other issues that prompted the use of drugs.
- [28] In response to a question from the Department's legal representative, the applicant stated that she did not use drugs at work, but used a small quantity at home. As she was working with children at the time, drug use at work would have resulted in the loss of her employment.
- [29] Her major life crisis occurred in and around 2017 when life became turmoil with cycles repeating themselves. She became unemployed, was in a relationship characterised by domestic violence, was forced to forfeit her accommodation and belongings, mixed with a group of young people who were drug users, and all of these situations were exacerbated by PTSD, back pain, and bulimia with persistent daily cravings for food, following by purging.
- [30] The applicant commented on her involvement with psychologists, counsellors, and the many programs and therapies in which she has participated from around the time of her convictions to the present. Overall, the involvement with psychologists and counsellors were valuable in the earlier stages when the focus was on identifying the underlying basis for her mental health issues. She stated that the early programs didn't address ways to overcome the emotional reactions to negative life experiences and trauma and those professional contacts ceased. She stated that the intervention of greatest assistance was Eye Movement Desensitization and Reprocessing (EMDR) therapy that directly addresses the trauma she had with PTSD. EMDR enables the client to relive traumatic or triggering experiences in brief doses while the therapist directs the client's eye movements facilitating those memories or thoughts without the strong psychological response. The applicant reported that EMDR removed the anxieties associated with PTSD and her back pain ceased.
- [31] The applicant reported and provided evidence of attending a number of "traditional" therapeutic programs that she believed were not overly successful, such as cognitive behaviour therapy. She stated that now she has no need to self-medicate. She has close friends within a wider social group. Some in that cohort have had similar experiences to hers and can provide sensible assistance if ever needed. Her husband is supportive, patient, gentle, and reliable. She also volunteers with a community group. The applicant said that she has begun to reconnect with family, but primarily with her mother.
- [32] In response to questions by the Department's legal representative, the applicant stated that she attended formal psychological and counselling sessions, but gained greater value from the alternative programs and workshops she attends. Early, she did develop a mental health plan with a therapist and a dietician as recommended,

but that plan has been replaced by methods that have given her functional methods to deal with any triggers that could lead to unacceptable emotional responses.

### **References and witnesses' evidence**

- [33] MS is a psychologist who undertook a mental assessment of the applicant over four days in May and June 2020. Her report is largely a client history provided by the applicant highlighting details that have been summarised above. MS writes that the applicant showed good insight and judgment. Her thought form was logical and sequential with no signs of disturbance. MS writes that she was unable to identify any current triggers or risk factors that may lead to her return to drugs as a way of coping. ML has been drug free for over two years. She referred to the court statement that the applicant's offences were victimless and her parole officer and her supervisor both saw her as no risk to children with whom she may work. MS said that the applicant has a good relationship with her husband, a group of responsible and supporting friends, and is highly valued by her employer and colleagues. She has found alternative strategies to manage her mental health issues and wellbeing. "These findings suggest that any children Ms [ML] may work with are not at risk of harm."
- [34] RJ provided a reference and also gave evidence under affirmation. In her letter RJ states that she was a colleague when the applicant was working in a child safety service and has maintained a friendship since that time. The applicant was a respected and the most experienced team member. She provided excellent mentoring and coaching to newly appointed staff. "No concerns have ever been raised about her ability to provide a safe environment for children by staff, foster carers or parents to my knowledge." The applicant carried a full caseload that involved visiting children on a regular basis.
- [35] RJ stated that she is aware of the applicant's history of childhood sexual abuse, domestic violence experiences, her convictions, mental health, and the professional support network including a general practitioner, mental health nurse, dietician, sleep specialist, relationship counsellor, domestic violence counsellor, psychologists, and drug and alcohol counsellor during her mental health recovery. She says that the applicant has developed further awareness and deep insights into her emotional and thinking patterns, is aware that self-medication served a purpose at the time, but ML is also very aware of the consequences.
- [36] RJ draws attention to ML's recovery without the use of prescribed medications and cognizant of the importance of abstaining from the use of drugs. RJ writes that the applicant has demonstrated an understanding of the effects of alcohol and drugs on her behaviour and society. She says that child protective services have a high turnover and burn out rate due to the pressures of the job and it requires a very high level of emotional resilience, professional knowledge, and flexibility. These are all characteristics the applicant has acquired over seven years employed in such services.
- [37] In response to the legal representative's question, RJ gave evidence that she holds a Bachelor's degree in Psychology and Master's degree in Social Work. She interacted with the applicant every day when working with her as a colleague. She reiterated points made in her written statement, commented upon RJ's self-development activities, stating that people need to find what therapeutic aides work for them and if they work, then she (i.e., RJ) is open to that. She reiterated that ML has been involved in traditional professions, such as psychology.

- [38] RJ said that she had never seen the applicant “triggered” at work. She manages her workload, teaches others, and RJ “is in awe of this.” She recognises that ML was vulnerable before she moved to Queensland, but now is confident, rational, calm and not distracted from her work. She has witnessed no mental health concerns or trauma responses. RJ said that the applicant has deep insight into her drug use and uses her knowledge and communication skills effectively when working with clients “who duck and weave.”
- [39] BD provided a written statement and also gave evidence under affirmation. In her letter she states that she has known the applicant since February 2020. They have mutual friends in the same friendship group. As for herself, BD offers support in the community as a life coach and offers personal development work based on her own extensive studies and personal investment in self-development. She is a mother of four children under eight years of age.
- [40] BD is aware of the applicant’s background and her involvement with the adult criminal justice system. She has been privy to the Director’s reasons. BD is aware of the mental health issues that ML was experiencing at the time of her offending and of the therapeutic programs and range of alternative therapies and personal development programs to deal with emotional triggers. BD says that the applicant has learned and uses a range of tools to manage stress and is confident that she understands the triggers and processes for successfully managing them. She has a strong network of friends along with her husband. She is a confident professional with an abundance of skills, tools, and knowledge to be a productive child safety worker and is without any mental health, child safety, or workload concerns.
- [41] When giving oral evidence, BD reported that she connects with ML on a weekly basis. She says that she is aware that the applicant went down the professional path with psychology and counselling services, but she was enthusiastic about adding other tools to her emotional tool belt. She has never seen the applicant get upset as she can self-reflect and engage strategies to maintain alignment and remain grounded. ML interacts well with children; she is calm and talks in ways that they understand. She is not aware of any persisting mental health issues.
- [42] NA is a Carer Assessor Practitioner outside of Queensland who has known the applicant for over four years as a work colleague and friend at the time of preparing her statement on 18 July 2019. She is aware of the applicant’s convictions. She states that the applicant was highly respected in the work environment for her diligence, sense of justice, honesty, passion and writing skills. NA was aware of the applicant’s victim status in a domestic violence relationship and that she had struggled with anxiety.
- [43] NA says that she has maintained contact with the applicant and has watched her overcome the consequences of her actions through a period of changing accommodation, bankruptcy, loss of belongings and living in a share house with 15 others. When on probation, ML engaged a number of support services to address her health and wellbeing including an intensive gym/group fitness program. She also attended a six-day training course on massage during which participants were required to detox and work through deep emotions in a group environment. BD concludes that ML has spent the last two years rebuilding her life to gain the confidence needed to re-enter the social welfare workforce.
- [44] IA is an Advanced Child Protection Practitioner. He provided a reference dated 18 July 2019. He has known the applicant in her role in two organisations. He states

that he is aware of the applicant's background and has always encouraged her to return to the child protection employment, which at the time of writing she had resisted because of her stated need to resolve a few personal matters and take some final steps in that journey. He writes that ML has found it easier since moving to Queensland.

- [45] IA states that he has observed the applicant in her professional role and she is skilled at working with young children and adults and building positive relationships with them. She maintains appropriate boundaries with a good balance between remaining firm and calm. During her term as coordinator she worked well with colleagues and displayed forethought in her approach to daily tasks and risk assessment.
- [46] KP is a youth and family counsellor who wrote a 20 October 2006 reference for the applicant's entry into a Bachelor of Youth Work program. She writes that she had contact with the applicant over 20 months and reports her determination to overcome her own personal obstacles. She says that after ML had worked through life obstacles with KP's service, the applicant has developed some awareness of what services can offer, and it is wonderful that she wishes to develop her own skills further to support others in the community.
- [47] GC wrote an undated letter on the applicant's behalf.<sup>3</sup> He identifies as a team leader at a community corrections service and at the time had known the applicant for approximately two and a half years. He states that she was charged in March 2017 for offences, went through the court process, lost her job with a government department and was ordered into a 12-month period under supervision. During those 12 months she showed a drive to move forward from her past, identified plans to remove herself from the setting that contributed to her conviction and toward a productive career in counselling and child safety. Because of her compliance with the conditions and strong desire to achieve her goals she was moved to a monthly rather than weekly reporting regime. She was notable in that she self-referred to counselling prior to her engagement with Community Corrections. She also self-referred to community-based counselling and left that program with no further intervention required. Throughout the supervision period, the applicant remained employed and frequently discussed her efforts to further her career of choice. She was aware that her offending would affect employment in that area, but continued to apply for appropriate positions. GC's office provided advice and support about how she could best face future challenges, should they present. He notes that the applicant maintained her OCHRE card as her offending was not deemed an excluding matter.
- [48] At the time of writing, GC states that the applicant has maintained her commitment to change her life.
- [49] DN and CL wrote on 22 January 2019 on behalf of the applicant after she had left a Queensland service where she was employed due to the negative notice. Their correspondence is brief but confirms that she was effective in communicating with children, young people, and vulnerable families. ML was skilled in engaging with families and their safety, and in her interactions with network members, agencies, and services. She was a punctual and effective contributing member of the team.

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<sup>3</sup> The letter was apparently written some time in 2020 based on comments therein.

### **Final statements**

- [50] In her final statement, the applicant reiterated her commitment to her new life, her wish to live by example, and expressed the belief that this could be best achieved in her chosen career. She reiterated the support she has received from counsellors to help her overcome personal obstacles saying that she was not at the mercy of her past life, but the person who she wants to be. She also drew attention to the Chief Justice's sentencing statement that she was not drug dependent and the prospect of her rehabilitation was good. She continued that one aspect of her change of life came with her move to Queensland with employment in the field in which she wants to work. She referred again to her supportive social network and productive life, aspects on which her referees have commented.
- [51] In her closing statement, the legal representative reiterated comments made in the Director's Reasons and the written submission provided to the Tribunal during the hearing. She acknowledged the positive comments by the applicant's referees, but stated that the applicant's rehabilitation was insufficient to support an argument that she had dealt with the crises in her earlier life. Her mental health issues were complex, as acknowledged by the applicant and the referees, and that the applicant's level of insight into her needs was unconvincing. She drew attention to 10 years of binge drinking and at least two years of illicit drug use; those factors alone constituted a significant risk of relapse.
- [52] The legal representative also questioned the applicant's reticence when discussing her drug and alcohol use and the impact that those behaviours had on her work life and performance. The legal representative also highlighted the applicant's failure to continue with long-term therapy with a psychologist or mainstream counsellors as recommended in the documentation. She states that the only evidence of the effectiveness of the alternative, self-development programs came from the applicant. In conclusion, the legal representative believes that all of these issues are still active and constitute a continuing risk if the applicant were to be issued a blue card.

### **The Tribunal's decision**

- [53] The Tribunal's decision, as it was for the Director, is to determine what is in the best interest of children and whether it would be in their best interest for the applicant to work with them in regulated employment situations. The Tribunal's focus is whether the applicant's circumstances represent an exceptional case under s 266(2) of the Act.
- [54] As with many blue card appeals, the present matter came to the Tribunal as the applicant's future employment is compromised by the inability to obtain a blue card. It is noted that the applicant was required to leave her employment with a child safety employer due to the Director's negative notice. In this regard, the Tribunal's earlier comments are relevant. Any prejudice or hardship that the applicant might have experienced—or would experience—by not holding a blue card, are of no consequence when considering this matter. Furthermore, it is irrelevant whether children or youths might derive benefit from interactions with her.
- [55] It is apparent that the applicant's early years were punctuated by traumatic events and it could be expected that her experiences during her childhood and adolescent years would have some persisting negative impact into adulthood. In the applicant's case, these appear to have led to a vulnerability to alcohol and drug use, which eventually brought her into contact with the adult criminal justice system.

Providentially, her convictions did not lead to incarceration and in this regard the sentencing comments by His Honour, the Chief Justice have considerable evidential weight.

- [56] Before she faced the Court, the applicant engaged with a range of rehabilitation and therapeutic services and these continue up to the present time. The Tribunal acknowledges that the applicant's early involvement with such services was unsuccessful in getting to the core of her mental health issues, but it is apparent that those issues were identified and addressed in more recent times. It is noteworthy that the applicant's life trajectory over the past three years has reflected her comments about working with vulnerable clients and her commitment to these individuals has been exemplary as reflected in her referees' comments.
- [57] The applicant has gathered references from professional colleagues and friends that reflect their positive views of her over several years, with RJ stating that the applicant "has demonstrated an understanding of the effects of alcohol and drugs on both individual behaviour and society ... [and] has developed deep insights, skills and knowledge, which are now an enhancement to her practice with clients and person life [sic]."
- [58] The Director's concerns are set out in her Reasons dated 14 January 2020 and in subsequent submissions including the legal representative's final statement to which I have referred above. Therein, the Director raised several risk factors:
- (a) Concern over drug and alcohol use and its potential effect on employment performance particularly in regard to the applicant's involvement with children.
  - (b) Concern over the quantity of drugs found in the applicant's possession that reflects the proliferation of dangerous drugs in the community and the impact of those drugs on others, including children.
  - (c) Concerns about the applicant's self-medication and lack of commitment to mainstream rehabilitation and therapy with no evidence other than from the applicant as to the effectiveness or success of the suite of alternative programs and treatments she has received.
  - (d) Concerns about the applicant's minimisation of her complex mental health issues and the potential for a carry-over into contact with children in any work environment in which she is working with children should she be issued with a blue card.
- [59] I will now address the evidence by way of reference to the Director's concerns along with the additional submissions made by the Department's legal representative.
- [60] The applicant acknowledges the offences committed. She states that she has not used drugs since the charges and has no inclination or reason to regress to that former time. During the hearing there were no denials and she responded in a straightforward way to all questions from the Tribunal and the Director's legal representative. She stated that her use of alcohol and self-medication with drugs was a function of the life complications and her inability to understand or redress the issues that were causing PTSD, anxiety, and physical symptoms. She was becoming and is now keenly aware of the effects of the stresses and mental health issues when she engaged in counselling and therapy soon after the police charges were laid. Since then she has chosen a very different life course.

- [61] The applicant expressed her awareness of the impact of drugs and alcohol on the community and this appears to be the underlying reason for her attraction to a career in child safety. In response to a question by the Tribunal about a career if a blue card was not issued, the applicant said that she would seek professional courses and employment in areas related to domestic violence, drug and alcohol services, corrections, and perhaps as a Court Services Officer. All of these have touchpoints in her earlier life experiences. It is salient to draw attention to the various comments made by the applicant's referees concerning her knowledge and skills in dealing with clients who have experienced life circumstances similar to hers.
- [62] The Director's legal representative has raised the matter of the applicant's limited time engaged in rehabilitation service and her discontinuation of engagement with mainstream rehabilitation and therapy services. Several who wrote on the applicant's behalf referred to ML's engagement with psychology and counselling professionals. The applicant also spoke about that involvement, indicating that contact with those services was essentially directed toward identifying the root causes of the mental health issues and not necessarily its treatment. The applicant does not dismiss those endeavours, but sees them as the beginning of the change in her life's pattern. Her involvement in what some call "alternative therapies" should not be minimised. It can reflect one taking personal responsibility for change while not minimising the importance of professional knowledge and insights. Taking responsibility adds an additional dimension to the commitment for change, to which the applicant made comment several times during the hearing. Seeking understanding, answers, and developing skills and strategies that will minimise the impact of negative emotions should not be viewed as a deficit, but an advantage and a significant protective factor.
- [63] As for point (d) above, the applicant never minimised the impact of her mental health issues. On the contrary, she clearly expressed the interrelationship between PTSD, her early unpleasant life experiences, victimisation in a domestic violence environment, and the use of drugs and alcohol. It was that relationship that drove her commitment to change and also to apply the wisdom gathered from those experiences in the career that she has sought over a decade.
- [64] The evidence presented to the Tribunal contains many protective factors that mitigate the likelihood of a relapse into the circumstances that characterised the applicant's life prior to her move to Queensland. I have referred to these above. Of considerable importance is the applicant's commitment to her career in social services and in particular child safety. The evidence given by the referees suggests a personal, community, and professional/collegial network of supportive individuals who have a commitment to the applicant's wellbeing. This is a distinctive advantage in anyone's life.
- [65] In coming to a decision in this matter, the Tribunal recognises that the Act is specific about its purpose, as I have noted above. The submissions made by the Director-General present a case that the risk factors override the protective factors. The Tribunal is not convinced by the Department's submission that the risks outweigh the protections. It is obvious that the applicant's early life was fraught with complications. She grew up in a family situation that was unresponsive to her needs. She was subject to sexual assault, to later domestic violence and became involved in a drug culture. These circumstances in her teenage and early adult years did little to lead her toward a positive restorative response to her needs. Perhaps unusually, the charges brought against her constituted a circuit breaker that was enhanced

significantly by the insightful judgement and thoughtful sentence by His Honour, the Chief Justice.

[66] No evidence has been presented in the written material or in the oral evidence given at the hearing to support the Department's contention that the applicant is a risk to children. Given the applicant's involvement in child safety services and her possession of the equivalent of a blue card in another jurisdiction (apparently now lapsed), any potential for risk to children would seem to this Tribunal to be exceedingly small. Hence, in coming to the decision, the Tribunal finds that the protective factors summarised above that exist in the applicant's life—and described in the evidence—do not sustain a position that ML is a risk to children any greater than any other adult in the community, arguably less. There is no evidence that the applicant has directly involved children during any contravention of the law. There is no compelling evidence that such a risk would occur in the future.

**The order**

[67] The order of the Tribunal is as follows:

1. The decision of the Director-General, Department of Justice and Attorney-General that ML'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.