

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *CRJ v Director General, Department of Justice and Attorney General* [2020] QCAT 81

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

APPLICATION NO: CML351-18

MATTER TYPE: Childrens matters

DELIVERED ON: 19 March 2020

HEARING DATE: 26 September 2019

HEARD AT: Townsville

DECISION OF: Member Pennell

ORDERS:

- 1. That the decision of the Director General, Department of Justice and Attorney-General dated 28 November 2018 that the applicant's case is exceptional within the meaning of section 221(2) of the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* is set aside and substituted with the tribunal's decision that there is no exceptional case.**
- 2. That pursuant to section 66(1) of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* the publication of the contents of any document or thing filed in or produced to the tribunal and any evidence given to the tribunal by any witness is prohibited to the extent that it could lead to the identity of the applicant or any member of the applicant's family or any non-party to the proceedings.**

CATCHWORDS: FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – GENERALLY – the applicant was previously issued with a positive notice and blue card – the applicant was convicted of common assault on 15 year old child – applicant also convicted of firearms offences – one of applicant's children gained access to his firearms – neither of the offences are serious or disqualifying offences – long

history of the applicant being a kinship carer – no history of any child protection concerns involving the applicant or his family – the applicant had substantial and long standing roles in development of junior sporting teams – no adverse behaviour in the applicant’s antecedents prior to his conviction for assaulting a child – the assault of the child was a single event following his own child being assaulted by others – whether there is a risk of repetitious behaviour – whether the protective factors negate the risk factors

EVIDENCE – MISCELLANEOUS MATTERS – NON PUBLICATION OF EVIDENCE – ORDERS – NON-PUBLICATION OF IDENTITY — openness and transparency principle – fair and accurate reporting of tribunal hearings – de-identifying of the proceedings initiated by the tribunal – publication of identity of applicant, witnesses and non-parties contrary to public interest

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 17, s 18, s 20(1), s 20(2), s 28, s 66, s 66(2), s 66(3)

Working with Children (Risk Management and Screening) Act 2000 (Qld), s 5, s 6, s 221(2), s 226, s 353, s 354, s 360, s 361

Commissioner for Children and Young People and Child Guardian v Maher & Anor [2004] QCA 492
Imperial Chemical Industries Ltd’s Patent Extension Petitions [1983] 1 VR 1
John Fairfax and Sons Ltd v Police Tribunal of New South Wales [2001] NSWSC 1024
Kent v Wilson [2000] VSC 98
Perry and Brown Patents (1930) 48 RPC 200
Raybos Australia Pty Ltd (1985) 2 NSWLR 47
Re TAA [2006] QCST 11
Russell v Russell (1976) 134 CLR 495
X v Australian Prudential Regulation Authority (2007) 226 CLR 630

APPEARANCES &
REPRESENTATION:

Applicant: J Mallory (Solicitor), Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd

Respondent: N Rajapakse, in-house Solicitor

REASONS FOR DECISION

Introduction

- [1] Prior to 28 November 2018, the applicant was the holder of a positive notice and a blue card. On that date, the respondent advised him that consideration had been given to the change in his police information. A reassessment had been undertaken of his eligibility to hold a blue card under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) ('the *Working with Children Act*'). He was also advised that a decision was made to cancel his positive notice and issue him with a negative notice. The applicant seeks a review of that decision.

The Applicant's police information

- [2] There are two entries on the applicant's police information which were subject to the respondent's reassessment of his eligibility to hold a blue card. The first entry relates to him assaulting a 15 year old child ('TCC'). He was originally charged with the offence of assault occasioning bodily harm, however that charge was discontinued and substituted with a charge of common assault. He pleaded guilty to the common assault charge in the Magistrates Court. No conviction was recorded, and he was ordered to pay a \$750 fine.
- [3] The assault occurred one evening at a local sporting precinct. A large number of adults and children were at that area, either playing sport or watching their own children participate. TCC was one of the children. He was a former member of a sporting team coached by the applicant. Police were called to investigate an incident after TCC complained that he had been assaulted by the applicant. Part of the observations made by the police was that TCC had swelling and a small abrasion to his right eye.
- [4] The applicant and the applicant's son ('CB') had approached TCC. CB was aged 9. A conversation took place between them because CB had been assaulted by a group of children who were much older than him. Although not clearly particularised during the hearing, it seems that TCC was associated with the group that assaulted CB.
- [5] When the conversation was finished, the applicant and CB turned to walk away but something was said that caused the applicant to turn back towards TCC. Further words were exchanged and TCC alleged that the applicant punched him in the right side of his face near his eye.
- [6] The applicant voluntarily attended the police station and participated in an interview. His version of the events differed to TCC's version. It was the applicant's position that after speaking to TCC about how his son was treated, he turned to walk away only to hear TCC make a rhetorical comment.
- [7] He then turned around to confront TCC. When he did this, he saw that TCC had a cigarette in his mouth and he swung the back of his hand to knock the cigarette from TCC's mouth. The applicant was holding a plastic water bottle in his hand at the time and the water bottle came into contact with the side of TCC's face. He denied ever punching TCC with a closed fist.

- [8] The second entry on the applicant's police information relates to when the police received information about the applicant's 17 year old girl daughter brandishing a firearm and threatening to commit suicide. When the police arrived at the applicant's address, they met with the applicant who had arrived home just prior to the police attending. The applicant's daughter was in her bedroom. Underneath a blanket on her bed was a .22 calibre rifle.
- [9] During the subsequent investigation, the police established that the applicant's daughter had gained access to his firearms. The firearms were usually kept locked inside a metal toolbox. She had obtained the key and simply unlocked the padlock. Police further discovered that within the applicant's possession was a shotgun which he was not licensed to possess. He was charged with three firearm related offences.¹ He pleaded guilty in the Magistrates Court and was ordered to pay a \$1,000 fine. No conviction was recorded.

The tribunal's role

- [10] Resulting from the respondent's decision to issue the applicant with a negative notice, the *Working with Children Act* provides that the applicant can apply to the tribunal for a review of that decision.² In undertaking review proceedings into blue card matters, the tribunal must apply the principle that the welfare and best interests of children are paramount.³
- [11] Although the respondent was the original decision maker who decided to cancel the applicant's positive notice and issue him with a negative notice, because the applicant seeks a review of that decision, the tribunal now effectively stands in the shoes of the original decision maker. It is for the tribunal to reach the correct and preferable decision⁴ in regard to the applicant's eligibility to work with children and young people. Any determination by the tribunal must be based on the merits of the application⁵ and the evidence before it at the time of the review hearing.
- [12] When undertaking the review and arriving at the correct and preferable decision, the tribunal is not bound by the rules of evidence, or any practices or procedures applying to courts of record, other than to the extent that the tribunal adopts the rules, practices or procedures. Regardless of that, the tribunal is still obligated to act fairly and according to the substantial merits of the case and must observe the rules of natural justice.⁶
- [13] After an evaluation of the available material and evidence, a discretion is provided to the tribunal to either confirm or amend the respondent's original decision; or set aside the respondent's original decision and substitute that decision with its own decision; or set aside the respondent's original decision and return the matter for consideration to the original decision maker with directions that the tribunal considers appropriate.⁷

¹ Pursuant to the *Weapons Act* 1990 (Qld).

² *Working with Children (Risk Management and Screening) Act* 2000 (Qld), ss 353, 354. *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 18.

³ *Working with Children (Risk Management and Screening) Act* 2000 (Qld), s 360.

⁴ *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 20(1).

⁵ *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 20(2).

⁶ *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 28.

⁷ *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 24(1).

An ‘exceptional case’

- [14] There is a well-known principle that every child is entitled to be cared for in a way that protects them from harm and the welfare and best interests of children is paramount.⁸ That principle is supported by an objective of the *Working with Children Act* which provides for the promotion and the protection of the rights, interests and wellbeing of children in Queensland.⁹ Unquestionably, the intention and the focus in blue card matters is on the protection of children from future harm within places of employment. Notwithstanding that, it is not the intention of the legislation to place additional punishment upon an applicant, thereby punishing them twice if they have acquired a police or disciplinary record.¹⁰
- [15] Because the respondent became aware of a change in the applicant’s police information, that is, he had been charged and convicted with the offences previously discussed, the *Working with Children Act* expressly provides that the respondent was to have regard to a number of factors relating to that information.¹¹ Notwithstanding the fact that the offences themselves were not defined within the legislation as serious or disqualifying offences, the respondent formed the view that the circumstances of that information satisfied the criteria of an ‘exceptional case’ and discretion was then exercised to issue the applicant with a negative notice.
- [16] The term ‘exceptional case’ is the overarching consideration in this matter. The *Working with Children Act* does not provide any guidance of a definitive description of the term, although it has previously been described by the courts as meaning ‘unusual, special and out of the ordinary course’.¹² The term has been the subject of many discussions by courts and tribunals in Queensland and elsewhere. The approach adopted in Queensland is that it would be unwise to lay down any general rule about what an exceptional case is, and discretion should be used. Each case should be considered on its own merits and facts.¹³ Furthermore, each case must be examined in the light of the legislation, the legislative intention and the interests of the parties involved and it would be wrong and undesirable to attempt to hypothetically define what the relevant factors are.¹⁴

The applicant

- [17] The applicant’s father was indigenous and his mother non-indigenous. He is the oldest of four siblings. For the first couple of years of his life he was separated from his parents and sent to be raised by his non-indigenous maternal grandparents in a city in rural Queensland. When aged about three, his parents and other siblings moved to where he was living, and he was reunited with his family.

⁸ *Working with Children (Risk Management and Screening) Act* 2000 (Qld), s 6.

⁹ *Working with Children (Risk Management and Screening) Act* 2000 (Qld), s 5.

¹⁰ *Commissioner for Children and Young People Bill* 2000 (Qld), second reading speech, Queensland Parliament Hansard, 14 November 2000 at page 4391.

¹¹ *Working with Children (Risk Management and Screening) Act* 2000 (Qld), s 226.

¹² *Kent v Wilson* [2000] VSC 98, [22] referencing the Oxford English Dictionary.

¹³ *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492, [34] per Philippides J endorsing the approach taken by Fullagar J in *Re Imperial Chemical Industries Ltd’s Patent Extension Petitions* [1983] 1 VR 1 in adopting the warning of Luxmore J in *Perry and Brown Patents* (1930) 48 RPC 200.

¹⁴ *Kent v Wilson* [2000] VSC 98, [22].

- [18] There was nothing remarkable about his childhood. He described living in a normal family household with the support of a very large extended family. There were no domestic violence issues within the family unit, and nor were there any issues relating to drugs or alcohol.
- [19] As a child, his sporting interests involved cricket and rugby league. He enjoyed success at both of those sports. At a relatively young age of 14 he was selected to play his first A Grade game of cricket and at the age of 16 he played his first game of A Grade rugby league. Such were his rugby league skills that he was identified by a talent scout and selected in a talent squad for a National Rugby League team known then as the Gold Coast Seagulls. He regularly travelled away from his hometown to attend training camps on the Gold Coast. During this same period, he successfully completed his high school education, attaining high marks in all his classes. After finishing school in 1992, he secured full-time employment while still travelling to the Gold Coast for the rugby league training camps.
- [20] In 1994, he sustained a serious neck injury which ended his rugby league career. With his sporting aspirations being curtailed, he focused on securing a future for himself. He married his childhood sweetheart and they started a family. In 1995, work commitments required him to relocate to a small community ('town A') which was approximately 150 kilometres from where he grew up. A large percentage of town A's population were indigenous. He was employed as a Community Agent for Centrelink and a Housing Co-Ordinator for a local housing co-operative where he managed 27 local rental properties.
- [21] After settling into town A, the applicant and his wife became the kinship carers of four young children aged 10, eight, six and three who were all his Auntie's children. His Auntie was the victim of significant domestic violence and the children were subjected to the associated violence between their parents. All those children remained in the applicant's care for a number of years until each of them completed school.
- [22] As time progressed, there were several changes which occurred to the applicant's life. Not only did he take on the extra responsibility of being a carer for abused children, but he and his wife had more children of their own. He also completed his studies towards an economics degree. In addition to that, he was elected president of an organisation which provided respite care services for the elderly residents of the community where he lived. He was also the president of the local Parents and Citizens Association. He was later elected as the Regional Councilor for what was then known as the Aboriginal and Torres Strait Islander Commission ('ATSIC'). He held all those positions until he relocated to another rural locality ('town B') sometime around 2000. At that stage, his family consisted of eight children, including his own biological children and the children placed into his care.
- [23] Once settled into town B, it appears that with a degree of determination and drive, he established the Western Queensland Regional Community Development Employment Project ('Western Queensland CDEP') to assist with creating employment for indigenous people in small and remote communities. He became the managing director of that organisation, and the Western Queensland CDEP and its group of companies employed over 690 people throughout Regional Queensland.

- [24] The applicant and his family only stayed in town B for a couple of years before moving back to town A. He again became the Regional Councilor for ATSIC and served in that role until the Federal Government abolished that organisation in 2004. During that period of appointment, he suffered two heart attacks. His health predicated he and his family relocating to town C.
- [25] Upon arriving in town C, he commenced employment as a scheduling clerk for a stock feed company. By the following year, he was promoted to branch manager. He also involved himself in coaching junior rugby league. He coached a number of junior teams and by 2017 he was coaching the under 16's team. Between 2007 to 2011 he helped establish and coach a junior cricket team for disadvantaged youths in town C's area.
- [26] By 2012, the applicant had ceased working for the stock feed company and had ventured out on his own to operate his own construction business. The following year, his eldest daughter self-harmed and attempted suicide. He shut down his business to be at home with his daughter as support until she recovered. He later recommenced employment with the stock feed company, this time as the production manager.
- [27] In 2017, another of his children self-harmed by attempting suicide. There were other family traumas around that time, including the death of a close family relative. These events occurred in close proximity in time to the assault incident between the applicant and TCC. In 2018, an incident occurred when another of his children gained access to his firearms. She threatened to self-harm. This child has since been treated for mental health issues and is recovering.
- [28] Throughout the applicant's adult life, there have been many of his close relatives who have passed away from illnesses. He described his family as being large, and he has a very close connection to the many extended members of his family. Those events just described were traumatic for himself and his family. Added to this are the mental health issues suffered by some of his own children. Those tragic events and the accompanying circumstances had an impact upon his life and that of his family. Notwithstanding all those points just discussed, he has still managed to maintain a solid family unit.
- [29] The evidence suggests that for a large majority of his life since leaving school, the applicant has devoted a significant amount of his time to the care, welfare and development of not only his own family, but also members of his extended family. In addition, there is the role that he has played in developing children involved in the sporting teams that he has coached.
- [30] There is nothing in the applicant's history to suggest that alcohol and drugs have had any influence upon his life, and indeed his evidence was that both he and his wife do not drink alcohol or use illicit substances. Their focus has been on providing a supportive environment for their children and loved ones.
- [31] Discussed earlier in these reasons was the applicant suffering an injury which curtailed his rugby league aspirations. Although unable to play rugby league himself, he devoted himself to coaching children in that sport in all the localities where he has resided, in particular towns A, B and C. Altogether, there has been well over 20 years of his life devoted to assisting young people in remote areas to

achieve their sporting endeavours. His involvement in assisting those young people ceased when the respondent issued him with a negative notice.

- [32] In regard to the assault of TCC, the applicant said that he had taken three of his children, including CB, to the sporting precinct to watch some games of netball. CB went off to kick a football around with other children. CB later came back him with physical injuries to his face. He had been attacked by a group of older children. He and CB walked to where the older children were. He did not physically discipline or touch those children, his only involvement with them was to verbally chastise them for their behaviour. It is not completely clear from the applicant's evidence, but it seems that TCC was associated with that group. The applicant knew TCC because he had coached him in rugby league. When he spoke to TCC and the other children about the assault on CB, TCC's attitude was one of belligerence, disrespect and he was argumentative.
- [33] To his credit, the applicant acknowledged that upon reflecting on what happened, it was silly of him to react to the rhetorical comment made by TCC. In hindsight he should not have turned back towards TCC and attempt to knock the cigarette out of his mouth. His reflection on his actions at least provides some display of insight about his actions.
- [34] It is noted that although the applicant had originally been charged with a more serious offence of assault occasioning bodily harm, the facts presented to the court fell in line with the less serious charge of common assault. It is observed that the applicant showed a high level of remorse for his actions and that was borne out by his plea of guilty in the Magistrates Court and his testimony at the tribunal hearing. Although he was obviously disappointed that TCC had made a complaint against him, he held no ill feelings about TCC. Prior to this incident he had enjoyed a good natured relationship with TCC, and it seems that after the charge was finalised in the Magistrates Court, he visited TCC and his mother as a form of reconciliation. His evidence was that his relationship with TCC has been restored.
- [35] In regard to the *Weapons Act* offences, the respondent suggested that the applicant had not been forthright with the police about his possession of firearms. When the police first arrived at his house, they asked the applicant if he had any firearms. The applicant told them that he did not, but this was not correct. He explained that he misunderstood what the police were asking him. He thought that they were asking him if he had any firearms specifically on his person and did not understand that they were referring to the firearms being at his premises. It is accepted that it is reasonable for any person placed within the stressful circumstances that arose on that occasion that there may have been some confusion about what was said and by whom.
- [36] The applicant's evidence in regard to his character was supported at the hearing by the evidence of MMK and BJN. MMK told the tribunal that she had known the applicant for approximately 10 years in both a professional and personal capacity. Not only did they work for the same employer, but her son was part of a junior rugby league team coached by the applicant. She went on to make positive comments about the overall influence that the applicant had upon her son. She said that her son was initially shy and introverted, but his involvement with the team coached by the applicant along with the positive behaviours and support provided by

the applicant, her son blossomed under that guidance and influence. She was of the view that the applicant was a good role model for children and young people.

- [37] She was aware of the incident which led to the applicant being charged with assaulting TCC and she was aware of him being convicted of offences under the *Weapons Act*. In regard to the incident involving the applicant's daughter and a firearm, she became aware of what happened the following day when the applicant came to work. She said that he was clearly upset about the events of that day. She went on to say that she had never known of any incident involving the applicant where he became aggressive or dangerous towards anyone, including children. She was comfortable with the applicant interacting with her son, and he had nothing but a positive impact upon her child.
- [38] BJB has known the applicant for 12 years. Like MMK, the applicant also coached junior rugby league teams which his sons were part of. In all the time that he had known the applicant, there were no concerns about the applicant's interaction with children. Although he knew about the applicant appearing in court for assaulting TCC, it would seem that he still held the applicant in high regard.
- [39] In addition to the evidence given by MMK and BJB, in the respondent's material there were a number of personal references provided by members of the community where the applicant lives.¹⁵ Although the authors of those references were not called to give evidence at the hearing, it is a matter of what weight is placed upon the contents of those documents. The comments made in those references paint a positive picture of the applicant so far as his involvement and interaction with children. A selection of the comments made by those authors indicates that the applicant had 'a good solid respectful relationship with the team'; he was a 'positive role model'; 'our footy boys love him and respect him'; he is a 'very caring man'; and that he was 'very approachable and respectable as a junior coach'.
- [40] All those comments suggest that he was held in high regard by the parents and other members of the community who were involved in the organisation of junior sport.

The respondent's position

- [41] The risk factors identified by the respondent relate to the applicant's recent criminal history involving the assault upon TCC and the *Weapons Act* offences. The circumstances of both of those incidents occurred approximately a year apart. The applicant was at the time a mature aged adult and he cannot rely upon, as the respondent put it, the 'folly of youth' to explain away his offending behaviour. He was also the holder of a blue card and positive notice at the time of the offences and his offending behaviour towards TCC raised concerns about his ability to resolve conflict. He reacted violently, not only towards a child, but also in the presence of children.
- [42] In respect to the offences relating to the firearms, the respondent urged me to consider that the risk factors involved in this incident related to a concern that at least five of the applicant's children were all residing in the house where the firearms were kept, of which all those children could have easily have gained access to his firearms.

¹⁵ Respondent's Reasons at pages BCS57 – 61.

- [43] The respondent accepts that the applicant has expressed some insight into his offending, however it is the respondent's position that the applicant minimises the seriousness of his behaviours. It was noted by the respondent that there was nothing within the applicant's material which would indicate that he now has appropriate strategies in place to manage and control his anger and demonstrate appropriate role modelling behaviour towards children, other than to say that if faced with a similar situation, he would 'walk away'.
- [44] The respondent is correct in adopting a submission that insight into any harm caused is not only a critical matter for me to consider, but it is also a protective factor which can be relied upon by an applicant. If a person is aware of the consequences of his or her actions, then that person is less likely to reoffend than a person who has no insight into the effect of their actions upon others. This is particularly important regarding children, because children are entirely dependent upon the adults around them having insight into whether their actions are likely to have an effect upon, or influence children.¹⁶
- [45] Ultimately the respondent's position is that even if it is not demonstrated that the applicant's criminal offending is directly child related, I should adopt a precautionary approach. The respondent went on to say that apart from the inherent impossibility of predicting future risk with certainty, the *Working with Children Act* was premised on an individual's past behaviour being an indicator of future behaviour.¹⁷

Conclusion

- [46] Although it is appreciated what the context of the respondent's submissions are, I do not hold the same view that the *Working with Children Act* was premised on an individual's past behaviour being an indicator of future behaviour. The Queensland Court of Appeal previously held in *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492 that each case should be considered on its own merits and facts¹⁸ and the view adopted by the legislators is that it was not the intention of the legislation to place additional punishment on someone who has acquired a police or disciplinary record and therefore punish them twice. The focus is on the protection of children.¹⁹
- [47] It is also noted that the respondent suggests that a significant risk factor is the applicant not having any strategies in place to manage and control his anger. This is in reference to him assaulting TCC. My observations were that there does not appear to be any basis to suggest that the applicant requires any such strategies.
- [48] Perhaps a strategy would be necessary if there was evidence of past behaviours of anger, which there is none. The applicant's overall history suggests that there is nothing in his antecedents that raises any concern that anger issues are a problem for him. The incident involving TCC, when weighed against the applicant's background, appears to have been a single or 'one off' incident and involved

¹⁶ *Re TAA* [2006] QCST 11, [97].

¹⁷ The respondent's submissions at page 12, paragraph 32.

¹⁸ At [34].

¹⁹ *Commissioner for Children and Young People Bill*, second reading speech, Queensland Parliament Hansard, 14 November 2000 at p. 4391.

something which was out of character for him and his emotions on that occasion were influenced by the assault of his son.

- [49] Over a substantial period of his life, the applicant has had the care of not only his own biological children, but also many other children from his extended family. Those children from his extended family came into his care because of the domestic violence that they had experienced within their own home. It seems that he and his wife were not formally appointed or approved as foster carers for those children, they simply acted in a kinship capacity. The applicant's evidence, which I accept, is that he has had a positive impact upon the lives of those children through his nurturing, devotion and guidance.
- [50] The tribunal issued a notice to the Department of Child Safety, Youth and Women ('the department') seeking any information relating to the child protection history of the applicant. To his credit, it would seem that although he cared for children who came from disadvantaged and difficult backgrounds, there has never been any information provided to the department which raises any concerns about his involvement in, or the level of care given to the many biological members of his own family, or the extended members of his family that he cared for. That, in my view, is a significant protective factor in favour of the applicant.
- [51] Neither of the convictions recorded against the applicant's police information are defined within the *Working with Children Act* as being serious or disqualifying offences. Each conviction should be weighed against the facts and circumstances of the allegations raised against the applicant at that time. In respect of the incident involving TCC, it appears that the applicant's behaviour on that occasion was influenced by what had occurred to his own son by a group of children who were associated with TCC. It is noted that there cannot be an excuse for the assault on TCC, and nor does it seem that the applicant is seeking one, but he did acknowledge upon reflection that he could have handled things differently. That in my view shows a certain degree of insight on his behalf.
- [52] In respect of the applicant's conviction for offences pursuant to the *Weapons Act*, the overall circumstances of that incident involved his 17 year old daughter gaining access to his firearms and threatening to self harm. It appears that the applicant had taken precautions to secure the firearms in a locked metal toolbox, however his daughter gained access by acquiring the key to the lock.
- [53] There are a few questions which arise as to whether the applicant's case is exceptional or not. Firstly, an assessment should be undertaken as to what, if any, is the risk of repetition of the concerning behaviour displayed by the applicant. I note that despite the many years of the applicant interacting with, and coaching children, the only incident of concern arose after his own son had been assaulted. There is nothing within his antecedents to suggest any similar behaviour had occurred in the past or that there was a likelihood of any repetition of that behaviour.
- [54] Secondly, can the tribunal be satisfied that there are protective factors in place which sufficiently mitigate the concerns relating to a risk to children. The applicant is a mature aged man with an extensive history of working constructively with children and young people across a broad spectrum, including as a parent, kinship carer and sporting coach. Some of those children or young people have challenging behaviours themselves and it would seem that he has the appropriateness, ability and

personality to suitably deal with children and young people in difficult environments.

- [55] Notwithstanding the entries on the applicant's police information, there appears to be no other concerning aspects of his life which would impede him from obtaining a positive notice and blue card. The incidents involving TCC was a single incident involving aroused emotions after he had discovered that his son had been assaulted. There is no evidence of the like nature in his past, or in the present which raises a concern. The incident involving his daughter threatening self harm with the firearm would have been a harrowing experience for the applicant. The ultimate price that could have been paid for his indiscretion of not securing the key to that receptacle holding the firearms is that his daughter may well have gone on to commit suicide. From the circumstances of this matter, I am satisfied that this fact is not lost on the applicant.
- [56] Having regard to the merits of this application and the evidence before the tribunal at the time of the hearing, I am satisfied that the correct and preferable decision is to set aside the decision of the Director General, Department of Justice and Attorney General dated 28 November 2018 that the applicant's case is exceptional within the meaning of section 221(2) of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) and substitute that decision with the decision that there is no exceptional case.

Non-publication decision

- [57] The *Working with Children Act*, being an enabling Act, authorises the tribunal to conduct the review proceedings.²⁰ Although the *Working with Children Act* expressly provides that subject to certain provisions, a review hearing must always be held in private,²¹ the making of a de-identification order does not automatically flow from that provision. The discretion to de-identify the participants in blue card proceedings falls under the ambit of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('the QCAT Act').²²
- [58] Openness and transparency are the characteristics of the principle of open justice. For that principle to succeed, there must be fair and accurate reporting of what takes place in the tribunal.²³ The High Court has recognised that open justice is part of the strong tradition that characterises the courts and tribunals of this country because every day, proceedings take place where parties and witnesses must disclose their names and identities.²⁴
- [59] Notwithstanding that, the QCAT Act provides the tribunal with the discretion to make a de-identifying order on its own initiative, or on the application of a party.²⁵ Any decision to de-identify the proceedings should not to be exercised lightly, it is

²⁰ The *Working with Children (Risk Management and Screening) Act 2000* (Qld) is an 'enabling Act' as provided for in the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 17 and the *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 354.

²¹ *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 361.

²² *Queensland Civil and Administrative Tribunal Act 2009*, s 66.

²³ *John Fairfax and Sons Ltd v Police Tribunal of New South Wales* [2001] NSWSC 1024, [23].

²⁴ *X v Australian Prudential Regulation Authority* (2007) 226 CLR 630, 655-656 citing *Raybos Australia Pty Ltd* (1985) 2 NSWLR 47, 53, 58-59 referencing *Russell v Russell* (1976) 134 CLR 495, 520.

²⁵ *Queensland Civil and Administrative Tribunal Act 2009*, s 66(3).

only if the tribunal considers the order is necessary after assessing all the information.²⁶

- [60] The evidence provided to the tribunal during these proceedings not only identified the applicant, but it also leads to the identify of his children, his wife, other witnesses and the complainant child, TCC. Having regard to that, I am satisfied that it would not be in the interests of justice to have the applicant identified. Therefore, pursuant to section 66(1) of the QCAT Act, the publication of the contents of any document or other thing filed in or produced to the tribunal, and any evidence given to the tribunal by any witness is prohibited to the extent that it could lead to the identity of the applicant, or any member of his family or any non-party to the proceedings.

²⁶ *Queensland Civil and Administrative Tribunal Act 2009*, s 66(2).