

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *JZ v Director-General, Department of Justice and Attorney-General* [2022] QCAT 183

PARTIES: **JZ**
(applicant)

v

DIRECTOR-GENERAL, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL
(respondent)

APPLICATION NO/S: CML061-20

MATTER TYPE: Childrens matters

DELIVERED ON: 20 May 2022

HEARING DATE: 21 October 2021

HEARD AT: Brisbane

DECISION OF: A/Senior Member Traves

- ORDERS:
- 1. The decision of the Director-General, Department of Justice and Attorney-General made on 12 February 2020 that this is an “exceptional case” within the meaning of s 221(2) of the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* is confirmed.**
 - 2. Pursuant to s 66(1) of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, the publication of any statements, documents or other materials relating to these proceedings is prohibited to that extent that such could identify or lead to the identification of the applicant, any child, witness, or third party in these proceedings.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – review of decision by respondent to issue a negative notice

FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – blue card – where application for review of decision to issue negative notice – where applicant

engaged in violent and threatening domestic violence behaviour over a ten year period – where incidents involving physical violence, use of weapons, threats to kill – threats to maim with acid – where violence occurred in presence of a child – where applicant made suicidal and homicidal threats which led to admission to hospital under Emergency Examination Authority - whether this is an exceptional case within the meaning of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) in which it would not be in the best interests of children for the applicant to be given a working with children clearance.

Human Rights Act 2019 (Qld), s 12, s 21, s 23, s 26(2), s 27, s 28, s 36(2), s 58, s 59

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 19, s 20, s 24, s 66

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

Chief Executive Officer, Department for Child Protection v Grindrod [No 2] [2008] WASCA 28

Chief Executive Officer, Department for Child Protection v Scott [No 2] [2008] WASCA 171

Commissioner for Children and Young People and Child Guardian v FGC [2011] QCATA 291

Commissioner for Children and Young People and Child Guardian v Lister (No 2) [2011] QCATA 87

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

APPEARANCES & REPRESENTATION:

Applicant:	Self represented
Respondent:	Ms J Capper, Blue Card Services, Justice Services, Department of Justice and Attorney-General

REASONS FOR DECISION

- [1] The applicant, JZ, runs her own massage and beauty business.
- [2] JZ was issued a positive notice and blue card on 22 June 2018. Subsequently the respondent was notified of a change to JZ's police information and, upon considering further information and JZ's submissions, a decision was made to cancel JZ's positive notice and issue her with a negative notice.¹

¹ Decision of respondent to issue a negative notice dated 12 February 2020.

- [3] The change to JZ’s police information was that on 4 August 2018 JZ had been charged with contravention of a domestic violence police protection notice.²
- [4] JZ was ultimately convicted of that contravention in the Brisbane Magistrates Court on 28 August 2018. As the offence was not a serious or disqualifying offence, the position under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) (WWC Act) is that the decision-maker must issue a working with children clearance (blue card) unless satisfied that JZ’s is an exceptional case in which it would not be in the best interests of children to do so.³ The respondent decided this was an ‘exceptional case’ and so did not issue a blue card.
- [5] JZ has applied to the Tribunal to review that decision.⁴

Overview of relevant statutory provisions

- [6] The Tribunal must decide the review in accordance with the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (‘QCAT Act’) and the WWC Act.⁵ The purpose of the review is to produce the correct and preferable decision,⁶ on the evidence before it and according to the law current at the time of the review.
- [7] In meeting that purpose the Tribunal must hear and decide the review by way of a fresh hearing on the merits.⁷ On review, the Tribunal may confirm or amend the decision, set the decision aside and substitute its own decision, or set aside the decision and return the matter for reconsideration to the original decision-maker.⁸
- [8] The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children by, in effect, screening persons engaged in employment or businesses that may involve working with children. It is protective legislation.
- [9] A child related employment decision, which is defined to include a ‘chapter 8 reviewable decision’, is to be reviewed in accordance with the principle that the welfare and best interests of a child are paramount.⁹ The overriding concern is the potential for future harm to children.
- [10] A ‘chapter 8 reviewable decision’ is defined to include a decision as to whether or not there is an exceptional case for the person if, because of the decision, a negative notice was issued.¹⁰
- [11] As outlined above, pursuant to s 221(1) of the WWC Act a working with children clearance or ‘blue card’ must be issued to a person who has been convicted of an offence other than a serious offence, unless the decision-maker is satisfied it is an ‘exceptional case’ in which it would not be in the best interests of children for a working with children clearance to be issued, the chief executive must issue a negative notice.

² BCS 10.

³ WWC Act, s 221(2).

⁴ Application to review a decision filed by the applicant on 18 February 2020.

⁵ QCAT Act, s 19(a).

⁶ QCAT Act, s 20(1).

⁷ QCAT Act, s 20(2).

⁸ QCAT Act, s 24(1).

⁹ WWC Act, s 6(a); s 360.

¹⁰ WWC Act, s 353(a).

[12] It is the existence of the chief executive's satisfaction which enlivens the power to issue a negative notice.¹¹

[13] The term 'exceptional case' is not defined in the WWC Act. It has been observed, by the Queensland Court of Appeal in *Commissioner for Children and Young People and Child Guardian v Maher*¹² that:

... it would be most unwise to lay down any general rule with regard to what is an exceptional case All these matters are matters of discretion.¹³

[14] Thus, what might be an exceptional case is a question of fact and degree, to be decided in each individual case having regard to:

...the context of the legislation which contains them, the intent and purpose of that legislation, and the interests of the persons whom it is here, quite obviously, designed to protect: children.

[15] In deciding whether there is an exceptional case in circumstances where the applicant has been convicted of, or charged with, an offence, the Tribunal must have regard to the criteria in s 226(2) of the WWC Act.¹⁴ These criteria, unlike the position under differently worded, equivalent legislation in other States are not exhaustive.

[16] Section 226(2) provides:

(2) The chief executive must have regard to the following—

(a) in relation to the commission, or alleged commission, of an offence by the person—

(i) whether it is a conviction or a charge; and

(ii) whether the offence is a serious offence and, if it is, whether it is a disqualifying offence; and

(iii) when the offence was committed or is alleged to have been committed; and

(iv) the nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children; and

(v) in the case of a conviction—the penalty imposed by the court and, if the court decided not to impose an imprisonment order for the offence or not to make a disqualification order under section 357, the court's reasons for its decision;

(b) any information about the person given to the chief executive under section 318 or 319;

(c) any report about the person's mental health given to the chief executive under section 335;

¹¹ *Chief Executive Officer, Department for Child Protection v Grindrod [No 2]* [2008] WASCA 28; (2008) 36 WAR 39 at [65]; *Chief Executive Officer, Department for Child Protection v Scott [No 2]* [2008] WASCA 171; (2008) 38 WAR 125 at [101].

¹² [2004] QCA 492.

¹³ *Ibid* at [34]; applied in *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291 at [33].

¹⁴ WWC Act, s 226(1).

(d) any information about the person given to the chief executive under section 337 or 338; 5

(e) information about the person given to the chief executive under the *Disability Services Act 2006*, section 138ZG;

(f) anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to the assessment of the person.

- [17] The Tribunal, when conducting a review of a child-related employment decision, is a ‘public entity’ and, as such, subject to the *Human Rights Act 2019* (Qld). Under s 58, it is unlawful for a public entity to make a decision in a way that is not compatible with human rights or without giving proper consideration to a human right relevant to the decision. Relevant human rights of JZ would include: JZ’s right to privacy (HRA, s 21); right to take part in public life (HRA, s 23); right to further vocational education and training (HRA s 36(2) and JZ’s cultural rights (HRA, ss 27-28).
- [18] The human rights of children are also engaged by this application. They are the right of every child to “the protection that is needed by the child, and is in the child’s best interests, because of being a child” as provided for in s 26(2) of the HRA.
- [19] The respondent based its decision largely on JZ’s history of domestic violence over a ten year period with three different partners. JZ’s domestic violence behaviour was said to raise ‘significant concerns as to JZ’s ability to manage relationship conflict and stressors without resorting to violence’. JZ’s conduct involved physical violence on her part, the use of weapons against her partners and making suicidal threats and threats to kill or maim others, including by pouring acid on her partner’s girlfriend’s face.
- [20] I turn now to consider whether, in view of the totality of the evidence, JZ’s is an exceptional case in which it would not be in the best interests of children for her to be issued with a blue card.

Background to and overview of JZ’s domestic violence behaviour

- [21] JZ’s domestic violent behaviour stems from 2008, culminating in the conviction for breaching the domestic violence police protection order in 2018. In brief, the behaviour can be summarised as follows.
- [22] In 2008 JZ was named as the respondent in a domestic violence order made in the Brisbane Magistrates Court. The application followed an incident in which, following an argument, JZ obtained a hammer and swung it at the applicant, striking him at least three times on the arm as he attempted to shield himself. JZ also struck him on the right ankle. JZ and the applicant’s child entered the room at this stage and was knocked to the ground. JZ allegedly later picked up a chair and smashed it against the glass bedroom door.¹⁵
- [23] The domestic violence order was later varied to extend to 2011 due to further allegations of domestic violence.¹⁶ They included in October 2008, JZ allegedly striking the applicant with a plastic stick while he held their daughter and JZ

¹⁵ NTP 97.

¹⁶ NTP 104.

threatening to kill him.¹⁷ The police at the time noted that there were “genuine concerns for the aggrieved and their child...domestic violence has occurred and is likely to happen again”.¹⁸

- [24] On 7 July 2015 JZ was named as respondent in a further domestic violence order made in the Sandgate Magistrates Court. The application related to an incident in which a verbal argument between JZ and her then partner, became physical. JZ allegedly picked up scissors after being pushed by the complainant and held them in an aggressive manner while saying “you can’t leave without giving me the money”.¹⁹ Both parties were protected in this matter, but police noted concerns in relation to JZ’ use of a weapon.²⁰
- [25] On 4 July 2018 JZ was named as respondent in a further domestic violence order made in the Pine Rivers Magistrates Court.²¹ On this occasion JZ and the complainant had been arguing before JZ bit the complainant on the arm. Later that evening JZ allegedly climbed the complainant’s fence to his home and smashed the front door with a sledge hammer, which went through the front door, landing inside the complainant’s house. JZ then entered the house and threatened the complainant and another female present with a knife. JZ ran after the female while threatening her with the knife and screaming, “I’m going to kill you”.²²
- [26] Following this incident JZ was taken to hospital under an Emergency Examination Authority due to JZ’s conduct, including having made suicidal and homicidal threats. Whilst at the hospital JZ repeated that she would kill the female at the complainant’s house and allegedly said:
- All I wanted to do is kill that bitch...I am gonna get acid and pour it on her face to make her ugly...I am gonna throw alcohol on her face and put it on fire.
- [27] JZ then, while at hospital committed the contravention of the police protection notice by sending texts to the complainant threatening him and the other female as well as suggesting she would take her own life as well as that of her unborn child.²³

Consideration

- [28] As outlined above, in making my decision as to whether an exceptional case exists, I must have regard to the criteria in s 226(2). The weight to be given to each criteria will vary depending on the facts and circumstances of the particular case²⁴ though the welfare and best interests of children will always be paramount.²⁵
- [29] I turn first to consider the criteria in s 226.
- Whether the offence is a conviction or charge*²⁶
- [30] JZ was convicted with contravention of a domestic violence police protection order.

¹⁷ NTP 105.

¹⁸ Ibid.

¹⁹ NTP 57.

²⁰ NTP 58.

²¹ NTP 110.

²² NTP 118.

²³ BCS 2.

²⁴ *Grindrod [No 2]* [2008] WASCA 28 at [71].

²⁵ WWC Act, s 6(a).

²⁶ WWC Act, s 226(2)(a)(i).

*Whether the offence is a serious offence and, if so, a disqualifying offence*²⁷

[31] This is neither a serious offence²⁸ nor a disqualifying offence.²⁹

*When the offence or alleged offence was committed*³⁰

[32] The conduct that led to the offence was committed in June 2018, almost 4 years ago.

[33] I accept that the passage of time without further offending, of itself, is not conclusive that the risk of harm is reduced.³¹ However, that does not mean it is not relevant. Obviously, what occurs in the time since the offence may be of considerable relevance.

[34] In my view, that 4 years has passed is not, in these circumstances, a factor which favours this not being an exceptional case. That is because, in my view, the nature of the JZ's conduct over ten years and involving three different complainants suggests it is a systemic issue for JZ, and not conduct that she has been able to put behind her.

*The nature of the offence and its relevance to employment, or carrying on a business that involves or may involve children*³²

[35] The nature of the offence, domestic violence, can have a hugely negative impact on children by exposing to them to violent and aggressive behaviour, causing them to feel insecurity and fear, and by exposing them to a range of destructive behaviour that has the real potential to influence their development and, sub-consciously or consciously, their behaviour.

[36] The conduct was erratic and irresponsible. It is not clear whether JZ left her daughter (who was 12 years old at the time) at home alone sleeping while she went to confront the complainant.

[37] The respondent submits that the nature of the offence, together with JZ's history of other domestic violence incidents, raises concerns about JZ's 'ability to make appropriate behavioural choices, exercise judgment and resolve relationship conflict in a calm and non-aggressive manner. judge appropriate behaviour and present as a positive role model'. Further, it is submitted that children rely upon adults responsible for their care and wellbeing to manage relationship stressors in an appropriate manner and to role model appropriate behaviour.

[38] I accept the respondent's submissions and accordingly find that the nature of JZ's offence is relevant to employment or carrying on a business that may involve children.

*In the case of a conviction – the penalty imposed and if no imprisonment order or no disqualification order under s 357, the court's reasons for its decision*³³

²⁷ WWC Act, s 226(2)(a)(ii).

²⁸ WWC Act, sch 2.

²⁹ WWC Act, sch 4.

³⁰ WWC Act, s 226(2)(a)(iii).

³¹ *Commissioner for Children and Young People and Child Guardian v Lister (No 2)* [2011] QCATA 87 at [55].

³² WWC Act, s 226(2)(a)(iv).

³³ WWC Act, s 226(2)(a)(v).

[39] JZ was convicted and entered into a \$500 recognisance on the condition JZ be of good behaviour for 12 months. No conviction was recorded. The court's reasons for imposing this penalty are as follows:

- (a) JZ plead guilty at a very early opportunity; and
- (b) JZ was aged 38 and had no criminal history.³⁴

*Any information provided under ss 318, 319, 335, 337 or 338 of the WWC Act or under s 138ZG of the Disability Services Act*³⁵

[40] No information has been requested or received pursuant to these sections.

*Anything else relating to the commission, or alleged commission of the offence that is reasonably considered to be relevant to the assessment of the person.*³⁶

- (i) The terms of the domestic violence order;

[41] The relevant domestic violence order that was contravened in 2018 does not expire until 2023. This is of some concern as it indicates that the Magistrate still thought her a risk to the complainant until at least 2023. Further, because JZ is subject to an order, she has not had an opportunity to demonstrate that she has addressed the triggers for her past domestic violence behaviour.

- (ii) JZ's anger management and mental health issues

[42] The incidents of domestic violence outlined above raise concerns about JZ's ability to manage her anger. JZ presented on each of these occasions as a person unable to regulate her own emotions and to restrain highly aggressive and violent behaviour. JZ's child was present during some of these incidents which is also concerning in that JZ was unable to prioritise her child's physical and emotional wellbeing.

[43] In this context, I take account of the letter from Dr Wendy Brown, clinical psychologist, where she refers to JZ having experienced a "number of bouts of anger management issues". Although Dr Brown states that JZ's anger management issues appear to now be resolved, there was no explanation as to how this has occurred or what strategies JZ now has in place to manage her anger. In my view, JZ's anger management issues were extreme. I am not satisfied that JZ, if faced with further relationship issues, would not react with the same level of violence and lack of control.

[44] Dr Brown states in her letter that JZ is functioning at a very healthy psychological state, though she does have some mild symptoms of anger management issues which Dr Brown considers JZ is able to control. I have taken Dr Brown's letter into account. That said, it is not apparent that Dr Brown knew JZ's history of domestic violence or of the severity of the incidents, particularly in 2018. Further, it is not apparent that Dr Brown knew of JZ's negative notice or the reasons for the negative notice. I note that Dr Brown completed her assessment of JZ over a two-week period.

[45] I am not satisfied that JZ's behaviour in 2018 and her mental health at the time, were confined to 2018 or that JZ is now mentally stable such that she would not resort to

³⁴ BCS 56-58.

³⁵ WWC Act, s 226(2)(b), (c), (d), (e).

³⁶ WWC Act, s 226(2)(f).

such conduct in the future. Indeed, in my view, the evidence indicates that JZ's behaviour forms part of a larger pattern of violent and threatening behaviour, with underlying anger management issues.

(iii) JZ's personal references

- [46] I have taken into account the six character references JZ filed in support of her application. The referees attest to JZ's kind nature, her business acumen and her appropriate interaction with children.

Conclusion

- [47] The starting position for the WWC Act is the paramount interests of children. In the context of JZ's long history of domestic violence, including the use of weapons and threats to kill or maim, I am satisfied that JZ's is an 'exceptional case' in which it would not be in the best interests of children for her to be issued with a blue card.
- [48] The human rights of JZ, as outlined above, are relevant to this application and must be applied by the Tribunal in making its decision.³⁷ However, although those rights are relevant, the paramount principle, namely, the welfare and best interests of children must take priority where JZ's rights and the rights of children, conflict. In this case there is such a conflict.
- [49] I have decided that JZ's case is exceptional because I am satisfied that it would not be in the best interests of children, applying the paramountcy principle, for JZ to be issued with a working with children clearance. It follows that the decision of the respondent, refusing JZ's working with children clearance, is confirmed. I order accordingly.

³⁷ HRA, s 59.