

CITATION: *Lister v Commissioner for Children and Young People and Child Guardian (No 3)* [2011] QCATA 88

PARTIES: Ms Susan Beryl Lister
(Applicant)
v
Commissioner for Children and Young People and Child Guardian
(Respondent)

APPLICATION NUMBERS: APL258-10 CML065-11

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Judge Fleur Kingham, Deputy President**
Ms Gwenn Murray, Member
Dr Nigel Collings, Member

DELIVERED ON: 14 April 2011

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The application for an order to prohibit publication of the reasons for the decision of the Appeal Tribunal of 31 March 2011 is refused.**
- 2. The Reasons for the Decision of the Appeal Tribunal dated 31 March 2011 are corrected in the way specified in paragraph [11] of the reasons for this decision.**

CATCHWORDS : APPEAL – BLUE CARD – SUBSTITUTED DECISION – CORRECTION – where respondent applied for non-publication order for reasons for decision – where ground for application was error in attributing a statement to her in the reasons – where Appeal Tribunal made a material mistake in the description of a statement attributed to the respondent – whether that mistake could and should be corrected – whether a non-publication order, otherwise, should be made

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*Queensland Civil and Administrative
Tribunal Act 2009, ss 66, 135*

APPEARANCES and REPRESENTATION (if any):

This matter was heard on the papers in accordance with section 32 of the *Queensland Civil and Administrative Tribunal Act 2009*.

REASONS FOR DECISION

- [1] The Commissioner for Children, Young People and Child Guardian refused Ms Lister's application for a blue card.¹ She successfully reviewed that decision in QCAT. The Tribunal at first instance set aside the Commissioner's decision and directed a blue card issue. The Appeal Tribunal stayed that decision and later set it aside. It substituted its own decision on review and confirmed the Commissioner's decision to refuse Ms Lister's application for a blue card.
- [2] The Appeal Tribunal published its substituted decision and the reasons for it on 31 March 2011. On 12 April 2011, the Tribunal received an application from Ms Lister for a non-publication order for those reasons. At that stage the reasons had been provided to the parties but had not been made publicly available.
- [3] Ms Lister's application referred to the decision as a whole but the ground advanced related specifically to a single statement included in the reasons. That statement was identified as one reported by a police witness and attributed to Ms Lister.
- [4] The person who reported those particular words gave a statement to police in the course of a criminal investigation. The statement was contained in the Queensland Police Service brief provided to the Commissioner as part of the blue card process.
- [5] The Tribunal may make an order to prohibit publication of the contents of a document or other thing produced to it.² Ms Lister's argument for a non-publication order is that the statement attributed to her was not made by her, nor did the witness attribute it to her. A fair reading of her application is that she wants that attribution to her corrected.
- [6] The Tribunal may correct a decision made by it in a proceeding if the decision contains a material mistake in the description of a thing mentioned

¹ This is the term commonly used for a positive notice under the employment screening provisions of the *Commission for Children, Young People and Child Guardian Act 2000*, which enables a person to work in certain child related employment.

² *Queensland Civil and Administrative Tribunal Act 2009*, s 66(1)(a).

in the decision.³ That course may be taken either on the application of a party or on its own initiative.⁴

- [7] In paragraph [42] of the Appeal Tribunal's reasons for decision published on 31 March 2011, the following statement was said to have been attributed by the relevant witness to Ms Lister:

*"You need to break them before you can work with them."*⁵

- [8] Ms Lister is correct that the witness attributed those particular words to a different person, not identified in the version of the statement provided by the Queensland Police Service to the Commissioner. That statement, like the other material in the Queensland Police Service brief, had been redacted to obscure the names of persons other than Ms Lister.

- [9] The inclusion of that statement was a material, and inadvertent, mistake. The statement the Appeal Tribunal should have included appeared in the same witness statement, at a later point. That later statement was directly attributed to Ms Lister. It was similar in language and tone to other statements attributed to Ms Lister by other witnesses about the behaviour management techniques she was alleged to have used and the rationale for them. The statement that should have been included in the reasons is this:

*"You need to break them."*⁶

- [10] The difference in the meaning or effect of the two statements is slight. Nonetheless, it is appropriate to correct the record to use the precise words attributed by the witness to Ms Lister.

- [11] Accordingly, paragraph [42] of the reasons originally published to the parties on 31 March 2011 will be corrected by deleting the words *"before you can work with them."*⁷ It is also appropriate to reference this and like

³ Queensland Civil and Administrative Tribunal Act 2009, s 135(1)(c).

⁴ Queensland Civil and Administrative Tribunal Act 2009, s 135(2).

⁵ This appeared at paragraph [8] of a 20 page statement given on 30 May 2003 by a 53 year old woman who worked as a carer for Care Independent Living between May 2000 and May 2003. The statement is the fourth in order in the Queensland Police Service Brief.

⁶ This appeared at paragraph [21] of a the statement identified in the previous reference.

⁷ This phrase originally used appears at paragraph [8]; the amended phrase appears at paragraph [21] of a 20 page statement given on 30 May 2003 by a 53 year old woman who worked as a carer for Care Independent Living between May 2000 and May 2003. A strikingly similar statement was attributed to Ms Lister at paragraph [5] of a 12 page (addendum) statement given on 17 November 2003 by another person who worked as a carer for Care Independent Living between May 1999 and July 2002. That statement is the tenth in order in the Queensland Police Service Brief. In that witness' first statement (number nine in the order) and a number of other statements by other people, the witnesses attribute statements to Ms Lister in which she either gives instructions about or explanations for inappropriate and, in some cases, abusive techniques for modifying the behaviour of the residents.

statements attributed to Ms Lister, so the basis for the conclusion that Ms Lister embraced this as a behavioural management philosophy, rather than being overborne by senior management, is apparent on the face of the reasons.

- [12] No other basis for a non-publication order was advanced and nor is any other apparent. As the issue Ms Lister has raised is adequately dealt with by the correction, Ms Lister's application for a non-publication order is refused. The decision of the Appeal Tribunal made on 31 March 2011 is corrected to amend the reasons in the way indicated in paragraph [11] of these reasons.