Queensland Law Society

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Office of the President

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Our ref 337/23

The Hon. Tracy Davis MP
Minister for Communities, Child Safety and Disability Services
GPO Box 806
Brisbane QLD 4001

By Post and Email to: [redacted]

Dear Minister

Child Safety Services withdrawing applications in child protection proceedings

Our members have noted confusion surrounding the process for Child Safety Services to adopt when a decision is made to withdraw an application before the Childrens Court of Queensland in a child protection proceeding. In the view of the Society, this issue requires clarification to ensure consistency in the jurisdiction.

In the Society's view, once an application has been filed in the court, as the court has an inquisitorial obligation[1], it should oversee the application to ensure that any withdrawal is in the best interests of the child and that the decision is considered in light of the impact it will have on all the parties (including each parent and the child).

The Society's view is that the proper process for withdrawing an application should be similar to the regime in place in the Queensland Civil and Administrative Tribunal (QCAT) for children's matters. Specifically, Child Safety Services should be required to seek leave to withdraw and articulate the evidentiary basis upon which the decision-maker should be persuaded to grant leave. We suggest that this oversight by a judicial decision-maker is essential given that child protection is a best interests jurisdiction.

We highlight the principle that, when dealing with childrens' matters in QCAT, the best interests of the child must be considered (section 99C(a), *Child Protection Act 1999).* More generally, the principle of the Act in s5A is that the safety, wellbeing and best interests of a child are paramount.

[1] Section 105 of the *Child Protection Act* 1999 provides that the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate. The Explanatory Notes of the Child Protection Bill 1998 in relation to this section state: The court is inquisitorial, and may use whatever means it wishes to inform itself. For example, the court may accept a submission from interested family members, or may ask to speak to the child in the magistrate's office.

When specifically examining the issue of whether leave of QCAT should continue to be required (during the consideration of the *Justice and Other Legislation Amendment Bill 2013),* the Department of Justice and Attorney-General stated:

> *DJAG considers that there may be cases where an application has been made under the Child Protection Act 1999 and it is appropriate for the tribunal to refuse to grant to leave to withdraw an application. For instance, there may be situations where an applicant, such as a parent, may wish to withdraw the application for a number of reasons, even though it is in the best interests of the child that the application continue to be dealt with by the tribunal. Leave of the tribunal would continue to be required before an application under this Act could be withdrawn.*[2]

We consider these statements highlight the important inquisitorial role of the decision-maker in child protection matters. In practice, our members have also reported that in one case where a child has successfully resisted the immediate withdrawal of an application, Child Safety Services has subsequently reviewed its assessment again and concluded that a child protection order was in fact required. This demonstrates the need for the judicial officer to be involved with the process, and also suggests a lack of robustness in the current withdrawal process.

We also note particularly a recent QCAT discussion which deals directly with this issue, CG v Department of Communities, Child Safety and Disability Services [2013] QCAT 275. The father in the case, CG, applied to withdraw his application to review a contact decision. In considering whether to grant the withdrawal, the QCAT member stated at [3] – [6]:

> *[3] CG subsequently notified QCAT that he would like to withdraw his application for review. The registry staff at QCAT notified the representatives of CE asking for her response to her father's request for leave to withdraw his application for review. Her representatives informed QCAT that CE opposed leave being granted. The representatives stated that CE had an interest in the outcome of the review. She had not filed her own application to review the decision about contact as she had only become aware of her right to do so when notified that her father had filed his application. She wanted to participate actively in the review of the decision and she was concerned that granting leave to CG to withdraw the application would extinguish her rights to have the decision reviewed.*
>
> *[4] CE, as a party to the review of the contact decision, must be permitted to exercise fully her right to participate in the process to review a decision made about her interests as well as about her father's interests. She wanted the review to continue. Even though it might be possible for the review to continue with CE being taken as the applicant, the participation of her father in the review about the level of contact between him and his children would be desirable, perhaps even essential, in achieving an outcome satisfactory to CE, at least to the end of the compulsory conference stage of the review.*
>
> *[5] If the application were to proceed to a hearing after the attempts at alternative dispute resolution were exhausted and if CG did not want to participate in a hearing,*

> *then the question of granting CG leave to withdraw from the review of the contact decision could be considered afresh.*
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> *[6] I have refused to grant leave to CG to withdraw the application for review in view of the opposition from CE and as his participation as a party is likely to enhance the prospects of the parties communicating effectively at the compulsory conference stage towards reaching contact arrangements that are both practical and appropriate.*[3]

We submit that this discussion demonstrates the importance of ensuring that withdrawals in child protection cases are only made with judicial oversight.

The Society requests your views on these matters and whether you anticipate legislative reform to address the concerns raised.

Please note we have also enclosed a copy of this letter to the Department of Justice and Attorney-General for their information.

Please contact our Senior Policy Solicitor, Ms Binny De Saram on [redacted]; or Policy Solicitor, Ms Raylene D'Cruz on [redacted] for further inquiries.

Yours faithfully

[redacted]

Ian Brown
President

[2] Letter from the Department of Justice and Attorney-General, *Justice and Other Legislation Amendment Bill 2013,* 15 July 2013, page 11 found at: http://www.parliament.qld.gov.au/documents/committees/LACSC/2013/Justice/cor-15Jul2013.pdf
[3] Judgment found here: http://archive.sclqld.org.au/qjudgment/2013/QCAT13-275.pdf