

Liquor Commission of Western Australia
(*Liquor Control Act 1988*)

Applicant: JME

Respondent: Commissioner of Police
(represented by Mr Toby Bishop of the State Solicitor's Office)

Commission: Ms Elanor Rowe (Presiding Member)

Matter: Application seeking review of a barring notice pursuant to section 115AD of the *Liquor Control Act 1988*.

Date of lodgement of Application: 25 December 2021

Date of Hearing: On papers

Date of Determination: 29 April 2022

Determination: The barring notice issued by the Commissioner of Police to JME on 30 November 2021 is affirmed.

Authorities referred to in determination:

- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC 33/2011)
- *ARQ v Commissioner of Police* (LC 46/2011)
- *MRP v Commissioner of Police* (LC 55/2011)
- *GML v Commissioner of Police* (LC 58/2011)

Background

1. On 13 November 2021, an incident (**the Incident**) involving the Applicant (aged 29 at the time) occurred at licensed premises, namely the [REDACTED] (**the Venue**).
2. On 30 November 2021, as a result of the Incident, the Applicant was issued with a Criminal Code Infringement Notice pursuant to section 74A(2)(a) of the *Criminal Code Act Compilation Act 1913* (**Criminal Code**) for the sum of \$500.00.
3. As a further consequence of the Incident, the Commissioner of Police (**the Respondent**) issued a barring notice (**Barring Notice**) dated 30 November 2021 pursuant to section 115AA(2) of the *Liquor Control Act 1988* (**the Act**) prohibiting the Applicant from entering the following specified licensed premises in Western Australia for a period of approximately eight and a half months:
 - a. all hotel licences issued under section 41;
 - b. all small bar licences issued under section 41A;
 - c. all nightclub licences issued under section 42;
 - d. casino licences issued under section 44;
 - e. all liquor store licences issued under section 47;
 - f. all club licences issued under section 48;
 - g. all restaurant licences issued under section 50;
 - h. all producer's licences issued under section 55;
 - i. all wholesaler's licences issued under section 58;
 - j. all occasional licenses issued under section 59; and
 - k. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
4. The Barring Notice will expire on 13 August 2022.
5. By Application dated 25 December 2021 (**Application**), the Applicant applied for a review of the Barring Notice pursuant to section 115AD of the Act. The Applicant has elected to have the review determined on the papers.
6. The Incident which gave rise to the Barring Notice is referred to in the following documents:
 - a. Copy of the Barring Notice;
 - b. The evidential material relied upon by the Respondent's delegate when the Barring Notice was issued:
 - i. Venue Incident Report, dated 13 November 2021;

- ii. Summary of Incident No. [REDACTED], dated 13 November 2021;
 - iii. Infringement Notice No. [REDACTED], dated 22 November 2021;
 - iv. Detected Incidents Report No. [REDACTED] (**Incident Report**), undated;
 - v. Running Sheet Incident Report No. [REDACTED], undated;
 - vi. CCTV footage;
 - vii. Photo images from the CCTV footage; and
 - viii. Disclosable Court outcomes for the Applicant – Criminal and Traffic;
- c. The Application for Review;
 - d. The Applicant's submissions dated 17 January 2022; and
 - e. The Respondent's Primary Submissions dated 11 February 2022.

The Incident

7. The circumstances of the Incident at the Venue are summarised in the Incident Report as follows:
 - a. The Applicant was at the Venue along with a friend (**Friend**) and two female companions;
 - b. At about 9.30pm, another patron (**Victim**), ordered a drink at the bar;
 - c. The Victim spoke to the Friend and one of the female companions for a while;
 - d. The Friend punched the Victim in the face, knocking him to the ground;
 - e. While the Victim struggled to get up off the ground, the Applicant approached from the side and punched the Victim multiple times in the ribs;
 - f. The Police arrived shortly afterwards and witnessed the Applicant leaving the Venue in a highly agitated state, screaming obscenities at the Victim who remained near the bar; and
 - g. The Police asked the Applicant what had occurred, and the Applicant in response screamed [REDACTED] and other profanities at the Victim.
8. The Applicant did not dispute any of the evidence relating to the circumstances of the Incident or put forward an alternative account of what had happened. The evidential material is consistent with the Incident Report.

Submissions by the Applicant

9. The Applicant submits that the length of the Barring Notice should be varied and reduced in length.

Personal circumstances of the Applicant and background

- a. The Incident was out of character for him, and he has an impeccable record of conduct. He is actively engaged with his local community through his ongoing [REDACTED] contributions.
- b. He has no prior criminal record and is of good character.
- c. He is deeply remorseful for behaving in a disorderly manner, particularly in a public place and in future he will choose to conduct himself in a far different manner.
- d. The Barring Notice had resulted in making him feel isolated from the small community where he lives [REDACTED]. It is a small remote town and the Barring Notice has had an impact on his mental health due to his inability to connect with the community, such as during town events and workplace functions as they are hosted on licensed premises. In [REDACTED], there are only two restaurants and one community sporting precinct, all of which are registered licensed premises. The Barring Notice prevents him from taking part in team sports.
- e. He has also been unable to attend at both restaurants for breakfast with his family, which has been a standing tradition with his young children since the family relocated to [REDACTED].
- f. The Applicant is an active rostered [REDACTED] and his roster consists of twelve-hour days on a 14:7 rotation: 7-day shifts, 7-night shifts and 7-days off. He only attends licensed premises once during each fourteen-day period when he is working. Over the duration of his seven-day non-working period, he would typically only enter licensed premises for family breakfast and a maximum of two social engagements.

The Incident

- g. The Applicant had attempted to assist a friend in diffusing a physical altercation which was started by a third party. He was then required to defend himself against the Victim, who is well known to the Police.

Submissions by the Respondent

10. The Respondent submits that the circumstances of the case warrant the exercise of the Respondent's discretion to issue a barring notice. The decision of the Respondent should not be varied, and the Barring Notice should be affirmed.

Why there are reasonable grounds to believe the Applicant has been violent or disorderly or contravened a provision of any written law

11. In the circumstances presented and on the evidence before the Respondent, a reasonable person would have been inclined to assent to, and not reject, the proposition that the Applicant had engaged in violent or disorderly conduct on or in the vicinity of licensed premises (the Venue) and/or contravened a provision of any written law, being the Criminal Code.
12. The Applicant attacked the Victim in the company of another man (his Friend), who had already delivered the first punches to the Victim. The Applicant then restrained the Victim by his head/neck to keep him from standing up. The Applicant then punched the Victim twice in the left side of his torso after his Friend had been removed by bystanders.
13. In his letter accompanying the Application, the Applicant attempted to minimise his role in the attack on the Victim. The Applicant described the altercation as having been "*started by a third party*" and attributed his assault on the Victim as self-defence. The Applicant stated that he was assisting a friend to diffuse a physical altercation.
14. However, the CCTV footage does not support the Applicant's submissions and there is no indication that the Victim was, at any time, behaving in a physically threatening manner or had intended to engage in any physical confrontation. There is also no evidence that the Victim attempted to retaliate or punch the Applicant. In any event, the Applicant's actions were unreasonable and disproportionate.

The nature and circumstances of the Incident giving rise to the Barring Notice

15. The violent nature of the Applicant's actions demonstrate a clear need for the Barring Notice in order for the public to be protected. The Applicant involved himself in the altercation before the Victim and the Friend were separated. There was no justifiable reason for the Applicant to involve himself in the altercation. His actions had the potential to cause serious harm to the Victim. The initial restraint was directed at the head and/or neck of the Victim. The punches appear to have been delivered to the rib area of the left side of the Victim's torso.
16. The evidence before the Commission does not show the extent of the injuries suffered by the Victim and the Victim was able to return to the bar after the Incident. However, that is not relevant. The relevant consideration is that the Applicant's actions had the potential to cause serious harm to the Victim.

The risk of the Applicant behaving in a similar manner

17. In this case, the fact that the Applicant attacked the Victim when there was no reason for him to become involved in the altercation supports the view that there is a risk of the Applicant behaving in a similar manner in the future. The Applicant was looking for a physical confrontation and took advantage of the opportunity to become involved in one.
18. The Applicant has failed to take any substantive responsibility for his actions and has not demonstrated any insight into the fact that his behaviour was antisocial and wrong by societal standards. The Applicant blames the Victim for the Incident. Antagonistic and inappropriate behaviour is not uncommon in society, particularly on licensed premises, and responding to it with violence is unacceptable.

19. The Respondent accepts that the Applicant does not have a criminal history. However, that is not in itself sufficient to indicate that the Applicant will not behave in the same way in the future.

The Applicant's Submissions

20. Given that the object of the Barring Notice is protective, the Commission should pay minimal, if any, heed to matters personal to the Applicant such as the impact that the Barring Notice may have on the Applicant's social life.
21. The Applicant did not put forward any medical evidence to support this submission that the Barring Notice is impacting his mental health.

Conclusion

22. There is no basis for varying the terms of the Barring Notice. The object of a Barring Notice is protective and the Commission should pay minimal, if any, heed to any perceived "harshness" suggested by the Applicant.
23. The Applicant's attempts to justify or minimise his actions show that he has not yet taken responsibility and learned from the Incident.
24. The decision of the Respondent should be affirmed.

Statutory Framework

25. The Commissioner of Police has the power to prohibit people from entering specified licensed premises, or a specified class of licensed premises, for a period of up to twelve months pursuant to section 115AA of the Act if the Commissioner believes on reasonable grounds that the person has, on licensed premises:
 - a. been violent or disorderly;
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.
26. The Commissioner may delegate the power conferred by section 115AA of the Act on any member of the police force of or above the rank of Inspector pursuant section 115AB of the Act.
27. Section 115AD(3) of the Act provides that where a person is dissatisfied with the decision of the Commissioner of Police to give the notice, the person may apply to the Commission for a review of the decision.
28. Section 115AD(6) of the Act provides that when conducting a review of the decision, the Commission may have regard to the material that was before the Commissioner of Police when making the decision as well as any information or document provided by the Applicant.
29. Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.

30. Section 16 of the Act prescribes that the Commission:
 - a. may make its determination on the balance of probabilities [subsection (1)(b)(ii)];
 - b. is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply [subsection 7(a)]; and
 - c. is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms [subsection (7)(b)].
31. In 2010, the Act was amended "*to give protection to the general public from people who have engaged in disorderly or offensive behaviour, who threaten people and who put people in dangerous situations*" (Minister's statement to the House, Western Australia, Parliamentary Debates, Legislative Assembly 19 October 2010, 7925).
32. The Minister further stated that the legislation gave the Police the power to issue Barring Notices to persons engaging in antisocial behaviour at licensed premises.
33. Section 5 of the Act sets out the objects of the Act. In subsection 5(1)(b) one of the primary objects of the Act is to minimise harm or ill health caused to people, or any group of people, due to the use of liquor. Section 5(2) provides for various secondary objects including to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor.
34. In light of the primary and secondary objects of the Act, the effect of a barring notice on a recipient, whilst it may have a detrimental effect on the recipient, is not meant to be seen as a punishment imposed upon them but is to be seen as a protective mechanism (*SVS v Commissioner of Police* (LC19/2011)).

Determination

35. The Commission, in considering an application pursuant to section 115AD, is to review the decision and determine whether to affirm, vary or quash a decision.
36. Therefore, the questions to be determined on a review are whether:
 - a. there are reasonable grounds for believing that the barred person has, on or in the vicinity of licensed premises, been violent or disorderly; engaged in indecent behaviour; or contravened a provision of a written law; and
 - b. the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature.
37. It is for the Commission to determine whether, on the balance of probabilities, the Applicant was involved in the Incident to the degree that warrants the issue of a barring notice.

38. I have considered all the evidence before me, and on the materials supplied I am satisfied that there were reasonable grounds to conclude that the Applicant was both violent and disorderly on licensed premises:
- a. the facts of the Incident are undisputed, including that the Applicant punched the Victim in the ribs multiple times as the Victim struggled to get up off the ground;
 - b. the Applicant continued to shout profanities at the Victim and was in a highly agitated state, even after the Police had arrived; and
 - c. he was issued with an Infringement Notice pursuant to section 74A(2)(a) of the Criminal Code.
39. Accordingly, I find that there was a clear and proper basis for the delegate of the Respondent to exercise the power conferred by section 115AA of the Act.
40. Therefore, it is for the Commission to determine, in the relevant circumstances, whether the length and terms of the Barring Notice are sufficient to uphold the objects of the Act and are not punitive in nature. The public interest must be balanced against the impact of the Barring Notice on the Applicant.
41. In determining whether to quash or vary the Barring Notice, it is relevant to take into account the nature and circumstances of the incident giving rise to the barring notice; the risk of the Applicant behaving in a similar manner again; and the need to protect the general public, the licensee and the Applicant: *KRB v Commissioner of Police* (LC 33/2011); *ARQ v Commissioner of Police* (LC 46/2011); *MRP v Commissioner of Police* (LC 55/2011); and *GML v Commissioner of Police* (LC 58/2011).
42. The Applicant did not provide the Commission with an explanation regarding the circumstances surrounding the Incident and did not put forward an alternative account as to what happened. Therefore, it did not seem to be in dispute that the Applicant acted violently towards the Victim and continued to verbally abuse him in plain sight of others and even after the Police had arrived. It appeared to be a senseless and potentially very dangerous act in a public place.
43. It is not clear how much alcohol the Applicant had consumed prior to the Incident. However, that does not prevent the imposition of a barring order and the Incident was of precisely the type that the amendments to the Act in 2010 were introduced to counteract.
44. I also accept that there is no prior criminal record against the Applicant, and he has no history of violent or aggressive behaviour. However, it is clear from the wording of section 115AA that a single incident is sufficient to give rise to a barring notice.
45. The Applicant's aggressive actions towards the Victim remain of great concern. Furthermore, while the Applicant stated that he was "*deeply remorseful for behaving in a disorderly manner, particularly in a public place and would choose to conduct himself in a far different manner in future*", he also attempted to excuse and justify his behaviour, stating that he had attempted "*to assist a friend in diffusing a physical altercation that was started by a third party which then resulted in requiring to defend myself against an assailant known well [REDACTED]*."

46. I also note that while the Applicant referred to his occupation as a [REDACTED] and his impeccable reputation generally, he did not provide any references from his place of work, or any supporting statements from personal referees. Nor was there any statement from any medical practitioner in relation to the impact of the Barring Notice on his mental health.
47. Therefore, it appears to me that there is some risk that the Applicant will behave in a similar manner in the future and that risk can be minimised by the terms of the barring notice [*KRB v Commissioner of Police* (LC 33/2011)].
48. Finally, the purpose of barring notices is different to that of criminal proceedings, and they are not intended as a punishment. Rather, they serve as a measure to protect the public from anti-social behaviour, such as the Applicant's, in and around licensed premises. Barring notices are also a mechanism to protect a licensee or indeed, the perpetrator, from his/her own actions.
49. In balancing the above considerations, I find it appropriate to affirm the Barring Notice. It will serve to assure members of the public who frequent licensed premises that they are in safe environments and can expect that they will not become victims of, or witness, violence or antisocial or disorderly behaviour.
50. Moreover, I find that to ban the Applicant from attending all licensed premises for a period of eight and a half months is not an unduly punitive measure - the Applicant acknowledged in his submissions that he does not attend licensed premises on a frequent basis. In any event, it will allow the Applicant the opportunity for introspection regarding his behaviour.



ELANOR ROWE
PRESIDING MEMBER