

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant: Commissioner of Police
(represented by Ms Stephanie Smith of State Solicitor's Office)

Respondent Mr Craig Stephenson Wright
(self-represented)

Commission: Mr Eddie Watling (Deputy Chairperson)
Ms Elanor Rowe (Member)
Mr Paul Shanahan (Member)

Matter: Complaint for disciplinary action pursuant to sections 95 and 102F of the *Liquor Control Act 1988*

Date of Hearing: 16 August 2018

Date of Determination: 7 September 2018

Determination: Pursuant to section 96(1)(a) of the *Liquor Control Act 1988* the Commission issues Mr Craig Stephenson Wright a reprimand and imposes a monetary penalty of \$2,500 which is to be paid within a period of 60 days from the date of this determination and lodge with the Commission evidence of payment of the penalty within 28 days of making the payment.

Authorities referred to in the determination

- *Australian Broadcasting Tribunal v Bond and others* (1990) 94 ALR 11 at 56
- *Briginshaw v Briginshaw* (1938) 60 CLR 336

Background

- 1 Craig Stephenson Wright ("the Respondent"), was at all material times and remains the sole director, secretary and shareholder, of Decanter Pty Ltd (ACN 605 662 388) ("the Company"). The Company was registered on 5 May 2015.
- 2 On 7 July 2016, Mr Wright was, under the *Liquor Control Act 1988* ("the Act"), granted status as an approved manager of the premises known as *Decanter*, which is situated at 279-281 (Lot 1016), Albany Highway, Victoria Park ("the Premises").
- 3 On 3 February 2017, the Company was granted a restaurant licence in respect of the Premises.
- 4 By an application lodged with the Director of Liquor Licensing ("the Director") pursuant to sections 95 and 102F of the Act and dated 15 March 2018, the Commissioner of Police ("the Police") alleged that there was proper cause for the Director to take disciplinary action against Mr Wright to revoke his approval as an approved manager on the grounds that he is no longer a fit and proper person ("the Application").
- 5 The Application was referred to the Liquor Commission of Western Australia ("the Commission") by the Director pursuant to section 24 of the Act.
- 6 On 26 March 2018, the Police lodged with the Commission, a complaint under section 95 of the Act ("the Complaint") alleging that there is proper cause for disciplinary action on the following ground:

A person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business, is or becomes not a fit and proper person to hold that position or to be so interested (s 95(4)(h) of the Act.
- 7 The Commission determined that the Application and the Complaint should be heard together.
- 8 Submissions and responsive submissions were subsequently lodged by each party.
- 9 A hearing of the Commission was held on 16 August 2018.

Submissions of the Police

- 10 The Application and Complaint arise out of an incident which occurred on 19 September 2016 at *The Game Sports Bar*, which is situated at 84 Aberdeen Street, Northbridge, where the respondent became involved in a verbal exchange and subsequent physical altercation with another patron, Mr Parata Reweti ("Mr Reweti").
- 11 The respondent is not professionally involved with *The Game Sports Bar* and was present at the bar following team building exercises with colleagues from *Decanter*.

- 12 Mr Reweti was seriously injured in the physical altercation and suffered a nasal bone fracture and ophthalmoplegia in the left eye requiring treatment by doctors at Royal Perth Hospital. He was later referred to the State Head Injury Unit at Sir Charles Gardiner Hospital for further treatment.
- 13 On 22 February 2017, the respondent was formally charged by the Police with the offence of Assault Occasioning Bodily Harm pursuant to section 317(1) of the *Criminal Code Act Compilation Act 1913*.
- 14 On 23 November 2017, the respondent was convicted in the Perth Magistrates Court of assault occasioning bodily harm ("the Conviction") and was sentenced to a suspended imprisonment order for a term of 12 months.
- 15 It is a pre-requisite to the grant of a liquor licence to a body corporate that each person who occupies a position of authority is a "*fit and proper person to occupy that position in a body corporate that is a licensee of the premises to which the application relates*" (section 37(1)(b)(i) of the Act).
- 16 Further, if a person holding a position of authority in a body that holds a licence is, or becomes, someone who is not a fit and proper person to:
- a. hold that position; or
 - b. be interested in the business that is conducted under that licence, or interested in the profits or proceeds of that business,
- then there will be proper cause to take disciplinary action (section 95(4)(h) of the Act).
- 17 The Police submitted that the Complaint and the Application are made out because the violent and serious nature of the respondent's offending demonstrate that he is no longer a fit and proper person to be an approved manager or hold such a position of authority.
- 18 The behaviour that led to the offence that is the subject of the Conviction did not occur whilst the respondent was acting in his capacity as an approved manager or in his capacity as a person holding a position of authority in the licensee. Nor did that behaviour occur at the Premises. However, the Police have submitted that there is a significant connection between the respondent's duties under the Act and the circumstances of the respondent's conduct that led to the offence.
- 19 The Police submitted that there was a disagreement between the respondent and Mr Reweti concerning the respondent's treatment of Ms Hannah Mancakas ("Ms Mancakas") immediately before the respondent assaulted Mr Reweti. Ms Mancakas was employed by the Company, was a co-worker of the respondent and was a friend of Mr Reweti. The Police have submitted that it is reasonable to expect a person with the respondent's responsibilities under the Act to resolve situations such as his disagreement with Mr Reweti lawfully, safely and with minimal harm to the public. The respondent had other options open to him and he did not need to take the action he did.

20 The Police also submitted that:

- a. The respondent's actions were unreasonable and unlawful.
- b. The respondent struck to the face with such force that Mr Reweti lost consciousness and fell to the floor. Mr Reweti suffered a fractured nose, swelling to his left eye, and small lacerations. Mr Reweti also continues to suffer problems as a result of the assault. The respondent is very lucky as the outcome could have been far more serious.
- c. The offence that is the subject of the Conviction is so serious in itself that it reflects adversely on the respondent's character.
- d. The seriousness of the respondent's actions is demonstrated by the severity of the penalty imposed.
- e. During his trial for the offence, the respondent argued that his assault of Mr Reweti was an act of self-defence. The Court did not accept that argument. The respondent received half of the maximum length of imprisonment that could be imposed by the sentencing Magistrate, suspended for the entirety of that period.
- f. By engaging in serious criminal conduct, it is clear that the respondent does not possess the qualities that are necessary for carrying on his role as an approved manager and his role as a person in authority in a body corporate that holds a licence. He has shown that he lacks the integrity necessary to enjoy the privilege, and to discharge the obligations, associated with the provision of liquor in the public interest.
- g. The respondent is not someone who the Commission or the public can trust to adhere to the standards of behaviour set out in the Act. Adherence to those standards is of fundamental importance in achieving the objects of the Act, particularly the object of minimising harm or ill-health to people as a result of the use of liquor.

21 The Police also submitted that, for the purposes of considering the Application and the Complaint, it is significant that the respondent engaged in violent behaviour:

- a. while at licensed premises;
- b. following the consumption of alcohol (noting that the sentencing Magistrate did not make a finding that the respondent "*necessarily drank too much*");
- c. at a time when he held a position of authority in a body corporate holding a liquor licence and when he was also an approved manager of the Premises; and
- d. in the presence of Ms Mancakas, who both:
 - (i) worked as a waitress at the Premises, where the respondent was the approved manager; and
 - (ii) was employed by the Company, which was the licensee of the Premises and of which the respondent was the sole director, the company secretary and the sole shareholder.

- 22 As to the last point (paragraph 21d above), the Police submitted that:
- a. The respondent committed the offence that is the subject of the Conviction in the presence of a person who was effectively his employee (albeit that Ms Mancakas was legally employed by the Company, rather than by the respondent personally).
 - b. This sets a bad example and demonstrates the respondent's inability to model the standards of behaviour that should be displayed by those engaged in positions of responsibility in the liquor industry to further the objects of the Act, and in particular the object of minimising the harm caused to people due to the use of liquor.

23 The Police also submitted that:

- a. The provisions of the Act manifest an unambiguous legislative intention that people involved in violent behaviour, including merely by reputation, are people who should not be permitted on licensed premises of any kind, and in some instances should not even be employed by a licensee.
- b. There is also a clear public interest in ensuring that people involved in violent behaviour do not hold positions of authority in licensed bodies corporate. Such persons cannot be regarded as 'fit and proper' to hold those positions.

In relation to the Application, the Police have sought orders that the Respondent's Manager's approval:

- a. be revoked pursuant to section 102F(2)(a) of the Act; or
- b. in the alternative, be suspended for a significant period, and at least 12 months, pursuant to section 102F(2)(b) of the Act.

24 In respect of the Complaint, the Police seek orders that:

- a. the respondent be disqualified, for such period as the Commission thinks fit, and at least 12 months, from being the holder of a position of authority in a body corporate that holds a liquor licence, or from otherwise being interested in, or in the profits or proceeds of, a business carried on under a licence pursuant to section 96(1)(g) of the Act; or
- b. in the alternative, and only if the Commission has revoked or suspended the respondent's managers approval for a significant period and at least 12 months, a reprimand be issued against the respondent pursuant to section 96(1)(a) of the Act.

25 The Police acknowledged that if the respondent is disqualified pursuant to section 96(1)(g) of the Act, then this would require the respondent to divest his interest in the licensee Company as a consequence of being sole director and shareholder of that company. However, the Police also submit that such a remedy is appropriate in light of the seriousness of the relevant conduct.

26 The purpose of disciplinary action under sections 102F and 95 of the Act is to protect the public and not to punish the respondent. Accordingly, the issue that needs to be determined is whether the respondent is a fit and proper person to hold a position of authority within the Company and to be an approved manager in light of the Conviction.

Submissions of the respondent

- 27 The respondent has advised that he is 35 years old and has two children of whom he has 50% custody.
- 28 The respondent submitted that he had little experience in the hospitality industry before opening the Premises. He claims that he has been running the Premises for nearly three years and that he has always worked within the liquor licensing rules during that time. He also says that he has learnt a lot and grown as a person since he opened the Premises.
- 29 *Decanter* is a small business operating at the Premises. The respondent says that he has worked very hard in the business, that he is very 'hands on', and that he contributes to the business in lots of areas. The respondent has also submitted that, in the current market, he needs to work in this manner as the Company could not afford to pay the wages to an employee to do his work.
- 30 The respondent has also submitted that:
- a. as licensee (through the Company) and approved manager, he understands the Act and understands what is expected of a person in his position;
 - a. on the night of the incident, he made a poor split-second decision that he has regretted ever since;
 - b. he does not seek to excuse his behaviour which led to the Conviction, but he says that behaviour is out of character for him;
 - c. he is ashamed and disappointed in himself, he is remorseful and he knows that what he did was wrong;
 - d. at the time of the offence that is the subject of the Conviction, he felt threatened and he thought he was about to be attacked;
 - e. he was confronted by Mr Reweti and he did not approach or provoke Mr Reweti;
 - f. the public are not at risk from his future conduct, and this is supported by his lack of convictions for violent offences;
 - g. the offence was the result of a one-off decision and it does not suggest he lacks the qualities essential to carry on a business associated with the provision of liquor;
 - h. he has dealt with intoxicated people at the Premises and there have never been any issues with this;
 - i. he is of good character and has a good reputation, which is evident from the character references he has provided;
 - j. he only has one conviction; and
 - k. if he is unable to work at the Premises, then he does not think he will be able to keep the *Decanter* business open, and this would not only affect him but also his partner, his children and the thirteen members of staff which the Company employs.

Determination

31 Having carefully considered the submissions from both the Police and the respondent, the Commission has determined the following matters.

32 The Commission may, where a complaint has been lodged under section 95 of the Act, take disciplinary action against the respondent on the ground that he is not a fit and proper person to hold:

- a. a position of authority in a body corporate that holds a licence;
- b. an interest in the business that is carried on under a licence; or
- c. an interest in the profits or proceeds of such a business,

if it is satisfied on the balance of probabilities that the ground(s) of the complaint has, or have, been made out.

33 The Commission may, where an application has been lodged under s102(F) of the Act, take disciplinary action against an approved manager under that section if the approved manager is no longer fit and proper and proper to be approved.

34 The central issue for the Commission is to determine whether the grounds of the Complaint and the Application have been made out, and whether, in light of his actions and subsequent conviction, the respondent is a fit and proper person in accordance with the Act.

35 Although section 33(6) of the Act sets out the matters for consideration when determining whether an applicant is a fit and proper person to hold a licence or whether approval should be given to a person seeking to occupy a position of authority in a body corporate that holds a licence, it is also indicative of those considerations which may be relevant to whether a person is, or has become, 'not a fit and proper person' to hold a position of authority in a body corporate. These considerations include:

- a. the character and reputation of that person; and
- b. the number and nature of any convictions.

36 The Act does not define the concept of a "*fit and proper*" person, however the definition of that term has been considered by the High Court in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321. The court stated at 380 that:

'The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.'

- 37 Although the respondent describes the relevant conduct as a 'one-off' decision that is out of character, it is clear that the offence and the Conviction are very relevant to any assessment of whether he is a fit and proper person under the Act. The offence is even more relevant to such an assessment because of the factors referred to in paragraphs 18, 21 and 22 (above).
- 38 The respondent's submissions as to the matters referred to in subparagraphs 31.e. and 31.f. are at odds with his submissions that he does not seek to excuse the relevant conduct (see subparagraph 31.c. above) and that he is ashamed and remorseful (see subparagraph 31.d. above). Indeed, the respondent's continuing attempts to provide some level of justification for his conduct have made it much harder for the Commission to accept his claims that he will not make the same choices if faced with the circumstances that led to the offence that is the subject of the Conviction at some time in the future. Conversely, the character references that the respondent has provided weigh heavily in favour of his assertion that the relevant conduct was out of character and is unlikely to reflect his future conduct.
- 39 When considering the Application and the Complaint, the Commission's primary consideration is the interests of the public. The Commission acknowledges the impact that a suspension of the respondent's licence, or disqualification under section 96(1)(g) of the Act, could have on his family and on the Company's employees, however, any particular detriment which they might suffer as a result of such a decision by the Commission must be weighed against the interests of the wider community in ensuring the safe and responsible consumption of alcohol, and in protecting the wider community from potential harm. The public interests of the wider community do not require the respondent to be punished under the Act, but those interests will be supported by a decision that will deter people who are in the same position as the respondent from acting inconsistently with the standards expected of a 'fit and proper person'.
- 40 The respondent has been convicted of a serious crime and sentenced to a term of imprisonment for 12 months, suspended for the entirety of that period. The nature and circumstances of the assault cannot be ignored. The offence that is the subject of the Conviction took place on licensed premises. The respondent is a member of the liquor industry. He has an obligation to uphold the highest standards of that industry so as to protect the public interest.
- 41 The Commission acknowledges that the respondent has continued to operate in a position of authority at *Decanter* since the date of the offence, 19 September 2016, which was almost two years before the Commission's hearing of the Complaint and the Application, on 16 August 2018. The Police issued the respondent with a Barring Notice on 15 May 2017, which was effective to 8 November 2017. However, under section 115AA(7A) of the Act, the respondent was able to enter the Premises solely for the purpose of performing his duties relating to his work.
- 42 The fact the respondent has continued to operate in a position of authority at *Decanter* since the date of the offence without incident, and the length of time which has passed since that date, strongly suggest that the respondent will not pose a risk to the public should he continue in a position of authority under the Act.

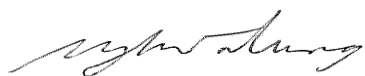
- 43 At the hearing of the criminal charges against the respondent on 23 November 2017 (see paragraph 14 above), Magistrate Scaddan made the observation:

'I've had regard to your personal circumstances, your otherwise good character, the fact that you have a family, and the fact that your prospects of rehabilitation, which I suspect aren't really the most important factor here, are good....'

- 44 Although the matter is to be determined on the civil standard of proof, an adverse finding will clearly have a serious impact on the respondent. This means that the respondent's fitness must be determined at the upper end of the civil standard according to *Briginshaw v Briginshaw* (1938) 60 CLR 336, where Dixon J stated that:

'The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.'

- 45 Under the circumstances the Commission does not believe that any purpose would be served in revoking or suspending the respondent's manager's approval pursuant to section 102F(2) of the Act. The length of time since the incident that the respondent has continued to perform as an approved manager is a good indication that, on the balance of probabilities, he is highly unlikely to pose a risk to the public.
- 46 Nevertheless, the criminal offence of the respondent is one of a serious nature and was committed on licence premises, albeit not the licensed premises at which he is an approved manager and in a position of authority. Accordingly, the Commission is of the opinion that grounds are established on which to order disciplinary action and the Commission also puts the respondent on notice that any future breaches of the Act may result in a much greater level of disciplinary action.
- 47 Pursuant to section 96(1)(a) of the Act, the Commission issues the respondent, Mr Craig Stephenson Wright, with a reprimand and requires him to pay a monetary penalty of \$2,500. That penalty must be paid within a period 60 days from the date of this determination and the respondent must lodge evidence of payment of the penalty with the Commission within 28 days of making that payment.



EDDIE WATLING
DEUPTY CHAIRPERSON