

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Y Z
(represented by Ms Mila Mortimer of Timpano Legal)

Respondent: Commissioner of Police
(represented by Ms Duska Van Nellestijn of State Solicitor's Office)

Commission: Ms Helen Cogan (Member)

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

Date of Determination: 04 April 2013
(on papers)

Determination: The application is refused.

Authorities referred to in the determination:

- *S V S v Commissioner of Police* (LC19/2011)

Background

- 1 On 11 October 2012, an incident occurred at licensed premises being the Kangi Camp Wet Mess at the Solomon Mine Site, Mount Sheila near Tom Price, when according to the statement of material facts the applicant:
 - 1.1. assaulted a workmate by head butting him causing the workmate to fall to the ground and sustain injuries namely a broken nose and a laceration to the bridge of his nose causing swelling and discomfort; and
 - 1.2. assaulted another workmate by punching him three times causing the workmate to sustain injuries namely from the first punch, swelling and bruising to his left eye/cheek area causing immediate pain and discomfort and from the second punch, an injury to the left side of his neck and from the third punch he suffered a small chip on his left front tooth.
- 2 In connection with the incident the applicant was charged with two counts of assault occasioning bodily harm under section 317(1) of the *Criminal Code*, to which he pleaded not guilty. The Liquor Commission ("the Commission") has not been made aware of the outcome of the charges.
- 3 On 12 October 2012, a barring notice was issued pursuant to section 115AA(2) of the *Liquor Control Act 1988* ("the Act") prohibiting the applicant from entering any licensed premises in Western Australia, except those premises licensed under a liquor store licence, from the date of the barring notice until 11 October 2013.
- 4 On 4 November 2012, the barring notice was served on the applicant.
- 5 On 5 December 2012, the applicant made an application for review of the barring notice pursuant to section 115AD of the Act.
- 6 Leave was granted by the Commission to lodge the subject out of time application.
- 7 The matter was determined on the papers.

Submissions on behalf of the applicant:

- 8 The applicant does not contest the barring notice but seeks to have the conditions imposed upon him varied so that he is able to enter premises licensed under a restaurant licence pursuant to section 60(4)(ca) of the Act, to attend meals and social events held at restaurants with his family and friends, particularly during the festive season.
- 9 If the barring notice is not varied it would be considered particularly overbearing on the applicant and would exclude him from socialising with his family and friends at a large number of licensed restaurants.
- 10 The applicant is aware of the determination of the Commission in *S V S v Commissioner of Police* LC 19/2011 as follows:

"a barring notice is not a penalty but a mechanism to protect the general public, a licensee or indeed the perpetrator from his own actions"
- 11 If the barring notice is varied there would be a low likelihood that the public

would be endangered or that the applicant would offend in a manner similar to the alleged offending and this submission is made on the basis that the applicant is considered a person of good character by his peers and he contests the alleged offending behaviour. A number of written character references will be submitted attesting to the applicant's good character (see paragraph 32 below).

- 12 The applicant will be entering pleas of not guilty to the charges against him. The complainants of the alleged offending are known to the applicant and the foundation and background to the applicant's defence is that he had been the victim of workplace bullying which escalated to the alleged offending.

Submissions on behalf of the Commissioner of Police

- 13 The Commissioner of Police ("the Police") has provided to the Commission and the applicant's solicitors a copy of material relied upon by the Police in issuing the barring notice (redacted to remove all references to the victims personal details). Such material included:

- Statement of Material Facts
- Incident Report 111012 0900 10529
- WAPOL record extract for the applicant
- Criminal and Traffic History Report for the applicant

Among the materials there is reference to an electronic record of interview with the applicant, victim statements, medical release forms and photographs, however the material was not before the respondent when making the decision to issue the barring notice.

- 14 The Police made detailed submissions concerning the interpretation and purpose of section 115 of the Act and the provisions of the Act relating to the review of barring notices.
- 15 The primary question to be determined on review is whether there are reasonable grounds for believing the barred person has been violent or disorderly, engaged in indecent behaviour or contravened a provision of a written law on licensed premises.
- 16 In the present circumstances the evidence before the respondent clearly establishes that a reasonable person would have been inclined to assent to and not reject the proposition that the applicant had engaged in behaviour that fell within one or more paragraphs (a) or (c) of section 115AD(2) of the Act.
- 17 The applicant has not contested the issue of the barring notice and therefore does not challenge the respondent's finding that the applicant contravened a provision of a written law on licensed premises (or that he otherwise engaged in behaviour that fell within one or more paragraphs (a) or (c) of section 115AD(2)).
- 18 The respondent opposes the applicant seeking to have the barring notice varied to permit the applicant to enter premises licensed with a restaurant licence.

- 19 In determining whether to vary the terms of the barring notice it is relevant to take into account the nature and circumstances of the incidents giving rise to the barring notice, the risk of the applicant behaving in a similar manner and the need to protect the general public, the licensee and the applicant himself.
- 20 In relation to the nature and circumstances of the incident giving rise to the barring notice the applicant merely asserts that the incident occurred in circumstances where he was the victim of workplace bullying but as at the date of the respondent's submissions the applicant has provided no explanation or evidence regarding the nature and circumstances of the alleged bullying, what effect it had on the applicant, whether or not the first and second victim were in any way involved and what (if any) connection it had with the incident(s) which occurred on 11 October 2012 (other than that the incident was an "escalation" of the alleged workplace bullying).
- 21 The incidents giving rise to the issue of the barring notice were aggravated by the following circumstances in summary;
- the conduct of the applicant was of the very nature which the Act was designed to overcome – that being anti-social and violent behaviour on licensed premises;
 - the applicant repeatedly behaved in an anti-social and violent manner;
 - the incident involved the use of considerable force – such that it caused injury to the first and second victims requiring them to receive medical attention from the onsite emergency response team and causing the applicant to be charged with two counts of assault occasioning bodily harm in connection with the incident.
- 22 The applicant asserts that the barring notice should be varied because he is at a low risk of offending in a similar manner but given the applicants recent criminal history (which includes assault offences committed less than 2 years ago) the basis for the applicant's assertion that he is at low risk of offending in a similar manner is unclear.
- 23 Other than an undertaking to provide character references (see paragraphs 11 above and 32 below) the applicant has not provided any information tending to indicate that he would not, or has taken steps to ensure he will not, react in the same way if similar circumstances arose in the future.
- 24 Even if the risk that the applicant could behave in a similar manner is low (which the respondent denies) that risk can be further minimised by the terms of the barring notice.
- 25 The nature of the applicant's previous criminal convictions, the applicant's character when viewed in light of the circumstances of the incidents presently under consideration and the consequences of these incidents support a conclusion (however slight) that the applicant may behave in a similar manner in the future creates a need to protect the general public and furthermore the applicant's personal interest in being able to socialise with family and friends at licensed restaurants does not outweigh the public interest in protecting the general public from violent and disorderly conduct.
- 26 Taking into account the lack of material provided by the applicant in support of the proposed variation of the barring notice, the aggravating factors identified in

paragraph 21 above, and in particular the very real risk that the applicant will pose a risk to the general public by behaving in a similar manner in the future (given the applicant's propensity to be involved in incidents of the kind the subject of the barring notice) this is not a case where it is appropriate for the Commission to exercise its discretion to vary the conditions of the barring notice as proposed by the applicant.

- 27 If the Commission considers that variation is warranted the respondent submits that the variation should be restricted to premises licensed under a restaurant licence, other than a restaurant which forms part of hotel premises or a restaurant with an extended trading permit and the applicant should not be allowed to consume alcohol while on the premises.

Determination

- 28 The applicant does not contest the barring notice but seeks a variation to permit the applicant to enter premises with a restaurant licence to enable him to socialise with his family and friends at licensed restaurants.

- 29 The Commission in *S V S v Commissioner of Police* LC19/2011 at paragraph 12 has observed that:

"This provision is clearly designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and is not focused on punishing an individual for their actions."

- 30 I therefore, only have to consider whether varying the barring notice as requested by the applicant, as section 115AD empowers me to do, will result in the likelihood of the public being endangered.

- 31 The following statement was contained in the letter from the applicant's solicitor's dated 5 December 2012 and was lodged along with the application for review:

"Mr Z does not contest the notice issued against him. Mr Z's application for review of the notice is to vary the conditions that have been imposed on him. Mr Z seeks to have the notice varied so that he is able to enter premises licensed with a restaurant licence pursuant to section 60(4)(ca) of the Act.

The reason Mr Z seeks to vary the notice is so that he is able to attend meals and social events held at restaurants with his family and friends, particularly during the festive season. It is respectfully submitted that if the notice is not varied, it would be considered particularly overbearing on Mr Z and would exclude him from socialising with his family and friends at a large number of licensed restaurants.

We respectfully submit that if the notice is varied according to section 115AD(7) of the act there would be a low likelihood that the public would be endangered or that Mr Z would offend in a manner similar to the alleged offending.

In relation to our submission that Mr Z is a person of good character, we advise we will submit a number of written character references which attest to this fact shortly.

In relation to the alleged offending, Mr Z will be entering pleas of not guilty.

The complainants of the alleged offending are known to Mr Z. The foundation and background to Mr Z's defence is that he had been the victim of workplace bullying which escalated to the alleged offending. These matters may be reviewed by Worksafe"

- 32 I note that no written character references have been submitted by the applicant and that the applicant has made no response to the respondent's submissions, in particular to the submissions dealing with his record of offences.
- 33 I note also that the applicant has offered no evidence to support the submissions made on his behalf, and has offered virtually nothing by way of mitigation or explanation and has expressed no remorse for his actions.
- 34 In particular the applicant has offered no evidence to support his submission that there is a low likelihood that the public would be endangered or that he would offend in a manner similar to the alleged offending.
- 35 On the evidence before me, in particular the applicant's record of offences, I consider that there is at least a strong possibility of a similar reaction in similar circumstances.
- 36 In all the circumstances, I am not persuaded that there is any reason to grant the applicant's request to vary the conditions of the barring notice and accordingly the application is refused.



HELEN COGAN
MEMBER