

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Commissioner of Police

Respondent: Mr Bradley Hayes Dorrington
(represented by Mr Ashley Wilson of Frichot and Frichot Lawyers)

Commission: Mr Jim Freemantle (Chairperson)
Ms Helen Cogan
Mr Greg Joyce

Matter: Application pursuant to section 152B of the *Liquor Control Act 1988* for a Prohibition Order prohibiting the Respondent from entering all licensed premises, except liquor stores, for a period of three years.

Determined In Chambers: 28 April 2010

Date of Determination: 24 May 2010

Determination: Application Granted.

Authorities referred to in decision:

Re Minister for Resources; ex parte Gazaly Iron Pty Ltd [2007] WASCA 175).

McKinnon v Secretary, Department of Treasury [2005] FCAFC 142 per Tamberlin J)

Sean Investments Pty Limited v McKellar [1981] 38 ALR 363 per Dean J

Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241

Introduction

- 1 On 22 January 2010 the Commissioner of Police lodged an application pursuant to section 152B of the *Liquor Control Act 1988* ("the Act") for a Prohibition Order against Bradley Hayes Dorrington. The application seeks to have Mr Dorrington prohibited from entering all licensed premises, except liquor stores, for a period of three years.
- 2 On 3 March 2010 the Director of Liquor Licensing referred the application to the Commission for determination pursuant to section 24 of the Act.
- 3 The application was determined in Chambers on the written submissions of the parties and by consent of the solicitor for the respondent.

Submissions of behalf of the Commissioner of Police

- 4 Between the hours of 8.00pm and 8.15pm on 27 September 2008 Mr Dorrington was at the Leederville Hotel when he became involved in an altercation with another patron. Mr Dorrington, who was intoxicated at the time, without warning punched the other patron to the left side of the face whilst holding a glass in his hand, smashing the glass and causing a 4-5cm facial laceration and damage to the sight in the left eye of the victim.
- 5 Mr Dorrington was subsequently convicted in the Perth District Court on 28 April 2009 of Grievous Bodily Harm and sentenced to 15 months imprisonment (suspended for 24 months).
- 6 It is submitted by the Commissioner of Police that Mr Dorrington's violent behaviour at licensed premises has endangered public safety.

Submissions on behalf of Mr Dorrington

- 7 In considering the merits of making a Prohibition Order, it was submitted that Mr Dorrington has not been involved in any repeat anti-social behaviour in or around licensed premises and that the Commissioner of Police is relying on a single incident that occurred at the Leederville Hotel on 27 September 2008.
- 8 Since that incident, which occurred over 17 months ago, Mr Dorrington has not been involved in any subsequent behaviour of that type or committed any other offence.
- 9 When Mr Dorrington was sentenced in the District Court, he was required to be supervised by a Community Corrections Officer and undergo and complete courses relating to substance abuse and anger management. Mr Dorrington has engaged in both the supervision and program requirements imposed by the sentencing Judge.
- 10 Letters from the Department of Corrective Services and from Cyrenian House confirm that since being sentenced, Mr Dorrington has been supervised by the Department of Corrective Services, has always reported as directed for supervision and has engaged well in sessions. Mr Dorrington was referred to Cyrenian House for alcohol and anger management counselling and during these sessions he has engaged well, displayed insight and remorse for his actions and reported on areas of his life that have altered since the incident.

- 11 Since the incident at the Leederville Hotel, Mr Dorrington has continued to visit licensed premises and has conducted himself appropriately and not been involved in any further incidents. Letters of support for Mr Dorrington indicate that he drinks moderately and is conscious of avoiding situations which may lead to altercations.
- 12 It was submitted that a Prohibition Order is not required to protect or further the public interest. Mr Dorrington has responded to the out of character experience in a positive manner and demonstrated that he does not pose a risk to the public. Furthermore, his suspended sentence remains in force until 28 April 2011 and there is a measure of public protection by reason of the fact that Mr Dorrington already has a considerable incentive to avoid becoming involved in any illegal or anti-social behaviour. The pre-sentence report submitted at Mr Dorrington's trial indicated that Mr Dorrington was a low risk of reoffending in a violent manner.

Determination

- 13 Pursuant to section 152E of the Act, the Commission may make a Prohibition Order only if satisfied that it is in the public interest to do so after giving the relevant person a reasonable opportunity to make submissions and be heard and regard is given to any information or document submitted.
- 14 Pursuant to section 33(1), the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest; the discretion being confined only by the scope and purpose of the Act (refer *Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241*).
- 15 In determining what constitutes the public interest in the context of a Prohibition Order, the Commission also notes the following precedents –

"The expression "in the public interest", when used as the criterion for the exercise of a statutory discretion, usually imports a discretionary value judgement confined only by the subject matter and the scope and purpose of the legislation" (Re Minister for Resources; ex parte Cazaly Iron Pty Ltd[2007] WASCA 175).

and

"The reference to "the public interest" appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.

The expression "in the public interest" directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances." (McKinnon v Secretary, Department of Treasury [2005] FCAFC 142 per Tamberlin J)

and

"In a case such as the present, where relevant considerations are not specified, it is largely for the decision-maker, in the light of matters placed before him by the parties, to determine which matters he regards as relevant and the comparative importance to be accorded to matters which he so regards." (Sean Investments Pty Limited v McKellar [1981] 38 ALR 363 per Dean J).

- 16 The objects of the Act are also an important factor in the consideration of the public interest. The primary objects of the Act in sections 5(1)(a) and (b) are directed to regulating the sale, supply and consumption of liquor and minimizing harm or ill-health caused to people due to the use of liquor.
- 17 A prohibition order is not about punishing the respondent; it is about protecting the public. People who attend licensed premises have a right to expect that those premises are safe and free from drunken violence and anti-social behaviour.
- 18 Albeit that Mr Dorrington's actions may have been out of character, they were extremely violent and had serious consequences for his victim and were committed whilst intoxicated.
- 19 In weighing and balancing the competing interests in this case, namely Mr Dorrington's ability to attend licensed premises and the public's right to safe drinking environments; the Commission is of the view that the "advancement of the interest or welfare of the public" (*McKinnon supra*) must take precedent over the individual. People who chose to drink excessively and behave in a violent manner must accept responsibility for their actions.
- 20 The Commission is mindful of Mr Dorrington's compliance with his sentencing conditions and that he has remained trouble-free, and although it was submitted that Mr Dorrington was considered to be at low risk of reoffending, it is not a risk that the Commission is prepared to accept or to which the public should be exposed. The circumstances of the incident at the Leederville Hotel on 27 September 2008 are so serious that the Commission is of the view that the only appropriate outcome is to grant the application sought by the Commissioner of Police.



JIM FREEMANTLE
CHAIRPERSON