

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Mr R C
- First Intervener:** Director of Liquor Licensing
(represented by Ms Caroline Chapman of State Solicitor's Office)
- Second Intervener:** Commissioner of Police
(represented by Ms Caroline Chapman of State Solicitor's Office)
- Commission:** Mr Paul Heaney (Presiding Member)
Mr Michael Egan (Member)
Dr Eric Isaachsen (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988*, for a review of a decision by the delegate of the Director of Liquor Licensing to withdraw unrestricted manager's approval to Mr R C.
- Date of Determination:** 4 October 2016
(on papers)
- Determination:** The application is refused and the decision of the Delegate of the Director of Liquor Licensing is affirmed.

Authority referred to in this determination:

Australian Broadcasting Authority v Bond and Others [1990] HCA 33

Overview

- 1 This is an application by Mr R W C (“the applicant”) pursuant to section 25 of the *Liquor Control Act 1988* (“the Act”) to review the decision of the Delegate of the Director of Liquor Licensing (“the Director”) dated 5 July 2016.

Timeline of Events

- 2 6 September 2014 – application lodged by the applicant for approval as an unrestricted manager pursuant to section 102B of the Act.
- 3 7 November 2014 – granting of that application by the Director with a caution that any future convictions may result in disciplinary action pursuant to section 102F of the Act.
- 4 6 February 2016 – an incident occurred at the Beldon Tavern where the applicant was the approved manager, giving rise to a charge against the applicant for an assault on a patron.
- 5 20 April 2016 – applicant pleads guilty to a charge of assault occasioning bodily harm pursuant to section 317(1) of the *Criminal Code*. He received a fine of \$2000.
- 6 6 April 2016 – representations made on behalf of the Commissioner of Police to the Director of Liquor Licensing that the applicant is no longer “fit and proper” to be an approved manager pursuant to section 102F(1)(b) of the Act.
- 7 5 July 2016 – withdrawal of the applicant’s unrestricted manager’s approval by the Director.

The Legislation

- 8 Section 102F of the Act provides that:
 - 1) *There are grounds for taking action against an approved manager under this section if:*
 - a) *n/a*
 - b) *the approved manager is no longer fit and proper to be approved; or*
 - c) *n/a*
 - d) *n/a*
 - 2) *If the Director is satisfied that there are grounds for taking action against an approved manager under this section the Director may, by notice in writing –*
 - a) *revoke the manager’s approval; or*
 - b) *suspend the manager’s approval for a specified period; or*
 - c) *impose conditions on the manager’s approval.*

9 Section 25 provides that:

1) *Subject to subsections (3) and (5), where a person who is a party to proceedings before the Director is dissatisfied with a decision made by the Director in respect of those proceedings the person may apply to the Commission for a review of that decision.*

...

2c) *When conducting a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision*

...

4) *On a review under this section the Commission may-*

a) *affirm, vary or quash the decision subject to the review; and*

b) *make a decision in relation to any application or matter that should in the opinion of the Commission have been made in the first instance; and*

c) *.....*

The Assault

10 The applicant's account

The applicant's account is contained in two statements accompanying his application for a review of the Director's decision to revoke the applicant's approval to act as an approved manager. One of these, dated 7 June 2016, sets out the basis upon which the applicant has sought the review. This statement also incorporates a statement dated 12 March 2016 he made in respect of an application for the revocation of a barring notice which was subsequently revoked. These two statements are lengthy setting out the applicant's account of events and why the applicant considers the Director's decision should be reversed.

It is unnecessary to set out the applicant's statements in full, but essentially, the applicant contends:

- the applicant was informed at 8.10pm by a work colleague about the unacceptable behaviour of a patron, who, it turned out, was known to the applicant as a person who "has always been trouble";
- the patron had been at the premises earlier in the day and had returned and been allowed to purchase five pints of beer "in advance";
- as the premises were to close at 8.30pm the applicant told the patron no further drinks would be served;
- the patron became upset, and abusive and aggressive towards other patrons and the applicant, and although the applicant attempted to refund money to the patron

for beer he had already paid for, the patron continued to abuse the applicant and other patrons, some of whom left the premises as a result;

- the applicant informed the patron he would have to leave the premises and after further abuse the applicant left the bar to approach the patron and further explain that the patron would not be served and had to leave;
- a physical altercation ensued for which the applicant was ultimately convicted of assault;
- the applicant believes he was threatened and provoked, and only used force in self-defence to ensure he was not injured; and
- whilst the applicant agrees he, the applicant, did “go overboard”, he:
 - was calm and firm in dealing with the patron before the incident occurred;
 - was trying to evict a dangerous, troublesome patron from the venue as quickly as possible before the patron hurt someone or wrecked any more of the furniture or equipment;
 - is not a violent person and although he has some previous convictions none are related to violence and all involved alcohol which he now hardly ever drinks;
 - has never once in his 10 or more years (in the industry) had to throw a punch or defend himself from being physically hurt;
 - has learnt from the incident and will make sure an incident like this never occurs again by calling the police if needed and staying behind the bar; and
 - has a good reputation with the community and customers.

11 The victim Jack Thompson’s account

The victim of the assault for which the applicant has been convicted, Jack Thompson, confirms he was at the bar at the relevant time. He said he was talking to the bar lady named “Tee”. He had about 5 pints, but definitely was not drunk. At about 10pm he saw the applicant approach him walking very fast and the applicant poured his beer out and said “I’m sick of you, you little cunt”. His next memory was being outside with a blood nose and a sore head.

12 Mr Thompson’s account was utterly inconsistent with the applicant’s account and the CCTV vision of the assault.

The CCTV Vision of the Incident

- 13 The vision commences with the applicant behind the bar at approximately 8.30pm. The applicant is talking with the victim Thompson who appears to be argumentative without being physically aggressive towards the applicant. The applicant then leaves the back of the bar and walks around to the front of the bar to confront and talk to the victim face to face. The argument continues for a short while. The victim appears to be the more aggressive of the two. Then the victim moves his face into the face of the applicant and “head-butts” the applicant. It does not appear to be a forceful head-butt. At this point the applicant grabs the victim around the neck and forces him to the ground. Whilst leaning over the victim, the applicant punches him 7 to 8 times. Another male comes onto the scene and attempts to drag the applicant off the victim. On being pulled away the applicant punches the victim another 5 times before being pulled out of range of the victim.
- 14 Taking into account the two statements from the applicant and the victim and the CCTV vision the following points can be made:
- The applicant was properly behind the bar.
 - The victim was argumentative but showing no signs of physical aggression towards the applicant, which may have been because the bar was between the two of them. The victim may well have been “foul-mouthed” as the applicant maintains.
 - The applicant walks to the end of the bar and turns and walks to the victim. The argument continues. The victim then jerks his head towards the applicant. In his statement of 12 March 2016, the applicant characterises the victim’s action as the victim attempting to head-butt him, and making contact but not injuring him.
 - The applicant then grabs the victim around the neck and takes him to the ground.
 - Whilst the victim is on the ground, the applicant throws 7 to 8 punches at the victim who appears to be in no position to defend himself.
 - On being pulled away, the applicant throws 5 more punches at the victim.
 - The victim threw no punches in the fracas and there does not appear to be any basis for the claim by the applicant that he feared the victim had a weapon and was reaching for it. Accordingly, the applicant can make no claim to self defence (and did not do so when pleading guilty to the assault, although he said he was acting on the advice of his solicitor and could not afford to go to trial).
 - Apart from his argumentative attitude, the victim did nothing to provoke the applicant to leave the safety of his position behind the bar and confront the victim. Even if the victim’s behaviour was provocative, the applicant’s response was disproportionate to the perceived provocation.

Fit and Proper

- 15 Section 102F requires the applicant to be a “fit and proper” person to maintain his status as an approved manager.
- 16 Section 33(6) of the Act looks at the issue of “fit and proper” and lists 5 characteristics as being relevant to the determination. It lists:
 - a) creditworthiness of a person;
 - b) character and reputation of a person;
 - c) number and nature of any convictions;
 - d) conduct of the person in respect to other businesses he may be involved with;
 - e) any interventions made pursuant to section 69 of the Act.
- 17 In the High Court case of *Australian Broadcasting Authority v Bond and Others* [1990] HCA 33, it was said the term fit and proper “is not a concept which is to be narrowly construed or confined” and in the same case Toohey and Gaudron JJ said “the expression “fit and proper” person standing alone carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by the those activities”.
- 18 Section 5 of the Act deals with the primary and secondary objects of the Act. One of the primary objects, defined at section 5(1)(b), is “to minimise harm or ill-health caused to people or any group of people due to the use of liquor” and one of the secondary objects, defined at section 5(2)(d) is “to provide adequate controls over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor”. Physical assaults of the type that has occurred in this case, fighting and bar room brawling is anathema to the above mentioned objects, particularly when initiated or contributed to by the approved manager.
- 19 In respect of the issue of ascertaining whether or not the applicant is a “fit and proper” person, the large number (29) of references are relevant and favourable to him. People, including his employer, speak highly of him in respect of his employment and his personal life. He appears to have performed his duties with great efficiency, in particular when dealing with difficult customers. It was also suggested by one referee that at the time of the relevant incident in February 2016 he was undergoing stress in his private life with the breaking of a long term relationship.

Decision to Approve Applicant as an Approved Manager - 7 November 2014

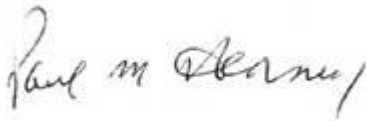
- 20 In paragraphs [1] to [12] of the Director’s determination to approve the applicant as an approved manager, the Director examined the applicant’s previous record of criminal convictions and also referred to the authorities on the definition and analysis of the concept of a “fit and proper” person.

- 21 At paragraphs [13], [14] and [15], the Director indicated how despite the applicant's record, he was prepared to approve the application given the applicant's apparent personal rehabilitation and the unlikelihood that any criminal behaviour will reoccur.
- 22 At paragraphs [16] and [17], the Director issued the applicant with a certain and stern caution whereby the applicant could be left with no uncertainty as to what would be the consequences if his behaviour were to provide reasonable grounds to show that he was no longer a suitable person to manage licensed premises.
- 23 At paragraph [17] the Director states:
- "...therefore Mr C should note that any future conviction may result in the provisions of section 102F being actively pursued".*

Determination

- 24 The Commission agrees with the Director's synopsis of the law and assessment of the facts as they apply in this case.
- 25 Taking into account all the factors referred to by the Director in his decision to revoke the applicant's approval to act as an approved manager, the Commission is satisfied that this application should be dismissed and the determination of the Director dated 5 July 2016 should be affirmed.
- 26 The applicant clearly made a fatal error of judgement when he stepped out from behind the bar and confronted the victim. At this point it was inevitable that the physical confrontation was going to occur. Both men were arguing and the applicant moved outside of the bar which provided both himself and the victim protection from each other. Whilst the bar remained between them, a heated verbal exchange was the most likely outcome.
- 27 This situation arose in the bar of a licensed premises. In such a situation where people are consuming alcohol, a bar room is a likely place for a verbal exchange to occur and to escalate into a physical confrontation if not properly managed.
- 28 What happened in this case was clearly inconsistent with the provisions of section 5(1)(b) and 5(2)(d).
- 29 Authorised people and members of the public lawfully at a licensed premises for the purposes of employment, recreation or entertainment should not be placed at risk due to any persons' threatening or violent behaviour and, in particular, such behaviour from an approved manager.
- 30 Members of the public who attend licensed premises have a right to expect that those premises are safe and free from violence and antisocial behaviour. It is the approved manager's duty to ensure the premises are safe and free from violence and antisocial behaviour.

- 31 The applicant has clearly failed to heed the warning given to him at paragraph [17] of the Director's determination of 7 November 2014.
- 32 Not only did the applicant make an error in judgement in managing the situation that arose and thereby place himself and the victim in a position in which a physical confrontation was the most likely outcome, but he also violently assaulted the victim, not once but in a sustained manner.
- 33 After the incident in question, one can have no confidence that if such a situation arose again that the applicant would act any differently.
- 34 Having regard to the applicant's previous record, the clear warning issued to him when he was approved as a manager of licensed premises and his violent behaviour on this occasion, the Commission considers and finds that the applicant is not a fit and proper person to be an approved manager of licensed premises.
- 35 The application for review is, therefore, dismissed and the decision of the Director affirmed.



PAUL HEANEY
PRESIDING MEMBER