

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

Applicant: Mr K E W

Respondent: Commissioner of Police
(represented by Mr Liam Nicholls of State
Solicitor's Office)

Commission: Mr Jim Freemantle (Chairperson)

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

Date of Determination: 27 March 2015
(on papers)

Reasons for determination: 30 April 2015

Determination: The Application is granted and the decision of the
delegate of the Commissioner of Police to issue
a barring notice to Mr K E W is quashed.

Authorities referred to in the determination

- *Briginshaw v Briginshaw* (1938) 60 CLR
- *Minister's statement to the House, Western Australia, Parliamentary Debates, Legislative Assembly 19 October 2010, 7925*

Background

- 1 At around 1 a.m. on the morning of 13 December 2014, Mr K E W (“the applicant”) was involved in an altercation at the Air Nightclub which also involved a number of other males including Mr C L J (“Mr J”) and Mr A K W (“Mr W”).
- 2 The circumstances of the incident are set out in the statement of First Class Constable Hayes and the incident report from the Air Nightclub.
- 3 The applicant was subsequently served with a barring notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* (the Act) barring him from all licensed premises, except those premises licensed under a liquor store licence, for a period of 3 months.
- 4 On 11 February 2015, the applicant lodged an application for review of the barring notice pursuant to section 115AD of the Act with the Liquor Commission requesting the matter be determined on papers.

Applicant’s Submissions

- 5 The applicant submits that while dancing a male unknown to him, later identified as Mr J, pushed another male identified as Mr W causing him to lose balance.
- 6 The applicant steadied Mr W and Mr J again approached Mr W and they became involved in an altercation.
- 7 Shortly after, a group of males approached the applicant and Mr W in an aggressive manner.
- 8 The Applicant took evasive action raising his hands in self-defence and states he was in fear for his life and safety.
- 9 Security personnel arrived and evicted a number of people at which point the applicant observed Mr W getting up from the floor.
- 10 Security then asked the applicant and Mr W to leave, a request with which they complied.
- 11 The Applicant and Mr W were interviewed by police officers who approached them after they were evicted. During the interview another police officer approached from the direction of the nightclub and informed these officers that the applicant and Mr W were the aggressors.
- 12 According to the applicant’s submissions he has worked as a crowd controller in Perth for 9 years and is concerned that the barring notice will reflect adversely on him and that he will be perceived as a violent person which he claims he is not.

Submissions on behalf of the Commissioner of Police

- 13 The applicant was involved in an incident at the Air Nightclub on the morning in question and was removed from the premises.
- 14 The premises incident report records that 2 males (1 Caucasian male black shirt and ponytail and 1 African male blue shirt) began striking two other males before other parties also got involved.
- 15 In the CCTV footage, it appears that the applicant and Mr W are speaking to a third person. The person identified as Mr J is standing nearby. Mr J is seen pushing Mr W and Mr W retaliates. The applicant is seen pushing the third person into Mr J and punching the third person in the back of the head.
- 16 The applicant steps back raises his hands while clenching his fists. He then runs towards the third person, punches him and then tackles the third person to the ground. Other people, including what appears to be security staff, intervene to break up the fight.
- 17 The Commissioner also relies on the statement of First Class Constable Phillip Hayes identifying the applicant as an aggressor.
- 18 Counsel for the Commissioner of Police also made comprehensive written submissions on the applicable law and I do not consider it necessary or helpful to repeat them, however I will refer to them as necessary during the course of the determination below.

Determination

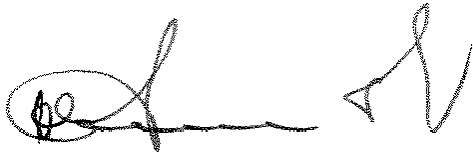
- 19 Two of the primary objects of the Act at section 5(1) are to minimise harm or ill health caused to people or any group of people due to the use of liquor and to regulate the sale, supply and consumption of it.
- 20 In 2010, the Act was amended “to give protection to the general public from people 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.*)
- 21 The Minister further stated that the legislation gave the Commissioner of Police the power to issue barring notices to persons engaging in antisocial behaviour at licensed premises and this power is set out in section 115 of the Act.
- 22 It is common ground that Mr J initiated the chain of events leading to the barring notice being issued to the applicant and also that the applicant retaliated.

- 23 The issue for me to determine is whether the applicant's behaviour went beyond reasonable steps to defend himself against attack.
- 24 Even allowing for the likelihood that the applicant's account of events would be framed so as to show himself in the best light possible, I consider his Personal Statement to be a somewhat sanitized account of the incident as he saw it. The statement is a very general account of the incident only.
- 25 The incident report from the premises gives an account of the incident which quite apparently commences when the altercation had been going for some period of time and makes no mention of the initiating events as recorded in the police evidence, no doubt because the Approved Manager signing the report and the crowd controllers involved did not arrive on the scene until the fight was underway.
- 26 The statement of First Class Constable Hayes is necessarily in part reflecting what he was told by others. He also viewed the CCTV footage and makes no reference to Mr W throwing punches or acting aggressively.
- 27 I found the CCTV footage somewhat poor in quality and had great difficulty in satisfying myself as to the amount of aggression exhibited by the applicant.
- 28 In weighing up the evidence I was conscious of the applicant's concern as to the possible consequences of the barring notice. Hence I took note of the statement by *Latham CJ in Briginshaw v Briginshaw at 343.4* "the standard of proof required by a cautious and responsible tribunal will naturally vary in accordance with the seriousness of the issue...."

In the same case *Dixon J at 362.3* stated "... the gravity of the consequences flowing from a particular finding (is a) consideration which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal."

- 29 I accept that consequences are potentially serious for the applicant.
- 30 Whilst the applicant's version of events is not very satisfactory (see my comments at paragraph 25) I have concluded that the Commissioner of Police has not made his case sufficiently to warrant the issue of a barring notice against the Applicant.
- 31 It should not be inferred that First Class Constable Hayes statement is anything but the truth of what was conveyed to him nor that he lacked diligence as he attempted to verify events from the CCTV footage.
- 32 I discounted the Incident Report for the simple reason that it was incomplete for the reasons I gave earlier. This should not be taken as any reflection on the relevant staff in the discharge of their responsibilities.
- 33 In making this finding the other matters raised by the respondent fall away.

34 The application is therefore granted.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long horizontal stroke and a final upward flourish.

JIM FREEMANTLE
CHAIRPERSON