

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

Applicant: [REDACTED]

Respondent: Commissioner of Police
(*represented by State Solicitor's Office*)

Commission: Ms Kirsty Stynes (Presiding Member)

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

Date of lodgement of Application: 8 August 2020

Date of Hearing: On the papers

Date of Determination: 26 February 2021

Determination: The barring notice is varied pursuant to section 115AD(7) to a period of four months.

Authorities referred to in determination:

- *SVS v Commissioner of Police (LC19/2011)*

Background

- 1 This is an application for the review of a barring notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* (WA) (“the Act”) made by [REDACTED] (“the Applicant”).
- 2 The history of this matter is as follows:
 - a. On 22 July 2020, the Applicant was served with a notice under s 115AA of the Act (“Barring Notice”) prohibiting the Applicant from entering the following specified class of licensed premises:
 - i. all hotel licences, however referred to, issued under section 41;
 - ii. all small bar licences issued under section 41A;
 - iii. all nightclub licences issued under section 42;
 - iv. casino licence issued under section 44;
 - v. all liquor store licences issued under section 47;
 - vi. all club licences issued under section 48;
 - vii. all restaurant licences issued under section 50;
 - viii. all producer’s licences issued under section 55;
 - ix. all wholesaler’s licences issued under section 58;
 - x. all occasional licences issued under section 59; and
 - xi. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulation 1989*.
 - b. It is unclear when the Barring Notice was served on the Applicant as the Service Endorsement is blank save for the name of the Applicant. I accept the Barring Notice was served for the purpose of this application for review as the Applicant has not raised a dispute as to service and self-evidently is aware of the Barring Notice.
 - c. The Barring Notice expires on 21 July 2021. By letter to the Applicant dated 22 July 2020 the Acting Inspector advised the Applicant in writing that the Barring Notice comes into effect from the day of service to 21 July 2021.
- 3 On 6 August 2020 the Applicant applied to the Liquor Commission of Western Australia for a review of the Barring Notice pursuant to section 115AD(3) of the Act.
- 4 The Commission has determined that the matter can be dealt with on the papers.
- 5 The Commission has been provided with the following material to determine the application:
 - a. Application for review dated 8 August 2020;
 - b. Letter from the State Solicitors Office dated 18 August 2020 enclosing evidential material relied upon by the Commission of Police when issuing the Barring Notice including the following:
 - i. Barring Notice dated 22 July 2020;

- ii. Service endorsement undated and unsigned;
 - iii. Statement of Material Facts, 3 pages;
 - iv. Brief Jacket, brief number 2031475-1;
 - v. Incident Brief Report;
 - vi. Incident Report Western Australia Police;
 - vii. Statement of [REDACTED] signed 10 July 2020;
 - viii. Photographs of alleged injuries; and
 - ix. Court outcomes history.
- c. Letter from the Applicant dated 20 August 2020 providing further evidence in support of the application:
- i. Statutory declaration signed by [REDACTED] dated 20 August 2020;
 - ii. Statutory declaration from [REDACTED] dated 20 August 2020;
 - iii. Letter from [REDACTED] dated 20 August 2020;
 - iv. Photographs of Appellant;
 - v. Barring Notice with wrong date of alleged offence.
- d. Respondent's outline of submissions dated 27 August 2020.

Nature of the Incident

- 6 The Applicant was charged with Aggravated Common Assault and the allegation can be summarised as follows ("Incident"):
- a. On 10 July 2020, the Applicant was with [REDACTED] ("complainant") at the [REDACTED];
 - b. The complainant had booked a room at the [REDACTED] for the Applicant and their four children from previous relationships;
 - c. The Applicant and the complainant were drinking at the [REDACTED] where a verbal argument started over the behaviour of the children;
 - d. This argument continued in the hotel room and the Applicant has allegedly stepped forward and hit the complainant with his right fist to the left side of her face and left ear causing bruising and momentary loss of hearing; and
 - e. The Applicant then left with his two daughters.

Statutory Framework

- 7 The Commissioner of Police ("the Commissioner") has the power to ban persons from licensed premises pursuant to section 115AA of the Act if the Commissioner believes on reasonable grounds that the person has, on licensed premises:
- a. been violent or disorderly; or
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.

- 8 The Commissioner may delegate the power conferred by section 115AA of the Act on any member of the Police Force of or above the rank of Inspector pursuant to section 115AB of the Act.
- 9 The underlying purpose of a barring notice is not to penalise an individual but to act as a protective mechanism.¹
- 10 A single incident is sufficient to give rise to a barring notice.²

Applicant's submissions

- 11 In the Applicant's written submissions received on 8 August 2020 and further submissions received on 20 August 2020, the Applicant argues that the Barring Notice should not have been issued on the basis that:
 - a. He was not in or near the public bar area, restaurant or beer garden at the time of alleged Incident;
 - b. He did not act at any point in a dangerous way towards management, public or patrons of the pub establishment;
 - c. He was not intoxicated or under the influence of alcohol;
 - d. He was not near the premises when police attended the scene and was not taken into custody;
 - e. He was removing his children from the verbal and physical abuse displayed by the complainant;
 - f. He has no criminal record;
 - g. He works FIFO on a rural site and the general store is a licenced premise so he will be unable to purchase everyday supplies;
 - h. He is a single Dad and has his daughters 50% of the time and will be unable to take them on holiday to any hotels or resorts in Western Australia;
 - i. He will be unable to take his daughters out for a meal at their favourite restaurants or even go to the local café;
 - j. He is willing to sign an undertaking to the Court that he will not drink alcohol on any licensed premises for 12 months;
 - k. He is a member of the local country club and will be unable to attend events and dinner evenings with his children;
 - l. He is part of the Emergency Response Team on a mine site and unable to attend competitions and events at licenced venues and have presentation evenings at these events also;
 - m. He is an honest and law-abiding citizen that has been subject to an unfortunate and regretful turn of events;
 - n. He has been wrongfully accused;
 - o. The Barring Notice states 10 June 2020 and he was not at the [REDACTED] on this night.

¹ *SVS v Commissioner of Police* (LC19/2011).

² *Supra*.

Submissions on behalf of the Commissioner of Police

- 12 The Respondent submits that the primary question to be determined on a review is whether there are reasonable grounds for believing that the Applicant has engaged in violent or disorderly conduct on licensed premises or contravened a provision of any written law, being the *Criminal Code*.³
- 13 The Respondent relies on material at paragraph 5(b) of this judgement which includes, the statement of the complainant, the photographs of the alleged injuries and the Incident Report which records the complaint being made at 19:30 on 10 July 2020 being the same day of the alleged offence, to submit that there are reasonable grounds for the belief.
- 14 The Respondent submits that the Applicant chose not to put evidence before the Commission as to an alternative version of events and as such the Commission is entitled to take the evidence of [REDACTED] on its face.
- 15 In considering whether to exercise a discretion to quash, vary or affirm the Barring Notice the Respondent suggests the Commission ought to consider:
 - a. The nature and circumstances of the incident giving rise to the Barring Notice:
 - i. The Applicant struck the complainant with his fist to the side of the head;
 - ii. Part of a domestic dispute with children present; and
 - iii. Demonstrates aggressive and violent behaviour.
 - b. The risk of the Applicant behaving in a similar manner;
 - i. The Respondent accepts there are no court outcomes however Barring Notice can be issued from one incident;
 - ii. There is evidence from [REDACTED] that the Applicant is a heavy drinker, violent when intoxicated and she feels scared and unsafe when he is drunk;
 - iii. Even if there is a low risk it can be further minimised by the Barring Notice.
 - c. The need to protect the public;
 - d. The need to protect the licensee;
 - e. The need to protect the Applicant himself.
- 16 In determining whether to vary the Barring Notice, the Respondent submits it's a subsidiary power which should only be exercised in certain cases.
- 17 The primary consideration is the objects and purposes of the Act and in particular the need to minimise instances of antisocial behaviour in licensed premises and protect the general public from harm.
- 18 The Barring Notice re-enforces community expectations that violent behaviour is not acceptable and will reduce the likelihood of harm to the general public.

³ Respondent's Outline of Submissions, [48].

- 19 The Respondent says the Applicant's personal circumstances does not warrant variation of the Barring Notice.

Determination

- 20 I accept that the Applicant has felt constrained in providing his full version of events to the Commission given the matter is yet to be determined by the Court. However, the Commission is to determine the matter based on the material put before it.
- 21 The threshold for having reasonable grounds for a belief is not a high standard when one has regard to the standard required in a criminal trial. The Commission is not determining whether the alleged Incident in fact occurred but whether there are reasonable grounds for a belief. Based on the material provided, I am satisfied that there were reasonable grounds for a belief that the Applicant had, on licensed premises or near licensed premises been violent or disorderly. I am so satisfied based on the statement of the complainant, the incident report confirming a complaint was made on the night of the alleged offence and the photographs of the alleged injuries.
- 22 Having found there were reasonable grounds it follows for the Commission to consider whether to exercise its discretion to quash, vary or affirm the Barring Notice.
- 23 When considering whether to exercise my discretion I have had regard to the primary and secondary objects of the Act. In particular, section 5(1)(b) of the Act, "to minimise harm or ill health caused to people, or any group of people, due to the use of liquor" and 5(2)(d) of the Act "to provide adequate controls over, and over the person directly or indirectly involved in, the sale, disposal and consumption of liquor".
- 24 Further, I accept the purpose of barring notices is different to the purposes of criminal proceedings and that 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".
- 25 In considering whether to quash, vary or affirm the Barring Notice, I have considered the nature and circumstances of the incident giving rise to the Barring Notice, the need to protect the public and the risk of the Applicant behaving in a similar manner.
- 26 The Applicant has denied the offending occurred and stated there was verbal and physical abuse of his youngest daughter by the complainant. The Applicant has provided statutory declarations from [REDACTED] (the complainant's ex-husband) and [REDACTED] (the ex-wife of the Applicant and mother of his two daughters). The statutory declaration signed by [REDACTED] is relevant in considering the nature of the alleged behaviour. [REDACTED] purports that she was on the telephone to the Applicant during at least part of the alleged Incident and could hear the complainant screaming in the background and shouting to speak to her. She states that the Applicant during the conversation shouted "she attacked me she punched me in the face". The Applicant has also provided photos of his alleged injuries.

- 27 In considering the nature of alleged behaviour, I accept that the alleged Incident initially began as a verbal argument at the [REDACTED] that continued inside a room in the accommodation section of the [REDACTED]. There is no suggestion that the initial verbal argument was of a violent or disorderly nature.
- 28 An Incident that occurs inside a room on a licenced premise is still covered by the ambit of the Act. However, behaviour that occurs inside a room with only the relevant parties' present does distinguish it from other violent or disorderly behaviour which occurs in the presence of other patrons at a licensed premise. The Commission ought to have regard to the nature and circumstances of the behaviour in each particular matter in considering the length of the Barring Notice to ensure that it does not act as a penalty.
- 29 The Applicant has no prior criminal record and that is accepted by the Respondent. Given the Applicant's lack of prior record and the materials in support of the Applicant's review application, I am satisfied the Applicant, if the allegation in fact occurred, is at very low risk of behaving in a similar manner. I am satisfied the current length of the Barring Notice has an unnecessary and punitive effect on the Applicant. This does not reflect the purposes and scope of the Act. A period of four months is sufficient to achieve the purposes of the Act. I have not considered whether to vary the terms of the Barring Notice given the time that has elapsed.
- 30 The Barring Notice is varied pursuant to section 115AD(7) to a period of four months.



KIRSTY STYNES
PRESIDING MEMBER