

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

Applicant: TRM

Respondent: Commissioner of Police
(*represented by A Westerside*)

Commission: Ms Alya Barnes (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: 1 March 2021

Date of Determination: 11 May 2021
(*on papers*)

Determination The application for review is dismissed.

Authorities referred to in Determination:

- *SVS v Commissioner of Police* (LC19/2011)
- *DJB v Commissioner of Police* (LC05/2017)
- *GML v Commissioner of Police* (LC 58/2011)

Background

- 1 This matter concerns an application for review of a barring notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* (WA) (“**the Act**”) made by Tyron Rhiley McCann (“the Applicant”).
- 2 The procedural history of this matter is as follows:
 - (a) On 7 January 2021, the decision [REDACTED] for the barring notice under section 115AA(2) of the *Liquor Control Act 1988* (“**Barring Notice**”) was made prohibiting the Applicant from entering the following specified licenced premises:
 - (i) All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restricted licences);
 - (ii) All small bar licences issued under section 41A;
 - (iii) All night club licences issued under section 42;
 - (iv) Casino licence [sic] 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) On 6 February 2021, the Applicant was served the Barring Notice.
 - (c) The Barring Notice commenced on 6 February 2021, being the date of service, and expires on 26 December 2021.
 - (d) On 1 March 2021, the Applicant applied to the Liquor Commission of Western Australia (“**the Commission**”) for a review of the Barring Notice pursuant to section 115AD of the Act (“**the Application**”) and elected to have the review determined on the papers.

- (e) On 8 March 2021, the Commission wrote to the Applicant seeking primary submissions and responsive submissions by close of business 6 April 2021 and 13 April 2021 respectively.
- (f) On 6 April 2021, the Respondent filed submissions in response to the Application (“**the Response**”).
- (g) The Applicant has not filed any documents other than the Application.

Nature of the Incident

- 3. On the Applicant’s own account on 26 December 2020 the Applicant was involved in an “incident” that occurred at licenced premises, namely the Rendezvous Hotel in Scarborough that resulted in the Barring Notice being served on the Applicant on 6 February 2021.
- 4. The details of the “incident” are not provided in the Application, but it does imply certain violent or disorderly conduct occurred, “My actions were not motivated by violence or anger, but rather stupidity and a futile attempt to impress my friends and those around me”.
- 5. The material before the Commission listed in paragraphs 4.1 – 4.9 of the Response as iterated in paragraph 8 (a)-(g) inclusive of this decision, show on reasonable grounds, that violent or disorderly conduct did in fact occur on licenced premises (s115AA(2)).
- 6. Specifically, the Applicant was charged with one count of criminal damage or destruction of property contrary to s444(1)(b) of the Criminal Code (WA) and one count of endangering life, health or safety of a person contrary to s304(1)(b) of the Criminal Code (WA) based on the following material facts:
 - (a) the Applicant at approximately 8.00 pm on Saturday, 26 December 2020 whilst staying with friends in room 1602 at the Rendezvous Hotel Scarborough jumped from the bed onto an ironing board causing damage to the board without the hotel’s consent;
 - (b) the Applicant then proceeded, without the hotel’s consent, to throw the ironing board off the balcony which is 16 stories high in the general direction of a crowd of people visible in a recording of the incident, standing outside a licenced venue below the Applicant, hitting a man on the street below in the leg;

- (c) the Applicant's actions were recorded by other occupants of the room and uploaded to Instagram.
7. As a result of the Incident, the Barring Notice was issued by the Commissioner and served on the Applicant.

Material Before the Commission

8. The Incident that gave rise to the Barring Notice, including those items in paragraph 4 of the Response, is referred to in the following documents before the Commission:
- (a) Brief Jacket for brief number [REDACTED];
 - (b) a Statement of Material Facts in respect of the charge against the Applicant for one count of criminal damage or Destruction of Property contrary to s444 (1)(b) of the Criminal Code (WA) (Code) and one count of Endanger life, health or safety of a person contrary to s304(1)(b) of the Code;
 - (c) Incident Report [REDACTED];
 - (d) Incident Brief Report for Incident [REDACTED];
 - (e) three photographs taken from Axon Body Camera video footage;
 - (f) The Applicant's criminal history compiled 29 December 2020;
 - (g) Instagram Video Footage of the incident;
 - (h) Axon Body camera Video Footage of arrest;
 - (i) Applicant's application for review dated 1 March 2021;
 - (j) Email to applicant regarding copy of the barring notice and date of service, reply from applicant providing a copy of the barring notice and confirming date of service;
 - (k) Acknowledgement letter to the applicant dated 8 March 2021;
 - (l) Acknowledgement letter to the Commissioner of Police dated 8 March 2021; and
 - (m) Respondent's Outline of Submissions dated 6 April 2021.

("the Material")

The Application

9. The Applicant in his Application submits the Barring Notice should be reduced in term to a period of 6 months from 26 December 2020 or allow the Applicant to attend all licenced premises other than nightclubs (under s42) and casinos (under s44) on the basis that:
- (a) his decision was a momentary lapse in judgement paired with excessive consumption of alcohol and that he regrets and is ashamed of his decision;
 - (b) his actions were not motivated by violence or anger, but stupidity and futile attempt to impress his friends and those around him;
 - (c) he is acutely aware of how dire the consequences of his actions could have been;
 - (d) he has gone through the justice system and has had significant time to reflect on his actions and himself as a person;
 - (e) he is deeply embarrassed and ashamed of his behaviour;
 - (f) he has taken the experience as an opportunity to learn from his mistakes and to be more aware of the consequences of his actions and that his behaviour was selfish and not reflective of how he is as a person;
 - (g) he understands the intent of the Barring Notice, its purpose and the types of behaviour it is designed to prevent;
 - (h) the implications of the Barring Notice is excessive;
 - (i) he is ██████████ and his family and social life revolves around attending restaurants and other licenced premises;
 - (j) the majority of venues in his locality are licenced and he enjoys the atmosphere of such venues;
 - (k) he feels uncomfortable that he is the constant determinant of the venues he attends with friends and family;
 - (l) he is fearful he will not be able to meet a partner if he is not able to attend licenced venues, that his inability to go to such venues reflects poorly on his character and will be difficult and embarrassing to explain to future partners;

- (m) the Barring Notice is detrimental to his social life and he will be unable to attend birthdays, weddings and other milestones to the extent they are hosted at licenced venues.

The Response

- 10. The Respondent submits, amongst other things, that:
 - (a) there are sufficient facts to induce in the mind of a reasonable person the belief that the Applicant engaged in violent and disorderly conduct,
 - (b) that the Applicant contravened a provision of a written law (s304(1)(b) and 444(1)(b) of the Criminal Code (WA), and
 - (c) that the Applicant did so on licenced premises,and I agree with the Respondent's submissions.

Statutory Framework

- 11. The Commissioner of Police ("**the Commissioner**") has the power to ban persons from licenced premises pursuant to section 115AA of the Act if the Commissioner believes on reasonable grounds that the person has, on licenced premises:
 - (a) been violent or disorderly; or
 - (b) engaged in indecent behaviour; or
 - (c) contravened a provision of any written law
- 12. The Commissioner may delegate the power by s115AA of the Act to any member of the Police Force of or above the rank of Inspector pursuant to s115AB of the Act.
- 13. Section 115AD (3) provides that where a person is dissatisfied with the decision of the Commissioner to give the notice, the person may apply to the Commission for a review of the decision.
- 14. Section 115AD of the Act provides at subsection (6) that when conducting a review of the decision, the Commission may have regard to the material that was before the Commissioner when making the decision as well as any information or document provided by the applicant.
- 15. Subsection 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 16. Section 16 of the Act prescribes that the Commission:

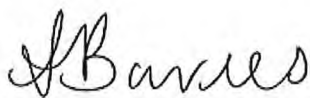
- (a) may make its determination on the balance of probabilities (ss(1)(b)(ii));
 - (b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply (ss(7)(a)); and
 - (c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms (ss(7)(b)).
17. 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 2020, 7925).
18. Hon Terry Waldon, Minister for Racing and Gaming stated in the second reading speech introducing the bill amending the Act in 2010 that “*The bill also contains a number of law and order amendments that are aimed at minimizing the incidences of antisocial behaviour in and around licenced premises.*”
19. Section 5 of the Act sets out the objects of the Act with a primary object being to minimise harm or ill health caused to people, or any group of people, due to the use of liquor (ss(1)(b) of the Act) and the secondary objects including the need to provide adequate controls over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor (ss2).
20. Given the primary and secondary objects of the Act, the effect and purpose of a barring notice is not to penalise an individual but to act as a protective mechanism (SVS v Commissioner of Police (LC19/2011)).
21. A single incident is sufficient to give rise to a barring notice (DJB v Commissioner of Police (LC05/2017), [5]).

Determination

22. Having reviewed the Application, the Response and the Material, I find that there are on the balance of probabilities, the following reasonable grounds for a belief that the Applicant had on a licenced premises or near a licenced premises been violent or disorderly and that he contravened a provision of written law:

- (a) it is undisputed that the Applicant jumped from the hotel bed onto an ironing board without the Hotel's consent;
 - (b) it is undisputed that the Applicant threw the ironing board from the 16th floor window of his hotel room to a crowd of pedestrians down below hitting a man in the leg;
 - (c) the Hotel is and was at all material times, a licenced venue.
23. Having found there were reasonable grounds to issue the Barring Notice and that the Commissioner appropriately exercised its discretion to issue the notice, it follows for the Commission to consider whether the length and terms of the Barring Notice are sufficient to uphold the objects of the Act and are not punitive in nature. The public interest must be balanced against the impact of the Barring Notice on the Applicant.
24. When considering whether to exercise my discretion, I have had regard to the primary and secondary objects of the Act and specifically s5(1)(b) of the Act, "to minimize harm or ill health caused to people, or any group of people, due to the use of liquor".
25. I note the Applicant, other than the charges laid in relation to the Incident, does not have a criminal record nor is there any evidence of a history of violent or aggressive behaviour such that one might surmise the probability of a similar event occurring again is slight. However, it is clear from the wording of s115AA that a single incident is sufficient to give rise to a barring notice and indeed, it is concerning the Applicant does not in his own Application acknowledge the precise behaviour that precipitated the Barring Notice and on review of the Material, it is clear his conduct was not a random impulsive decision, but rather an ongoing organised deliberate attempt by the Applicant and his friends to record themselves, whilst under the influence of alcohol, doing something dangerous and disorderly in several respects.
26. Whilst the Applicant complied with the police and on police questioning stated his conduct was "silly", such compliance lacks credibility in the circumstances the whole incident, as the Applicant would have known, was recorded, and shared on social media.

27. The Applicant submits his judgment was impaired with the excessive consumption of alcohol and sets out several reasons why the length and scope of the order that limits his access to licenced venues is inconvenient to the Applicant without describing how any proposed variation might mitigate the punitive impact of the Barring Notice on the Applicant.
28. The Applicant submits he has had significant time to reflect on his actions, yet, as mentioned in this decision, he did not articulate in his Application what those actions were and as such, there is no ownership of his behaviour. Whilst the Barring Notice may have a detrimental effect on the Applicant, I am not convinced he has fully appreciated the gravity of his conduct and consider the public should be protected whilst he is afforded more time to “introspect and adopt strategies to manage his behaviour on licenced premises” (*GML v Commissioner of Police* (LC 58/2011)).
29. That no one was seriously injured by the ironing board being thrown by the Applicant out of the 16th floor window is most fortunate particularly since footage of the Applicant shows him throwing the board in the direction of the people standing on the street below the window.
30. 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 and I am not satisfied that the Applicant is at very low risk of behaving in a similar manner, or if there was low risk, that such risk can be further minimized by varying the terms of the existing Barring Notice, and I am not satisfied that the current length of the Barring Notice has an unnecessary or punitive effect on the Applicant thus the Application is dismissed and the Barring Notice for the period of time and scope is upheld as it presently gives effect to the Act’s objects and purposes.



ALYA BARNES
PRESIDING MEMBER

