

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr M R H C

Respondent: Commissioner of Police
(represented by Mr Lachlan Geddes of State Solicitor's Office)

Commission: Ms Elanor Rowe (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: 21 February 2019

Date of Determination: 30 April 2019

Determination: The application for review is dismissed.

Authorities referred to in determination:

- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC 33/2011)
- *ARQ v Commissioner of Police* (LC 46/2011)
- *MRP v Commissioner of Police* (LC 55/2011)
- *GML v Commissioner of Police* (LC 58/2011)

Background

- 1 On 27 December 2018, an incident ("the Incident") occurred in and around licensed premises namely [REDACTED] ("the Venue") involving the Applicant (aged 26).
- 2 As a result of such Incident, the Applicant was charged with:
 - a. disorderly behaviour in a public place, contrary to section 74A(2)(a) of the *Criminal Code*;
 - b. obstructing a public officer, contrary to section 172(2) of the *Criminal Code*.
- 3 On 25 January 2019 the Applicant received a spent conviction and a fine in respect of the above offences.
- 4 As a further result of the Incident, the Commissioner of Police ("the Respondent") issued a barring notice ("Barring Notice") pursuant to section 115AA(2) of the *Liquor Control Act 1988* ("the Act") prohibiting the Applicant from entering specified licensed premises in Western Australia for a period of just less than six months, namely:
 - a. all hotel licences issued under section 41;
 - b. all small bar licences issued under section 41A;
 - c. all nightclub licences issued under section 42;
 - d. casino licences issued under section 44;
 - e. all club licences issued under section 48;
 - f. all restaurant licences issued under section 50;
 - g. all occasional licenses issued under section 59; and
 - h. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
- 5 The Barring Notice was served on the Applicant on 20 February 2019 and will expire on 13 August 2019.
- 6 On 21 February 2019, the Applicant lodged an Application for Review in respect of the Barring Notice pursuant to section 115AD (3) of the Act. The Applicant has elected to have the review determined on the papers.
- 7 The Incident giving rise to the Barring Notice is referred to in the following documents:
 - a. The Application for Review ("Application");

- b. The material relied upon by the Respondent's delegate when issuing the Barring Notice:
 - i. Statement of Material Facts;
 - ii. Brief Jacket;
 - iii. Incident Report;
 - iv. CAD Incident Brief Report;
 - v. Venue Incident Report;
 - vi. CCTV footage and a set of labelled screen captures produced by liquor enforcement officers; and
 - vii. The Applicant's Disclosable Court Outcomes – Criminal and Traffic.
- c. The Respondent's outline of submissions dated 2 April 2019.

The Incident

- 8 Having considered all the materials before the Commission, I am satisfied of the following salient matters:
 - a. On Thursday 27 December 2018, the Applicant was inside the Venue located near the Northbridge Piazza.
 - b. The Applicant became involved in a verbal argument with other patrons of the bar. The argument escalated into a physical altercation and the Applicant launched himself off a table at another patron.
 - c. The Applicant was evicted from the Venue by security.
 - d. Once outside the Venue, police attempted to speak with the Applicant who was hostile and started to move away. While moving away the Applicant continued to abuse officers.
 - e. The Applicant walked into the Piazza and then ran towards an officer attempting to knock him to the ground. The Applicant actively resisted arrest however despite also being impeded by others, officers were eventually able to restrain the Applicant.
- 9 The Applicant does not dispute that the Incident occurred and the evidential material is consistent with the factual findings set out above.

Submissions by the Applicant

- 10 The Applicant submitted the following in the grounds for the Application ("Grounds"):

- a. he was granted a spent conviction due to his prior good character;
- b. he feels he is being unfairly treated as the consequences of his actions have been dealt with;
- c. he has shown remorse and he has not taken the consequences of his actions lightly;
- d. he understands the mistakes he made, and his behaviour was out of character for him;
- e. since the court case he has taken many things into consideration to adjust his attitude and the way he approaches different situations. This includes seeing a personal psychologist regarding controlling his actions appropriately and this has helped him deal with situations in a much better manner;
- f. the Applicant apologises for his actions and endeavours to be a better person for himself and others around him.

Submissions on behalf of the Respondent

- 11 The Respondent submits that the circumstances of the case warrant the exercise of the Respondent's discretion to issue a Barring Notice. The decision of the Respondent should not be quashed or varied, and the Barring Notice should be affirmed:

The nature of the incident giving rise to the Barring Notice

- a. In this case, the Incident was aggravated by the following circumstances:
 - the conduct giving rise to the Barring Notice was the very type of behaviour which the amendments to the Act were designed to overcome, that being anti-social and disorderly behaviour within the vicinity of licenced premises;
 - the Applicant's conduct disrupted most or all patrons inside the Venue, and continued into Northbridge Piazza, an open and central location, with many people being exposed to the Applicant's behaviour;
 - when actively resisting arrest, the Applicant wiped blood in the mouth of a police officer attempting to detain him; and
 - multiple police officers were required to detain the Applicant, prejudicing officers' ability to police other offending in the area.

The risk of the Applicant behaving in a similar manner

- b. In his Grounds, the Applicant apologises for his actions and states that they were out of character for him. However, there is insufficient evidence for the Commission to be satisfied that the Applicant will not display similar anti-social and aggressive behaviour in and around licensed premises within the period of the Barring Notice:

- the Applicant has not provided any character references or a reference or other information from a psychologist to support an argument that the Applicant does not pose a risk of repeating his behaviour;
- even if the risk that the Applicant could behave in a similar manner is low, that risk can be further minimised by the terms of the Barring Notice;

Response to Applicant's Grounds

- c. In his Grounds, the Applicant states that he feels he is being unfairly treated because he has already been punished in the Magistrates Court and was granted a spent conviction. However, the Barring Notice is not punitive nor is it restorative or compensatory. Rather, it serves as a measure to protect the public from anti-social behaviour, such as the Applicant's, in and around licensed premises. The fact the Applicant was granted a spent conviction provides no justification for revoking the Barring Notice.
- 12 In light of the Applicant's conduct, banning the Applicant from licensed premises for a period of around 6 months is reasonable and appropriate in all of the circumstances, in order to provide a level of protection to the community. It will also serve as an opportunity for the Applicant to reflect on his behaviour and the importance of behaving appropriately on licensed premises.
- 13 Counsel for the Respondent makes further comprehensive written submissions regarding the applicable law, which are referred to as necessary during the course of the determination below.

Statutory Framework

- 14 The Commissioner of Police has the power to prohibit people from entering specified licensed premises, or a specified class of licensed premises, for a period of up to twelve months 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;
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.
- 15 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 section 115AB of the Act.
- 16 Section 115AD (3) of the Act provides that where a person is dissatisfied with the decision of the Commissioner of Police to give the notice, the person may apply to the Commission for a review of the decision.

- 17 Section 115AD (6) of the Act provides that when conducting a review of the decision, the Commission may have regard to the material that was before the Commissioner of Police when making the decision as well as any information or document provided by the Applicant.
- 18 Section 115AD (7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 19 Section 16 of the Act prescribes that the Commission:
- a. may make its determination on the balance of probabilities [subsection (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 [subsection 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 [subsection (7)(b)].
- 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 Police the power to issue Barring Notices to persons engaging in antisocial behaviour at licensed premises.
- 22 Section 5 of the Act sets out the objects of the Act. In subsection 5(1)(b) one of the primary objects of the Act is to minimise harm or ill health caused to people, or any group of people, due to the use of liquor. Section 5(2) provides for various secondary objects including to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor.
- 23 In light of the primary and secondary objects of the Act, the effect of a barring notice on a recipient, whilst it may have a detrimental effect on the recipient, is not meant to be seen as a punishment imposed upon them but is to be seen as a protective mechanism (*SVStyn v Commissioner of Police (LC19/2011)*).

Determination

- 24 The Commission, in considering an application pursuant to section 115AD, is to review the decision and determine whether to affirm, vary or quash a decision.
- 25 The questions to be determined on a review therefore are whether:
- a. there are reasonable grounds for believing that the barred person has, on licensed premises, been violent or disorderly; engaged in indecent behaviour; or contravened a provision of a written law; and

- b. the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature.
- 26 The Applicant does not dispute that the Incident occurred and that he engaged in the conduct as alleged. I am satisfied that there was a clear and proper basis for the delegate of the Commissioner to exercise the power conferred by section 115AA of the Act and that there were reasonable grounds to conclude that the Applicant was violent or disorderly on and in the vicinity of licensed premises and contravened a provision of written law.
- 27 Therefore, it is for the Commission to determine, in the relevant circumstances, 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.
- 28 In determining whether to quash or vary the Barring Notice, it is relevant to take into account the nature and circumstances of the incident giving rise to the barring notice; the risk of the Applicant behaving in a similar manner again; and the need to protect the general public, the licensee and the Applicant himself: *KRB v Commissioner of Police (LC 33/2011)*; *ARQ v Commissioner of Police (LC 46/2011)*; *MRP v Commissioner of Police (LC 55/2011)*; and *GML v Commissioner of Police (LC 58/2011)*.
- 29 The actions of the Applicant were very serious in nature. The Applicant exposed the public to violent and disorderly behaviour on and in the vicinity of licensed premises:
- a. the Applicant's behaviour in standing on a table in the Venue and launching himself at other patrons was dangerous, senseless and reckless and could have resulted in injury to several people as well as the Applicant himself;
 - b. the Applicant argued and struggled with other patrons as well as Venue security who were trying to remove him from the premises due to his behaviour; and
 - c. the Applicant's aggressive and disruptive behaviour continued once he left the Venue and went outside into the Piazza which is an open and busy public space. Several members of the general public witnessed the Incident.
- 30 While I accept that there is no prior criminal record against the Applicant and the Applicant states the behaviour was out of character for him, it is clear from the wording of section 115AA that a single incident is sufficient to give rise to a barring notice. Furthermore, the Applicant has not provided any personal references to support his submissions regarding his general good character.
- 31 The Applicant also acknowledges he is addressing issues with regard to his attitude and behaviour and has sought help from a psychologist. However again, he does not provide any evidence of this or information as to what stage he is currently at in his treatment. It appears to me that there is some risk the Applicant will behave in a similar manner in the future and that risk can be minimised by the terms of the barring notice [*KRB v Commissioner of Police (LC 33/2011)*].

32 Finally, although the Applicant states that he is being treated unfairly because his actions have already been dealt with and he has shown remorse, the purpose of the Barring Notice is not intended as a punishment. Rather, it serves as a measure to protect the public from anti-social behaviour, such as the Applicant's, in and around licensed premises.

33 In balancing the above considerations, the punitive effect of the Barring Notice is relatively low when balanced with the protection of the general public. The terms and length of the Barring Notice are appropriate to assure the public that they are in safe environments and can expect that they will not be exposed to disorderly behaviour. It will also allow the applicant the opportunity for further introspection in assessing his behaviour and actions and to consider his future conduct on licensed premises.

34 Therefore, the Application for Review is dismissed, and the Barring Notice is affirmed.



ELANOR ROWE
PRESIDING MEMBER