

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

**Applicant:** LFO  
*(represented Mr Stephen McGrath, Barrister & Solicitor)*

**Respondent:** Commissioner of Police  
*(represented by Ms Emma Salsano 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:** 17 May 2019

**Date of Determination:** 15 July 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 13 December 2018, an incident (“the Incident”) occurred on licensed premises namely [REDACTED] (“the Venue”) involving the Applicant (aged 28).
- 2 As a result of such Incident, the Applicant was charged with:
  - a. one count of Grievous Bodily Harm, contrary to section 297 of the *Criminal Code* (WA);
  - b. one count of Assault Occasioning Bodily Harm, contrary to section 317(1) of the *Criminal Code*,  
 (“Charges”).
- 3 The Applicant has entered a plea of not guilty to both Charges. The Charges are yet to be determined.
- 4 As a further result of the Incident, a delegate of 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, 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 liquor store licences issued under section 47;
  - f. all club licences issued under section 48;
  - g. all restaurant licences issued under section 50;
  - h. all producer’s licenses issued under section 55;
  - i. all wholesaler’s licenses issued under section 58;
  - j. all occasional licenses issued under section 59; and
  - k. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
- 5 The Barring Notice is in place from the date of service on 18 April 2019, until 28 March 2020, a period of just under 12 months.
- 6 On 17 May 2019, the Applicant lodged an Application for Review in respect of the Barring Notice pursuant to section 115AD(3) of the Act. The Application was filed within the time specified in section 115AD(4) and the Applicant has elected to have the review determined on the papers.
- 7 In conducting a review of the decision in this case, I have had regard to the following material (pursuant to section 115AAD(6) of the Act):
  - a. The material relied upon by the Respondent’s delegate when issuing the Barring Notice;
  - b. The Barring Notice;

- c. The Application and the outline of submissions filed on behalf of the Applicant dated 17 May 2019; and
- d. The Respondent's outline of submissions dated 10 June 2019.

**The Incident**

8 The following is taken from the Statement of Material Facts relating to the Incident:

*"On Thursday the 13<sup>th</sup> of December 2018 the Accused was at* [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

*During the prolonged attack the victim has suffered severe facial injuries with a preliminary medical examination revealing a large depressed fracture of his right orbital floor (eye socket), a fractured nasal bone complex, fractured cheek bone, contused nose, deep lacerations to the left eyebrow, and multiple bruises and contusions to his face and body. The victim is due to undergo surgery on Thursday the 20th of December for a full facial reconstruction.*

*At the time of the attack there were customers and staff present in the family restaurant who were extremely concerned, scared, and fearful for their safety.”*

- 9 The evidential material (including the incident reports and the CCTV material) is consistent with the Statement of Material Facts as set out above.

### **Submissions by the Applicant**

10 The Applicant submitted the following in the grounds for the Application (“Grounds”):

- a. The Applicant denies the Charges and has pleaded not guilty to them.
- b. The Applicant is of good character, as demonstrated by his criminal and traffic records, and six character references.
- c. If the Applicant has not yet been found guilty of the Charges, there is insufficient evidence that there are reasonable grounds for the Barring Notice. The Applicant should be presumed innocent of the Charges until matters are determined in Court and if the Applicant is acquitted, he would have been unjustly subjected to the Barring Notice. The Barring Notice is for such a length of time as to be unjust in the circumstances, and the majority of it will run before a determination of the Charges by a Court.
- d. The Applicant resides in [REDACTED]. Given the Applicant’s place of residence, the Barring Notice is too wide, as it severely restricts his ability to attend eateries and other restaurants in the region both socially and [REDACTED] he regularly takes to family restaurants. The majority of the venues he attends are within the specified premises of the Barring Notice.
- e. The Applicant is [REDACTED]. The Applicant often travels as part of his work requirements and needs to stay at hotels and attend places that are licensed premises subject to the Barring Notice. The Barring Notice has meant the Applicant has lost work as he has not been able to perform certain jobs, and he will be unable to perform part of his work duties during the term of the Barring Notice.
- f. The Applicant has been a registered player for the [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

- h. The facts that form the subject of the Charges indicate an alleged issue between the [REDACTED]. It is submitted that it is a very narrow set of circumstances that gave rise to the altercation and the general public is not in any danger or harm.
- i. The Applicant is subject to protective bail conditions and other conditions that should be sufficient to protect the public from any further possible disturbances arising from possible contact with the Complainant. The Applicant is also subject to an interim Violence Restraining Order (which he has objected to). This provides further protection for the community and the Complainant.
- j. There is no suggestion that the Applicant was intoxicated at the time of the alleged Incident and therefore alcohol is unlikely to have played a role in the Charges being brought against him.
- k. There is no evidence that there is a likelihood of the Applicant behaving in a similar manner as alleged again, such that the safety of the public may be jeopardised. There is no reason to think that the Applicant will enter into any further altercations when he enters licensed premises.

### **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.

#### Reasonable grounds on which decision was made

- 12 The evidence before the Respondent, especially the CCTV footage, established that a reasonable person would have been inclined to assent to the proposition that the Applicant had been disorderly and violent whilst on licensed premises:
  - The Applicant participated in the attack on the Victim, holding the Victim down while his brothers continued to strike and punch him. The Victim fell to the ground and the Applicant then kicked the Victim to the head and body several times.
  - The Applicant has pleaded not guilty to the charges however the Applicant has not provided any evidence upon which the Commission could assess the availability of a defence to the Charges.

#### The nature of the incident giving rise to the Barring Notice

- 13 In this case, the Incident was aggravated by the following circumstances:
  - The Applicant involved himself in the altercation, initially holding the Victim so that his brothers could punch and kick the Victim. The Applicant proceeded to kick the Victim himself whilst the Victim was on the ground, and thus in a particularly vulnerable position.

- The Incident occurred at a family-friendly restaurant and disrupted other patrons at the Venue. Violent behaviour on licensed premises is not conduct that the public should be exposed to; that is the whole purpose of the barring notice regime.
- The Victim's injuries were significant, requiring the Victim to travel to Perth and stay overnight in hospital after reconstructive surgery to his face.
- The absence of intoxication does not prevent the imposition of a barring notice.

The risk of the Applicant behaving in a similar manner and the need to protect the general public

14 The Applicant submits that there is a risk of the Applicant behaving in the same or a similar manner in the future.



15 The Applicant submits that it was a narrow set of circumstances that gave rise to the Incident and therefore the general public is not in any danger of harm. However, the Applicant does not contend it is unlikely that he will behave in a similar manner in the future, and indeed appears to accept that future instances of violence against the Victim are likely. Accordingly, there is a real and not insubstantial risk that the Applicant will engage in similar behaviour again.

*Protective bail conditions and violence restraining order*

16 Little weight can be given to the protections afforded by the protective bail conditions and the interim violence restraining order. In any event, the bail conditions and violence restraining order do not prevent a barring notice from being appropriate in the circumstances.

*Character of the Applicant*

17 The Respondent accepts that the Applicant's criminal history and the six character references provided in support of the Application, indicate he is of a prior good character. However, none of the character references provide an explanation for the Applicant's conduct during the Incident and therefore offer only limited assistance for the Applicant's case. Furthermore, one particular reference seems to support the conclusion that there is a risk that the Applicant will behave in the same or a similar manner in the future where his family is involved.

Response to Applicant's Grounds

18 A barring notice may be imposed where there are "*reasonable grounds*" for one of the stipulated beliefs. The presumption of innocence that applies in the criminal context has no application or relevance to the present context. The evidence was sufficient to meet the "*reasonable grounds*" threshold. Furthermore, the Applicant's submission that he should be presumed innocent until proven guilty is misconceived.