

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr Paul James Moss
(represented by Mr Simon Freitag, instructed by DG Price and Co)

Respondent: Commissioner of Police
(represented by Mr Daniel Harrop of State Solicitor's Office)

Commission: Mr Paul Heaney (Presiding Member)
Dr Eric Isaachsen (Member)
Ms Mara Barone (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for review of a prohibition order.

Date of Determination: 27 October 2016

Date of Reasons of Determination: 21 December 2016

Determination: The application is upheld and the prohibition order ceases to operate from the date of this determination.

1 This is an application to review a Prohibition Order made by the Director of Liquor Licensing (“the Director”) on 21 July 2016 against Paul James Moss.

2 This Prohibition Order was made pursuant to section 152E(2) of the *Liquor Control Act 1988* (“the Act”). Section 152E(2) provides that:

the Director may make a prohibition order that-

a) *N/A*

b) *prohibits the relevant person from entering specified licensed premises, licensed premises of a specified class or any licensed premises*

3 This application for review is made pursuant to section 25 of the Act. Section 25 provides that:

1) *subject to subsections (3) and (5), where a person who is a party to proceedings before the Director is dissatisfied with a decision made by the Director in respect of those proceedings, the person may apply to the Commission for a review of that decision;*

...

4) *on review under this section the Commission may-*

a) *affirm, vary or quash the decision subject to the review*

4 Timeline:

- 1) The incident giving rise to the application for the Prohibition Order occurred on 11 March 2016 at the University of Western Australia, Crawley.
- 2) 20 April 2016- an application for a Prohibition Order was made.
- 3) 5 May 2016 - Paul James Moss was charged with assault occasioning bodily harm arising from the incident of 11 March 2016 at the University of Western Australia.
- 4) 9 June 2016- Paul James Moss filed submissions in response to the application for the Prohibition Order.
- 5) 4 July 2016- the submissions for the Commissioner of Police were filed.
- 6) 21 July 2016 - the Prohibition Order was granted in the public interest.
- 7) 19 August 2016 - an application for review of the Director’s decision was filed by the solicitors for Mr Moss.

5 Section 33 of the Act is headed:

“POWERS OF LICENSING AUTHORITY WHEN DECIDING APPLICATIONS”

6 Section 33(1) of the Act provides that:

Subject to this Act the licensing authority has an absolute discretion to grant or refuse an application under this Act on any ground or for any reason that the licensing authority considers in the public interest

7 Section 5 of the Act states the primary objects and secondary objects of the Act, particularly 5(1)(a) and 5(2)(c).

8 Section 152E(2)(b) gives the Director the authority to make a Prohibition Order.

9 Section 152E(3) provides that:

3) The Director may make a Prohibition Order only if satisfied that it is in the public interest to do so after-

a) having given the relevant person reasonable opportunity to make submissions or to be heard in relation to the application; and

b) having regard to-

i) any information or document provided by the Commissioner of Police in or with the application;

and

ii) any information or document provided by the relevant person under paragraph (a).

10 The facts pertinent to this decision are clearly in dispute.

11 Section 16(1) provides that:

1) In any proceedings under this Act the licensing authority, however constituted

...

b) may-

i) obtain information as to any question that arises for decision in such manner as it thinks fit; and

ii) make its determination on the balance of probabilities

12 As is required an application for a prohibition order is to be supported by evidence.

13 In this case, evidence by way of statements has been received by several security officers; a witness William Beer; a transcript of a video record of interview of Paul James Moss and Senior Constable Adam David Francis. We

have also received a Royal Perth Hospital Emergency Department Report relating to Mr Paul Moss, and also his record revealing two convictions in 2013 for which he was placed on a Community Based Order. Having read the witness statements referred to above, there is no dispute that on 11 March 2016, Mr Moss and his friends and associates attended at the grounds of the University of Western Australia ("UWA") on Hackett Drive in Crawley. The UWA was hosting a ticket only Mexican Party. Mr Moss and his friends walked to grounds where this function was being held. They did not have tickets to this event. Some of his friends stated an intention to "jump the fence" into the function however Mr Moss maintained that he intended to enter by legitimate means of obtaining a ticket.

- 14 It is what occurred on their arrival at this function that we are concerned with here.
- 15 The first statement is from Bosko Koloski who is a crowd controller and was on duty at the Mexicana Party at around 6:45pm on Friday 11 March 2016. He was wearing his crowd controller uniform and his ID ticket was clearly displayed. His duties were to check identification, prevent entry of people with no entry tickets and to prevent people from sneaking in and jumping the fence. He was also there to remove intoxicated persons.
- 16 At about 10pm he was at the main entrance evicting an intoxicated male. He saw security officers Ivanov and Casella and a couple of other security officers standing under some large trees about 20 meters away. They were talking to a group of 4 or 5 males who appeared to be about 18 years of age. These males were getting "closer and closer" to the security guards. Mr Koloski walked over towards them and stood off to the side of both the security officers and the youths. He heard officer Ivanov ask them to leave, members of the group responded by saying they were on private property and were allowed to stay. The conversation continued back and forth for a few minutes. The youths continued to walk past the security officers towards the fence line. He was not looking at anyone directly when he heard officer Ivanov call "spray spray spray". He saw one of the youth who we now know was Mr Moss, with his arm fully extended holding something black and orange in his hand. An orange mist hit him directly in the eyes. His eyes became blurry and started to tear up, he turned his head and received more spray to his ear and neck. He then felt two thumps to the back of his head which felt like punches. He went to his knees and saw two men being restrained by security officers.
- 17 He then went to the toilet to attend to cleaning the pepper spray from his face. On exiting the toilet he saw that the police had arrived. Because of the pain he was in he could not speak to the police immediately but did so 30 to 40 minutes after he had been sprayed.
- 18 The second statement was from Security Officer Lumbro Ryan Ivanov who was also on duty at the Mexicano function on the said night. At about 10pm he heard a call on his security radio that there was an incident at the perimeter fence of the function. He walked to the perimeter and saw a group of about 10 males who looked younger than 18. Standing with him were about 6 other security officers. He and the other security officers were asking the males to move away. They were being abused in response. He saw one of the males holding something in his right hand and spraying in the direction of the security officers. He received some of the spray around his eyes and neck. He saw that other officers had also been sprayed. The male who did the spraying was

grabbed and swung to the ground which was covered in wood chips and exposed tree roots. He was restrained on the ground face down with his hands restrained.

- 19 The third statement was from Security Officer Justin Luke Casella. Mr Casella was also on duty on the said night at the grounds of UWA for the Mexicana function. He got a call at around 20 past 10 to say that about 10 people were at the front of the event causing problems. On his arrival he saw a male putting his hands into a bumbag out of which he pulled a small red can in his right hand. He then lifted it into the air and started spraying it around. Officer Casella and another officer went to tackle him and got further sprayed. The man with the spray was tackled and held down until the Police arrived.
- 20 The fourth statement was from Luke Ralph Stone who was also a security officer at the Mexicana function at UWA on the said night. At about 10:30 pm he received a call over the radio indicating a physical altercation was in progress. He went to the scene and saw two males being restrained by three security officers, he could taste and smell what he believed to be O.C spray. The males being restrained were face down on their stomachs with their hands behind their backs. He took over the restraint of the first male and other officers took control of the other male until the Police arrived, who in turn placed the two males into handcuffs. He did not notice any visible injuries to either of the males.
- 21 The next witness statement was William Ernest Beer. Mr Beer is 20 years of age and a friend of Mr Moss. He confirmed that he was with Mr Moss and a group of other friends and it was decided that they would go to UWA. As they were walking down Broadway and approached the grounds of UWA they heard music. They headed towards the music. He said he was keen to jump (the fence), but everyone was not keen to jump so they were sitting and standing around talking. He said they had all been drinking but he was not really as drunk as the rest. One of the group referred to as "Olly" was arguing back and forth with the security officers. Whilst this was occurring at one point he heard one of the friends point to another friend who sounded as if in distress. He turned to look and saw security officers "all pretty big and in blue security shirts" about 10 of them, his vision then focussed on a friend of his, the applicant Paul Moss. He saw Mr Moss get shoved by two security officers. He saw their hands on the front of him- probably in the chest. Mr Moss appeared to lose his balance stumbling backwards. He then saw Mr Moss pull out from the back of his pants a pepper spray. A security officer pushed his hand up into the air, at the same time he was tackled by one of the security officers. He was about 15-20 meters away in an area that was not well lit. He then ran over to where Paul Moss was but ran into the pepper spray in the air and went to the ground to cover his eyes. He then received two blows to the head, he didn't see who delivered these blows. He then saw 10 security guards around Paul Moss and another friend Ashton. They were both on their stomachs on the ground, with security officers on top of them kicking and kneeling them. He saw one security officer punch Mr Moss to the ribs. He saw Mr Moss punched twice but speculated given the situation there would have been a lot more. He continued to be beaten until the Police arrived about 15 minutes later. Mr Beer and others were being spoken to by Police when another police officer brought Mr Moss to the "paddy wagon". Mr Moss was in cuffs and "every centimeter of his face was cut and bleeding". Mr Beer said that at no time did he see any of his friends being aggressive to or strike or hit a security officer.

22 The next witness statement was from Adam David Francis, a senior constable who had been called to the incident. He described what he saw including his attention being drawn to Mr Moss who appeared to have a reddened face with dirt and grass over his face.

23 We also received a video interview of Mr Moss taken on the 7 April 2016. In that video record Mr Moss stated:

6:20 11 March between 10:20 and 10:40pm

Tell me your involvement? Me and my friends were catching up around the corner from UWA. Had some drinks there. One of them saw on FB there was a party going on there. We thought we'd check it out and maybe get tickets. We strolled down there, found out it was sold out.

Stuck around hoping to get tickets.

I was talking to a friend I hadn't seen in a while and I saw my friends talking to the bouncers.

It seemed the bouncers were getting aggressive. I walked over and noticed they were getting aggressive and abusive. It was really unprofessional. Saying things like ... there were so many of them, I can't remember how many. I was intoxicated so it didn't help, my senses weren't up to scratch.

8:30 *Comments like "give us a reason to hit you" and "come on".*

A lot of swearing. Pretty intimidating.

They got to the point of being physical.

Don't know if there's video cameras which could help.

They did things like grab us and head butt us, telling us "do something, give us a reason to hit you"

I felt like my safety was at risk and my friends were at risk because they were saying things like "I'll F you up"

We weren't trying to start fights we were there to have a good time.

We started walking backwards

We didn't want to walk off because they were doing stuff behind our backs like putting up their fists and a lot of aggressive behaviour.

9:30 *That's when I withdrew this pepper spray that I bought at the Surplus Store for my girlfriend originally. She's been sexually abused in the past so I bought it for her. I unleashed it at one of the guys who had his hands on one of my friends and was either pushing him or had his face pressed up against his head.*

10:15 *As soon as I pressed the button I remember getting punched or tackled*

I feel like I lost consciousness in and out

I haven't experienced anything like it

I was held on the ground and continuously punched

Disorientating

Being hit repetitively on the ground

I took photos of my face the next day

10:53 *I couldn't see out of one eye*

I believe one of them wrestled the pepper spray off me

I think one of them sprayed it at me

One of my friends was on the ground being choked, he was asking for air

It was really distressing for me

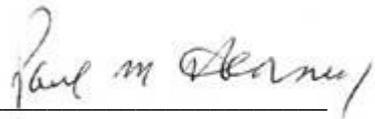
I was lying on the ground not knowing what was going on, struggling to breathe, thinking "I hope the police get here".

12:04 As soon as the police were called they laid off me.

- 24 Also we saw a doctor's report relating to Mr Moss presenting to "emergency" with multiple injuries after alleging to have been assaulted by security officers while trying to enter an event venue. This report includes "blood in the ear canal, tenderness, elbow abrasions, superficial abdominal abrasions".
- 25 The evidence referred to above is so starkly different that it looks like the respective witnesses were observing 2 different incidents. This evidence is of course unchallengeable, so we must judge as it is. Remarkably none of the security officers were able to give any account or explanation for the injuries suffered by Mr Moss. On the contrary Mr Beer and Mr Moss were able to give a full account of how the injuries were sustained.
- 26 To determine the appropriateness of the imposition of a Prohibition Order upon Mr Moss, the Commission needs to determine if there is sufficient evidence to justify such an order.
- 27 If the Commission were to accept the evidence of the security officers a Prohibition Order would be likely to be justified.
- 28 If the Commission were to accept the evidence of Mr Beer and Mr Moss such an order would not be appropriate.
- 29 Section 16(1)(b) provides as follows:
- 1) *In any proceedings under this Act, the licensing authority however constituted-*
 - a) *shall act with undue formality,*
 - b) *may*
 - i) *obtain information as to any question that arises for decision in such manner as it thinks fit; and*
 - ii) *make its determinations on the balance of probabilities*
- 30 It is clear then, that it is not simply a case of believing one story as distinct from the other. It may well be that the finder of fact is unable to say which account is the correct, true account.
- 31 The Commission is required to determine the application before it, based on findings of fact and then the extent of the facts as found.
- 32 The significant fact that we have found is that Mr Moss was in possession of a can of O.C spray and that he discharged that can of spray which came into contact with the faces of security officers.
- 33 The circumstances surrounding that possession of the spray and its subsequent discharge, in conjunction with his minimal record as a juvenile do not leave us to the conclusion that he is likely to behave in a violent, disorderly

or anti-social manner whilst on licensed premises or within the vicinity of licensed premises.

- 34 The Commission can not see how the “public interest” can possibly be served by the imposition of the Prohibition Order being continued against Mr Moss (section 33(1)).
- 35 Accordingly this prohibition order made on the 21 July 2016 ceases to be in effect from 27 October 2016.



PAUL HEANEY
PRESIDING MEMBER