

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr J J H
*(represented by Mr Peter Whennan of Dwyer Durack
Lawyers)*

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

Commission: Mr Jim Freemantle (Chairperson)

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

Date of Hearing: 19 October 2012

Date of Determination: 24 October 2012

Date of Reasons: 20 November 2012

Determination: The application seeking review of the barring notice
issued by the Commissioner of Police on
27 July 2012 is dismissed.

Authorities referred to in the decision:

- *McKinnon & Secretary of Treasury [2005] FCAFC 142*
- *S V S v Commissioner of Police (LC 19/2011)*
- *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*
- *K B v Commissioner of Police (LC 33/2011)*
- *Interpretation Act 1984 (WA)*
- *Western Australia Parliamentary Debates, Legislative Assembly, 19 October 2010, 7925 (TK Waldron, Minister for Racing and Gaming)*

Background

- 1 A series of events involving the applicant occurred at licensed premises (Albion Shamrock Hotel in Boulder) and other places commencing on Friday, 25 May 2012 and continuing into the morning of Saturday, 26 May 2012.
- 2 The statement of material facts tendered in evidence by the Commissioner of Police ("the Police") indicates that the applicant was involved in an assault on a person who had allegedly stolen alcohol from the hotel bottle shop.
- 3 The applicant was subsequently charged and later convicted in the Kalgoorlie Magistrates Court for assault and deprivation of liberty.
- 4 On 27 July 2012, the applicant was issued a barring notice pursuant to section 115AA(1) of the *Liquor Control Act 1988* ("the Act") prohibiting him from entering any licensed premises in Western Australia except for premises licensed as a liquor store.

Submissions on behalf of the applicant

- 5 The applicant made a number of submissions on the relevant law and I deal with these as necessary in my determination (below).
- 6 It is not alleged that injury was sustained by the victim as a result of the direct actions of the applicant.
- 7 The applicant had not consumed alcohol, had no prior criminal record and acted only to restrain a thief.
- 8 The circumstances of the offence were unique and it cannot be implied that the applicant would repeat the conduct if on a licensed premises.
- 9 There is thus no basis for a finding that the barring notice is necessary in order to protect licensees or the general public.
- 10 Alternatively, if the Commission were to find that grounds for the issuance of a barring notice existed then the current terms of the barring notice are unnecessarily severe and should be modified to permit entry to a wider range of licensed premises.
- 11 The violent act that precipitated the barring notice involved minimal use of force by the applicant and thus the offence fell at the lower end of the scale for acts which would attract the issuance of a barring notice. The length of the barring notice of 12 months is excessive and more appropriate to a more serious act than that of the applicant.

Submissions on behalf of the Commissioner of Police

- 12 The Police also made extensive submissions on the relevant law. As I indicated earlier, I will deal with the legal submissions in my determination.
- 13 The Police relied on the statement of material facts.
- 14 There is sufficient material before the Commission to sustain the issue of the barring notice.
- 15 The incidents which resulted in the barring notice being issued are covered by the

witness statements, particularly those of:

- a) Mr B A W
- b) The victim
- c) Mr J J H
- d) Dr T E

16 The statements referred to at paragraphs 14 and 15 above give a clear picture of the seriousness of the assault and the severity of the injuries sustained by the victim.

Determination

17 Section 115AA of the Act empowers the Commissioner of Police to give notice to a person prohibiting that person from entering all or specified classes of licensed premises if, on reasonable grounds, it is concluded that the person behaved in a violent and disorderly manner.

18 Section 115AD(3) provides for a person subject to a barring notice to seek a review of the Commissioner of Police's decision before the Liquor Commission ("the Commission").

19 Section 115AD(6) prescribes that the Commission may have regard to the material before the Commissioner of Police when he made the decision and any other information provided by the applicant.

20 Section 115AD(7) provides that the Commission on review can affirm, vary or quash the Commissioner of Police's decision.

21 Section 33(1) gives the licensing authority absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest and the discretion being confined only by the scope and purpose of the Act.

(Refer *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*).

22 Section 16 of the Act requires the Commission to act according to equity, good conscience and the substantial merits of the case and the Commission is not bound by *The Evidence Act 1906*.

23 Section 19 of the *Interpretation Act 1984* provides that regard may be had to extrinsic material (including the Second Reading Speech to a Bill) to confirm that the meaning of a provision is the ordinary meaning conveyed by the text.

24 It is the Commission's view that Commissioner's power to issue a barring notice is an original power granted to a decision maker not constituting any part of the licensing authority.

25 (Refer *K B v Commissioner of Police LC33/2011*)

- 26 In introducing the legislation to give effect to barring notices in October 2010, the responsible Minister (the Minister for Racing, Gaming and Liquor, Hon. Terry Waldron) said... *“the whole idea of the legislation is to protect the general public, the licensee.... and also the person”*. (WA Parliamentary Debates Legislative Assembly October, 2010).
- 27 This is consistent with the clear public interest theme of the Act in the determination of licensing applications and consistent with the provisions of section 152E of the Act in respect of prohibition orders where it provides that such an order may only be made if the licensing authority is satisfied that it is in the public interest to do so.
- 28 Clearly it is an important matter of public interest that patrons of licensed premises are protected from acts of violence.

Tamberlin J in *McKinnon v Secretary Department of Treasures [2005] FCAFC 142* stated..... *“the expression in the public interest “directs attention to that conclusion and determination which best serves the interest or welfare of the public.... and its content will depend on each particular set of circumstances”*.

(See paragraphs 30-32, *K B v Commission of Police* (LC 33/2011)).

- 29 The purpose of a barring notice issued under section 115AA(2) is not to punish the person subject to the barring notice (refer *S V S v Commissioner of Police* (LC 19/2011)).
- 30 The applicant has been charged with assault and convicted in the Kalgoorlie Magistrates Court. Essentially I had to determine whether given the particular circumstances leading to the issuing of the barring notice, there *was any probability or indeed the possibility* of the applicant reoffending with consequent danger to the public, the licensee or himself.
- 31 The evidence clearly demonstrates that the applicant was a party to and directly involved in a violent assault which resulted in serious injury to the victim. That he did not strike the victim is irrelevant. He chased, apprehended and bound the victim with fencing wire. He held him down whilst another person reigned blows on him. In my view this is a major overreaction to the provocation occasioned by the alleged theft of alcohol. Not content with this the applicant drove the injured victim some distance out of town and abandoned him without shoes to make his way home or to a source of assistance as best he could.
- 32 I do not accept the submissions made by the applicant’s counsel that this offence involved minimal force and falls at the lower end of the scale for acts which would attract the issuing of a barring notice. In fact, I have formed the opposite view.
- 33 The applicant has not only demonstrated a propensity for violence but a propensity to badly overreact to no great provocation.
- 34 Notwithstanding the character references the applicant supplied, I am in no way convinced that the applicant would not again react with violence even if only mildly provoked.
- 35 The likelihood of him doing so will be mitigated by the impact of the conditions existing in the current barring notice.

36 The application is therefore refused.

A handwritten signature in black ink, consisting of a cursive 'J' followed by 'F' and 'M' with a long horizontal stroke extending to the right.

**MR JIM FREEMANTLE
CHAIRPERSON**