

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: George Mark Lewer

Respondent: Commissioner of Police
(represented by Ms Leanne Atkins of WA Police)

Commission Mr Greg Joyce (Member)

Matter: Application seeking review of barring notice pursuant to section 115AD of the *Liquor Control Act 1988* (“the Act”).

Date of Determination: 7 December 2011 (on papers)

Determination: The application is dismissed and the barring notice is affirmed.

Authorities referred to in Determination:

- *Shayne Van Styn v Commissioner of Police (LC 19/2011)*
- *Mckinnon v Secretary, Department of Treasury [2005] FCAFC 142 (2 August 2005)*

Background:

- 1 On 14 July 2011 the applicant, by his own admission, at the Red Sea Nightclub, struck a person with a clenched fist causing him to fall backwards and black out. The victim was dancing with the applicant's former girlfriend. The victim was treated at Sir Charles Gardiner Hospital and received stitches to his mouth. He subsequently has experienced headaches. The victim was smaller than the applicant.
- 2 The applicant was charged with assault occasioning bodily harm under section 317(1) of the *Criminal Code* and the matter was heard in the Magistrates Court on 10 October 2011. The Applicant pleaded guilty to the charge and received a spent conviction and a fine of \$2000 of which \$1500 was payable to the victim.
- 3 On 1 September 2011 the delegate of the Commissioner of Police, Acting Superintendent Vidovich, issued a barring notice (the notice) against the applicant pursuant to section 115AA of the Act. On the 11 September 2011 the notice was served on the applicant which prohibited the applicant from entering licensed premises in Western Australia except liquor store licences until 29 February 2012.
- 4 On 3 October 2011 the Liquor Commission ("the Commission") received an application from the applicant to review the barring notice under section 115AD of the Act.
- 5 The matter is determined on the papers by a single Commissioner pursuant to section 16(2)(b) of the Act.

Submissions of the Applicant:

- 6 The attack was not a random attack on a stranger but one resulting from an incident between the victim and the applicant's estranged partner.
- 7 The applicant has no previous convictions and acted out of character on this isolated occasion.
- 8 The applicant provides several positive character references which support the claim of the passive and friendly character of the applicant.
- 9 The applicant pleaded guilty and accepts that he acted unlawfully.
- 10 The barring notice prevents the applicant from being involved in any activity where a liquor licence operates. This is particularly onerous during the Christmas period.
- 11 The purpose of the barring notice is to protect the public, it is not a penalty (*Shayne Van Styn v Commissioner of Police (LC 19/2011)*, paragraph 9).

Submissions of the Respondent:

- 12 The conduct giving rise to the barring notice is the very type which the Act was designed to overcome namely violent conduct on licensed premises. The aim of the legislation is the protection of the general public from actions of a violent nature.
- 13 The assertion that the incident occurred because the victim 'smirked' at the applicant after the victim and the applicant's estranged partner had 'hooked up' does not detract from the seriousness of the assault.
- 14 The applicant has provided references to the effect that the actions of the applicant were out of character. In none of these or in the application, is there any explanation for the behaviour or an attempt to address it to avoid reoccurrence, nor is there any remorse except as regards the personal impact of the offending.
- 15 The personal interests of the applicant in being able to socialise with family and friends at Christmas do not outweigh the public interest in protecting the general public from violent and disorderly conduct.
- 16 The respondent cited the case law on the meaning of the public interest and in particular the summary by Tamberlin J in *Mckinnon v Secretary, Department of Treasury [2005] FCAFC 142 (2 August 2005)*, pages 587-592 including "*The expression 'the public interest' is often used in the sense of a consideration to be balanced against private interests or in contradistinction to the notion of individual interest. It is sometimes used as a sole criterion that is required to be taken into account as the basis for making a determination*".

Determination:

- 17 This is an application for review of a decision of the delegate of the Commissioner of Police pursuant to section 115AD of the Act. It has been determined on the papers pursuant to section 16(2)(b) by a single member. When conducting a review the Commission may have regard to the material that was before the Commissioner of Police and any information or document provided by the Applicant (section 115AD(6)). The Commission is required under section 5(2) of the Act, in carrying out its functions, to have regard to the objects of the Act including minimising harm or ill-health caused to people.
- 18 The power to issue a barring notice is a recent amendment to the Act (January 2011) and was designed to give protection to the public. In his second reading speech, the Minister for Racing and Gaming, Mr Terry Waldron said "*This legislation seeks to give protection to the general public from people who have engaged in disorderly or offensive behaviour, who threaten people et cetera and who put people in dangerous situations. The whole idea of this legislation is to protect the general public, the licensee, which is pretty important and also the person. That is the aim of this legislation*". (Parliamentary Debates, 19 October 2010, page 7925).

19 In Van Styn, *supra*, paragraph 12, the Commission held that *“This provision is clearly designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and is not focused on punishing an individual for their actions”*. Thus the test is whether the general public, the licensee and the applicant himself need protection at licensed premises from the applicant reoffending. In this regard the Commission is empowered to make the determination on a balance of probabilities with a wide discretion from the Act (section 16(1)(b)(ii)).

20 In weighing and balancing this application the Commission takes into account the following positive matters:

- The applicant pleaded guilty and accepted the consequences of his behaviour.
- The applicant has good parents who are clearly guiding him through this matter.
- There is no prior evidence of this sort of behaviour.
- Several referees attest to the applicant’s good character.

Against this are the negatives:

- Whilst the applicant’s father and a referee indicate the applicant is remorseful there is nothing in the application or the transcript of the Magistrate’s Court from the applicant to confirm this.
- The prosecutor in the Magistrates Court said *“I think that this whole thing has been trivialised completely. Something has been made about the fact that he only hit him once. Your Honour he only had to hit him once, he knocked him out”*.
- This assault was a serious matter and potentially life threatening.
- There was minimal provocation.
- The general public have an expectation that there will be no violence on licensed premises

This is not a matter of punishing the applicant but rather of predicting whether he is likely to reoffend on licensed premises within the time frame set by the barring notice. The applicant did put himself in the predicament of seeing his former girl friend in public company and there is nothing in the evidence to suggest he is over the relationship. He is still vulnerable to the implications of a reoccurrence of the circumstances. The barring notice is not only about protecting the public but also protecting the applicant.

- 21 On the balance of probabilities the Commission finds that there is some risk that the applicant if confronted with a similar situation could reoffend and the barring notice should stay in place. When a person goes to licensed premises he or she has an expectation that there will be no violence against them. Accordingly the application is refused.



GREG JOYCE
MEMBER