

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Georgina Lianne Banks
*(represented by Mr Peter Fraser of Dwyer Durack
Lawyers)*

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

Commission: Mr Jim Freemantle (Chairperson)
Ms Helen Cogan (Member)
Mr Eddie Watling (Member)

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

Date of Hearing: 2 May 2012

Date of Determination: 9 May 2012

Date of reasons published: 13 June 2012

Determination: The application is refused.

Authorities referred to in the determination

- *McKinnon v Secretary, Department of Treasury [2005] FCAFC 142*

Background

- 1 On 9 February 2011 an incident involving the applicant occurred at licensed premises (The Court Hotel) in Northbridge.
- 2 On 12 April 2011 the respondent applied to the Director of Liquor Licensing (“The Director”) for a prohibition order pursuant to section 152B of the *Liquor Control Act 1988* (“the Act”) and on 16 March 2011 the respondent issued a barring notice against the applicant for a period of 12 months, pursuant to section 115AA of the Act.
- 3 The application for a prohibition order was held over pending the outcome of an unlawful wounding charge before the Magistrates Court, of which the applicant was acquitted on 30 January 2012.
- 4 On 15 March 2012 a prohibition order was made by the Director prohibiting the applicant from entering any licensed premises of the following classes:-
 - a) all hotel licences however described under section 41 of the Act;
 - b) all nightclub licences however described under section 42 of the Act;
 - c) all restaurant licences however described under section 50 of the Act that are subject to an extended trading permit issued under section 60(4)(ca);
 - d) all casino licences however described under section 44 of the Act; and
 - e) all special facility licences however described under section 46 (and regulation 9A) except any special facility licence issued for the purposes of:
 - i. works canteen;
 - ii. theatre or cinema;
 - iii. reception or function centre;
 - iv. transport;
 - v. vocational education and training institution;
 - vi. vocational and educational training courses;
 - vii. sports arena;
 - viii. food hall;
 - ix. catering;
 - x. bed and breakfast facility;
 - xi. room service restaurant; or
 - xii. auction.
- 5 On 28 March 2012 an application for review of the decision of the Director of Liquor Licensing was lodged by Ms Banks with the Liquor Commission (“the Commission”).
- 6 A hearing of the application for review was held on 2 May 2012.

Submissions on behalf of the applicant

- 7 The applicant admits that her actions resulted in injury to the victim however she claims that it was accidental, a result of the glass in her hand slipping when she was in the act of throwing the contents at the victim, not the deliberate act of “*smashing the*”

glass in the victim's face" as stated in the Statement of Material Facts dated 28 February 2011.

- 8 Counsel for the applicant submitted that the Magistrate in the criminal proceedings accepted that it was an accident and this led to her acquittal. (Extracts of the court proceedings were not submitted to verify this, however, it was not disputed by the respondent; hence the Commission accepts it to be the case).
- 9 The applicant has learnt a valuable lesson from the trauma of facing criminal proceedings in a court of law. She has already been unable to attend licensed premises for the last 14 months as a result of the barring notice and the subsequent prohibition order served on her.
- 10 The applicant agreed with the thrust of the legal submissions relating to the issues of public interest and the intent of section 152(A to M) of the Act.
- 11 The prohibition order was not in the public interest as the applicant did not represent any threat to the patrons of licensed premises.

Submissions on behalf of the respondent

- 12 The respondent made submissions on the interpretation and impact of Part 5A of the Act as being relevant to this matter as well as the concept of public interest as developed in case law over a period of time.
- 13 The respondent accepted that the acquittal in the Magistrates Court was relevant, however the acquittal in that jurisdiction did not preclude action under the *Liquor Control Act 1988* (being a different jurisdiction).
- 14 The evidence before the court was not led in this application.
- 15 Section 115 relating to barring notices does not mention public interest, whereas section 152E(3) relating to prohibition orders does. The prohibition order is in the public interest based on the evidence.

Determination

- 16 As both parties are in general agreement as to the law and precedent, the Commission will confine itself to brief comments only.
 - a) Section 152E(3) provides that the Director may make a prohibition order only if satisfied that it is in the public interest to do so after having given the relevant person a reasonable opportunity to make submissions or to be heard in relation to the application.
 - b) Tamberlin J in *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 said; *"The expression 'in the public interest' directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances"*.
 - c) Section 25(2c) of the Act provides - *"When conducting a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision."*

- 17 The effect of imposing the prohibition order on the applicant is to extend the period during which she is unable to enter licensed premises specified in the barring notice (issued 16 March 2011) for a further 12 months, making it a two year ban in total.
- 18 Therefore the question for the Commission is whether it is in the public interest to do so.
- 19 The applicant was acquitted by the Magistrate in the criminal proceedings, the onus of proof in that jurisdiction being beyond reasonable doubt. The fact that Ms Banks was acquitted must carry some weight in these proceedings.
- 20 It is not the Commission's role to retry the charge to a lesser degree of proof as required under the *Liquor Control Act (1988)* (balance of probabilities) but to assess whether, on identical or at least similar facts to those before the Magistrates Court, it is in the public interest to prohibit the applicant from entering specified licensed premises.
- 21 On the evidence before it, the Commission accepts that a violent incident occurred and that the applicant was the perpetrator. Whether or not the glass slipped from Ms Banks' hand rather than her deliberately assaulting the victim with the glass, the outcome was that serious injury resulted to the victim. An injury that would not have occurred if the applicant had not chosen to become involved in what, at the time of the incident, appeared to be a situation that did not involve her directly.
- 22 In view of the spontaneous and violent nature of the incident, the Commission is not convinced the applicant may not react in a similar fashion if the same or similar set of circumstances arose. Therefore it is deemed to be not in the public interest to approve the application.
- 23 In reaching this determination the Commission notes the terms of the prohibition order are such that Ms Banks is prohibited only from entering the type of licensed premises where a similar incident may arise.



MR JIM FREEMANTLE
CHAIRPERSON