

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

- Applicant:** Mr BMC
(*represented by Mr Ken Bates of Bates Legal*)
- Respondent:** Commissioner of Police
(*represented by Ms Danielle Underwood of State Solicitor's Office*)
- Commission:** Mr Jim Freemantle
- Matter:** Application seeking review of a barring notice issued pursuant to section 115AD of the *Liquor Control Act 1988*
- Date of Determination:** 30 July 2015
- Determination:** Pursuant to section 115AD(7) of the *Liquor Control Act 1988* the terms of the barring notice are varied as follows:
- 1) Mr BMC is prohibited from entering any licensed premises in Western Australia except
 - a) those licensed under a liquor store license;
 - b) those licensed premises of the Esperance Football and Sporting Club.
 - 2) The barring notice shall have effect until midnight on 19 September 2015.

Authorities

- *McKinnon v Secretary Department of Treasures [2005] FCAFC142*

Background

1. On 19 May 2015, the applicant was served with a notice under sec 115AA of the Act prohibiting him from entering any licensed premises in Western Australia, except premises licensed under a liquor store license, for a period of 12 months
2. At approximately 2.30am on 22 March 2015, the applicant was involved in a fight at the nightclub bar of the Pier Hotel, the Esplanade, Esperance.
3. The circumstances of the incident are summarised in the WA Police Statement of Material Facts and the relevant Incident Report.
4. These documents indicate that the applicant and the victim were in the Pier Hotel, Esperance.
5. The applicant and the victim were both heavily intoxicated.
6. The victim walked over to the applicant and touched him on the right breast.
7. The applicant pushed the victim backwards and the victim stumbled and looked away. As the victim looked away the applicant lunged forward and punched the victim in the face causing the victim to immediately fall to the floor at which time the applicant ran from the area.
8. Several bystanders came to the aid of the victim who was unconscious on the ground and he was conveyed to hospital by ambulance.
9. The applicant was subsequently charged with, and convicted of, assault occasioning bodily harm pursuant to section 317(1) of the *Criminal Code (WA)*. The applicant was fined and granted a spent conviction order for the offence.
10. On 12 June 2015, the applicant applied to the Liquor Commission (Commission) for a review of the barring notice subsequently issued by the Commissioner of Police, under section 115AD of the Act.

Submissions on behalf of the Applicant

11. The applicant freely admits to his actions in respect of the incident from which the barring notice arose.
12. The applicant's following submissions were effectively a plea in mitigation:
 - a) On the day after the incident the applicant voluntarily attended the Esperance Police Station to speak to the Police about the incident.
 - b) Having subsequently been charged over the incident, the applicant was granted a spent conviction and a fine was imposed.

- c) In his sentencing remarks the Magistrate concluded that the applicant was unlikely to commit such an offence again.
- d) The Magistrate also concluded that the applicant was of previous good character and in granting the spent conviction he was mindful of the longer term adverse impact on the applicant's future employment of a conviction.
- e) The applicant is a respected member of the local community and in stable employment.
- f) The actions of the applicant were out of character, a one off error of judgement and he is deeply remorseful.

Submissions on behalf of the Respondent

- 13 The respondent made a comprehensive summary of the relevant law and as there is no apparent disagreement with the applicant I do not see that it serves any purpose to repeat it at length. I will deal with any specific legal issues as they arise in the reason for the determination set out below.
- 14 The respondent submits that the applicant was on licensed premises, was by his own admission, violent and the incident was serious.
- 15 The Commission should take into account:
 - a) the nature and seriousness of the incident and the risk of the applicant behaving in a similar manner;
 - b) the need to protect the general public, the licensee and the applicant himself.
- 16 There is sufficient material before the Commission to establish that the applicant has been violent on licenced premises and the decision of the respondent to issue a barring notice in the terms it did was warranted and it should not be varied or quashed.

Determination

- 16 Two of the primary objects of the Act at section 5(1) are to minimise harm or ill health caused to people or any group of people due to the use of liquor and to regulate the sale, supply and consumption of it.
- 17 In 2010 the Act was amended "to give protection to the general public from people who have engaged in disorderly or offensive behaviour, who threaten people and who put people in dangerous situations" (*Minister's statement to the House, Western Australia, Parliamentary Debates, Legislative Assembly 19 October 2010, 7925*)

- 18 The Minister further stated that the legislation gave the Police the power to issue barring notices to persons engaging in antisocial behaviour at licensed premises.
- 19 Section 115A(2) of the Act authorises the Commissioner of Police to issue a notice to a person prohibiting that person from entering specified licensed premises, or a specified class of licensed premises, for a period of up to 12 months if the Commissioner believes, on reasonable grounds, that the person has, on licenced premises:
- a) been violent or disorderly, or
 - b) engaged in indecent behaviour, or
 - c) contravened a provision of the written law.
- 20 The provision is clearly designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and it's not focused on punishing the individual for their actions. As submitted by the respondent, it was stated by the Minister for Racing and Gaming during the parliamentary debate on the amendments to section 115AA of the Act that "*the whole idea of this legislation is to protect the general public, the licensee, which is pretty important, and also the person.*"
- 21 This is consistent with the public interest theme of the Act in the determination of licencing 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 licencing authority is satisfied that it is in the public interest to do so.
22. Clearly it is an important matter of public interest that patrons of licenced premises are protected from acts of violence.
- Tamberlin J in McKinnon v Secretary Department of Treasures [2005] FCAFC142 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".*
23. In assessing the particular circumstances surrounding the issuing of the barring notice, it is necessary to determine the degree of probability or possibility that the Applicant might reoffend with consequent danger to the public, the licensee or himself.
24. There is no dispute between the parties that the incident was serious. It led to a charge of assault causing actual bodily harm and the applicant was found guilty.
25. However, whilst acknowledging the difference in jurisdiction, rules of evidence and standard of proof between the Courts and the Liquor Commission, I am influenced by the magistrate's sentencing remarks wherein he stated he was satisfied there was little chance of the applicant re-offending. He also, significantly, granted him a spent conviction.
26. I am further influenced by the strong character references submitted in evidence.

27. I agree with respondent's submissions that the barring notice should not be quashed as the evidence supporting its initial imposition is persuasive and a period of enforced absence from licenced premises give the applicant time to reflect on the seriousness of what he did.
28. However, I am sufficiently convinced that the likelihood of the applicant now repeating his behaviour if similar circumstances arose is not high.
29. The applicant appears to be genuinely remorseful and given that his appearance before the court was a first offence, I am of the view that he has learned a valuable lesson and it has been brought to him that this style of behaviour even if provoked is totally unacceptable.
30. Having weighed the evidence before me I have concluded that the applicant represents a minimal risk of reoffending and behaving in a manner endangering himself or others. Thus I have also shortened the period of the barring notice so that it expires at midnight on 19th September 2015.
31. The applicant submitted that he has been a member of the Esperance Football and Sporting Club all his life and is involved in active weekly training and playing sessions. In addition he socialises on a regular basis with the other members of the Club. Having reached the conclusions referred to in paragraphs 28-30 above, I believe that the applicant should be allowed to attend the Esperance Football and Sporting Club.



JIM FREEMANTLE
CHAIRPERSON