

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

Applicant: Mr Glen James McCormick

Respondent: Commissioner of Police
(represented by Mr David Leigh of State Solicitor's Office)

Commission: Mr Jim Freemantle (Chairperson)
Mr Alastair Bryant
Mr Evan Shackleton

Matter: Application for review of a Prohibition Order imposed on the applicant by the Director of Liquor Licensing pursuant to section 152E of the *Liquor Control Act 1988* prohibiting the applicant from entering any licensed premises except those licensed under a liquor store licence for a period of 3 years.

Determination: The application is refused.

**Date of Determination:
(on papers)** 20 February 2014

Authorities referred to in the Determination

- *Hancock v Executive Director of Public Health* [2008] WASC 224.
- *McKinnon v Secretary, Department of Treasury* [2005] 145 FCF 70 per Tamberlin J
- *O'Sullivan v Farrer* (1989) 168 CLR210

Background

1. An incident involving the applicant and another person occurred at the Groove Lounge Bar, Crown Casino Burswood on 1 December 2013.
2. The statement of material facts reveals that the applicant struck another male in the face whilst holding a glass in that hand. The glass shattered and the victim of the blow suffered lacerations to the face.
3. The incident was preceded by an interaction between the two parties culminating in the victim pushing the applicant whilst he was seated after which the applicant stood up and struck the victim as described in para 2 (above).
4. The applicant was subsequently charged with unlawful wounding.

Submissions by the Applicant

5. He was not the instigator and has not previously been in any trouble relating to alcohol.
6. The prohibition order is severe and not in congruence with the penalty already imposed by the Court.
7. The prohibition order prevents the applicant from visiting his partner at her work place (licensed premises) and prevents him from socialising in the normal way with family and friends at licensed restaurants and other venues.
8. The Court with apparent agreement of the prosecutor felt that prohibiting him from such venues was not necessary.
9. A letter from a psychologist whom the applicant consulted was tendered.

Submissions by the Respondent

10. The respondent made detailed submissions concerning the applicable law and these will be dealt with as necessary in the determination below.
11. The statement of material facts and supporting CCTV footage establish clearly the nature of the incident and show the applicant reacted (over reacted) to a minor assault with a disproportionate degree of violence notwithstanding there was no indication that the applicant was under any threat of further action by the victim nor was there any indication of a threat to his safety.
12. In any event the applicant's use of glass which could inflict serious injury was well beyond what could be considered to be a reasonable response.

Determination

13. This application is brought under the provisions of section 25(2)(c) of the *Liquor Control Act 1988* ("the Act") and requires the Commission to review only material that was before the Director when he made the decision.
14. In determining the matter the Commission must satisfy itself that the prohibition order is imposed in the public interest (section 152E(3) and it is required to do so by considering ab initio the material before the Director and conduct a full review of that material (see *Hancock v Exec Director of Public Health [2008] WASC224*).

15. The concept of public interest has been well covered in numerous judgements of the Supreme Court of WA. In *McKinnon v Secretary, Department of Treasury (2005) 145 FCF 70 per Tamberlin J* held that it is determined by what conclusion or decision best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on the particular circumstances.
16. In *O'Sullivan v Farrer (1989) 168 CLR210* the Court held that assessing the public interest is only confined by the scope and purpose of the Act.
17. The objects of the Act clearly set out that the minimization of harm is a primary objective of the legislation and protection of patrons in and around licensed premises is clearly a matter of public interest.
18. The Commission accepts that the applicant was provoked but the reaction was violent and disproportionate in the circumstances. It demonstrated an unacceptable lack of control.
19. The psychologist's letter tendered by the applicant is instructive. It alludes to the applicant having angry outbursts (plural) and acting on these urges (plural).
20. The applicant has had 3 sessions with the psychologist and there is no indication he continues to attend and thus deal with the urge to respond aggressively to which the psychologist's letter refers.
21. The Commission in *Shane Van Styn v Commissioner of Police LC 19/2011* noted 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. During the parliamentary debate on the amendments to section 115AA, the Minister for Racing and Gaming stated that... "the whole idea of this legislation is to protect the general public, the licensee, which is pretty important, and also the person."*
22. The Commission has real concerns that if provoked, even mildly, the applicant is, on the balance of probabilities, likely to respond in a similar manner to the way he reacted in the incident out of which the prohibition order arose.
23. Thus the Commission considers that it has been satisfactorily established that the current prohibition order is imposed in the public interest and should stand.
24. Accordingly, the application is refused.



MR JIM FREEMANTLE
CHAIRPERSON