

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

Applicant: Ms C E M
(represented by Mr Neville Barber of NR Barber Legal)

Respondent: Commissioner of Police
(represented by Ms Hannah Stapp 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 Determination: 18 December 2012

Reasons for determination: 18 February 2013

Determination:

The terms of the barring notice dated 19 July 2012 are varied as follows:

Ms C E M is prohibited from entering for a period of 9 months ending 18 April 2013 any licensed premises in Western Australia except those premises licensed hereunder:

- a) liquor store licence;
- b) a restaurant licence other than a restaurant with an extended trading permit (liquor without a meal) issued pursuant to section 60(4)(ca) of the Act.

Authorities referred to and considered in the determination:

- *V S v Commissioner of Police (LC19/2011)*
- *K B v Commissioner of Police (LC33/2011)*
- *M P v Commissioner of Police (LC55/2011)*
- *L M C v Commissioner of Police (LC05/2012)*
- *G M L v Commissioner of Police (LC58/2011)*
- *McKinnon v Secretary Department of Treasures [2005] FCAFC 142*
- *Interpretation Act 1984*
- *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*

Background

- 1 An incident involving the applicant occurred at licensed premises (the Leederville Hotel) on 18 July 2012.
- 2 The statement of material facts reveals that a verbal exchange between the applicant and the victim led to the applicant throwing a glass which caused injury to the face of the victim.
- 3 The applicant was subsequently charged with unlawful wounding.
- 4 On 20 July 2012, the applicant was served with a barring notice dated 19 July 2012 pursuant to section 115AA(2) of the *Liquor Control Act 1988* ("the Act") prohibiting her from entering any licensed premises in Western Australia other than those operating under a liquor store licence for a period of 12 months.
- 5 A preliminary hearing was held on 28 November 2012 wherein consent orders were made concerning submission deadlines and it was agreed that the matter would be determined on papers.

Submissions on behalf of the applicant

- 6 The applicant was subject to taunting and highly offensive behaviour by the victim who was heavily intoxicated.
- 7 The applicant's reaction was a spontaneous response to such behaviour.
- 8 It was accepted at the applicant's sentencing hearing that she did not intend to strike the victim but simply to throw the glass at his feet.
- 9 The applicant co-operated readily with Police and pleaded guilty.
- 10 In sentencing the applicant, the Magistrate accepted a number of factors including that she was very remorseful and anxious about the fact that she had caused injury. The Magistrate further accepted that the applicant was at low risk of reoffending, had no police record and that she was of good character.
- 11 The applicant accepts that the barring notice is appropriate in the circumstances but because of the low risk of reoffending and her palpable sense of remorse, the terms of the barring notice are broader and the time longer than necessary in the circumstances to achieve the ends to which section 115 of the Act is directed.

Submissions on behalf of the Commissioner of Police

- 12 The Police made comprehensive submissions on the intent, content and context of section 115 of the Act particularly and the applicable law generally and I will deal with this as necessary later in the determination.

- 13 The respondent relied on the statement and material facts which in its view spoke for themselves.
- 14 An amount of the applicant's submission was not supported by concrete evidence and should be given less weight by the Commission.
- 15 The applicant has not provided sufficient evidence to warrant varying the terms of the barring notice.

Determination

- 16 The applicant concedes the barring notice is appropriate but submits that by varying it and making it less restrictive the risk to the public is extremely low.
- 17 As the respondent points out in its submissions, section 115AA(2) of the Act is not intended to act as a punishment per se, and is there to protect the public and cites the previous determinations of the Commission viz; *V S v Commissioner of Police (LC19/2011)*; *K B v Commissioner of Police (LC33/2011)*; *M P v Commissioner of Police and G M L v Commissioner of Police (LC58/2011)*.
- 18 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 the 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.
- 19 Clearly it is an important matter of public interest that patrons of licensed premises are protected from acts of violence.

Tamberlin J in *M v Secretary Department of Treasury [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 Commissioner of Police LC 33/2011*).

- 20 This principle is clearly stated by the responsible Minister (Minister for Racing Gaming and Liquor, Hon. Terry Waldron) in introducing the legislation to give effect to banning notices... "*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*)
- 21 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 construe that the meaning of a provision is the ordinary meaning conveyed by the text.
- 22 It therefore remains for me to determine whether the variation to the barring notice issued to the applicant could be varied without defeating the purpose of section 115 of the Act.

- 23 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 or disorderly manner.
- 24 Section 115AD(3) of the Act 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").
- 25 Section 115AD(6) of the Act 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.
- 26 Section 115AD(7) of the Act provides that the Commission on review can affirm, vary or quash the Commissioner of Police's decision.
- 27 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*)

- 28 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.

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

- 29 The applicant has been charged with assault and convicted in the 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 herself.
- 30 The evidence clearly demonstrates that the applicant engaged in a stupid and dangerous act whether or not she intended to throw the glass at the victim or at his feet.
- 31 I accept that she was provoked and subject to the most unpleasant verbal attack however her reaction can only be described as an over reaction which resulted in significant injury to the victim.
- 32 I am influenced by the Magistrate's comment that he thought her at low risk of reoffending and thus a reduction in the period of the notice by 3 months and varying it to allow her to enter restaurants excluding those serving liquor without a meal licensed under section 60(4)(CA) of the Act is justified.

33 I therefore determine that the conditions of the applicant's barring notice be varied accordingly.

A handwritten signature in black ink, consisting of a cursive 'J' followed by 'F' and 'M', with a large loop at the end.

MR JIM FREEMANTLE
CHAIRPERSON