

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Complainant:** Commissioner of Police
(represented by Ms Emily O'Keefe of the State Solicitor's Office)
- Respondent:** Mr Jordan John McNeill
(represented by Mr Desmond McNeill)
- Commission:** Mr Eddie Watling (Deputy Chairman)
Mr Alex Zilkens (Member)
Ms Wendy Hughes (Member)
- Matter:** Complaint for disciplinary action pursuant to section 95
of the *Liquor Control Act 1988*
- Date of Hearing:** 21 October 2019
- Date of Determination:** 22 November 2019
- Determination:** The Commission finds that there is cause for disciplinary action and pursuant to sections 96(4)(m) and (n) of the Act the respondent is to:
- i. pay a monetary penalty of \$3,000 within 60 days of the date of this determination and to lodge with the Commission evidence of payment of the penalty within 28 days of making the payment; and
 - ii. undertake an anger management course and provide evidence to the Commission within 6 months of the date of this decision that the respondent has completed such a course.

Authorities referred to in Determination:

- *Australian Broadcasting Tribunal v Bond and others* (1990) 94 ALR 11 at 56
- *Simonsen v Rossi, the Registrar, Real Estate and Business Agents Supervisory Board* [2005] (WADC 76)
- *Tavelli v Johnson, Unreported, WADC Library No 960693, 25 November 1996*
- *Hughes and Vale Pty Ltd v New South Wales* [No 2] {1955} (HCA 28)

Background

1. On 12 July 2019, the Commissioner of Police (“the Police”) lodged a complaint with the Liquor Commission of Western Australia (“the Commission”) under section 95 of the *Liquor Control Act 1988* (“the Act”) to take disciplinary action against Mr Jordan John McNeill (“the respondent”) and Mr Desmond McNeill (“Mr D McNeill”) on the grounds that a person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business, is or becomes not a fit or proper person to hold that position or to be so interested - (s 95(4)(g) of the Act).
2. The respondent is a joint licensee of The Boardroom Subiaco, situated at Suite 1, 94 Rokeby Road, Subiaco, Western Australia (“the licensed premises”). The respondent is 24 years old.
3. By way of submissions dated 7 October 2019, the Police discontinued their complaint against Mr D McNeill and accordingly, the complaint proceeded against the respondent only.
4. This complaint relates to the following conduct by the respondent:
 - (1) the respondent’s traffic record including:
 - (a) 3 driving under suspension offences on 30 January 2016, 28 January 2018 and 26 September 2018;
 - (b) one conviction for using an unlicensed vehicle on 30 January 2016;
 - (c) one conviction for contravening a traffic signal on 28 January 2018; and
 - (2) an alleged assault perpetrated by the respondent at the licenced premises on 11 February 2018; and
 - (3) hostile and offensive behaviour towards police at the licenced premises on 22 January 2019 (following on from similar behaviour in 2013 and 2014).
5. The complaint incorporated the following:
 - (1) CCTV footage and timeline;
 - (2) photographs of injuries to Victim S;
 - (3) statements from Senior Constable Brewer, Senior Constable Lavers, First Class Constable Viles and Constable Jenkins;
 - (4) incident reports dated 15 July 2013 and 11 February 2018;
 - (5) statement of Victim S dated 12 February 2018;
 - (6) statement of Victim O dated 12 February 2018;
 - (7) statement of Witness O dated 16 October 2019;
 - (8) disclosable Court/Traffic Outcomes in respect of the respondent;

- (9) letter (unsigned and undated) from the respondent to the Director of Liquor Licensing;
 - (10) move on notices dated 15 July 2013 and 19 October 2014;
 - (11) Small Bar Licence (no: 634209232116) and Extended Trading Permit (no: 0209232616); and
 - (12) intervention by police dated 28 October 2016 in respect of the application of small bar liquor licence by Jordan John McNeill and Jaegan Francis McNeill.
6. On 7 October 2019, the Police filed their submissions.
 7. On 8 October 2019, Mr D McNeill (on behalf of himself and the respondent) filed submissions.
 8. On 13 October 2019, the Police filed responsive submissions.
 9. No further submissions were filed by the respondent or the Police.
 10. A hearing by the Commission was held on 21 October 2019.

The Hearing

11. The Commission, pursuant to section 17(1)(e) of the Act, gave its approval to Mr Desmond McNeill as the respondent's father, to appear on behalf of the respondent.

Submissions on behalf of the Police

12. Counsel for the Police relied substantially on the written submissions filed on 7 October 2019 and the responsive submissions filed on 13 October 2019.
13. Counsel confirmed that the discontinued complaint (7 October 2019) was against Mr D McNeill.
14. Counsel acknowledged the following errors in the written submissions:
 - (1) in the submissions dated 7 October 2018, the incident in February 2018 was incorrectly dated as 10 February 2018. The correct date is 11 February 2018;
 - (2) in the submissions dated 7 October 2018, it was incorrectly stated that Victim S stated that he was punched by the respondent. Victim S in fact stated that the respondent's friend punched him not the respondent (para [22] of responsive submissions); and
 - (3) in the submissions dated 7 October 2018, it was incorrectly stated that the injuries were sustained by Victim O. The injuries were in fact sustained by Victim S (para [22] of responsive submissions).

15. In respect of the incident on 11 February 2018, Counsel submitted the following:
 - (1) while the respondent did not cause the injury to Victim S, the respondent shoved Victim S and failed to diffuse the situation and continued to engage both individuals by verbally inflaming the situation;
 - (2) the respondent pursued Victim S and Victim O to outside the licensed premises; the respondent's conduct is demonstrative of the respondent's unsuitability to be a licensee;
 - (3) the incident could have been avoided by the respondent by locking the doors to the licensed premises and/or calling the police;
 - (4) the respondent has a tendency towards violent and belligerent behaviour;
 - (5) other than the respondent accepting that he should have locked the door, the respondent has not demonstrated any remorse for his conduct or gained any insight into his behaviour. This displays a lack of maturity; and
 - (6) the fact that the police did not charge the respondent for this incident does not mean the respondent did not do anything wrong or that his behaviour was acceptable.
16. In respect of the incident on 22 January 2019, Counsel submitted that as a licensee, the respondent should not be outside the licenced premises at 5:45am intoxicated and shoving members of the public and swearing at the police. This incident demonstrates the respondent's belligerent character, his lack of maturity and his inability to deal with people in positions of authority, which he is required to do as a licensee.
17. In respect of the respondent's other incidents relating to traffic offences and move on notices, Counsel submitted that this demonstrates his disregard for the law.
18. In summary, Counsel submitted that due to the above incidents, the respondent is not a fit and proper person to hold a position of authority in, a body corporate that holds a liquor licence, or an interest in the business or the profits or proceeds of the business and the appropriate disciplinary action is that he be permanently disqualified

Submissions on behalf of the respondent

19. Mr D McNeill relied substantially on the written submissions lodged on 8 October 2019.
20. Mr D McNeill submitted that the move-on notices on 15 July 2013 and 19 October 2014 occurred a long time ago when the respondent was young and impressionable and that he was not a licensee at those times when these move on notices were issued.
21. Mr D McNeill submitted that the respondent in his 6000 to 8000 hours as a licensee has had no infringements in respect of the licence.
22. In respect of the of the incident on 11 February 2018, Mr D McNeill submitted the following:

- (1) it was conceded that the licensed premises should have been locked and that this was an error of judgment by the respondent. However, it was further submitted that even if the doors were locked, Victim S and Victim O would have barged their way in;
 - (2) the licensed premises were closed and the respondent and his friend were inside the licensed premises;
 - (3) Victim S and Victim O were intoxicated and were being anti-social;
 - (4) to de-escalate the situation, the respondent asked both individuals to leave;
 - (5) Victim S threw his bag on to the ground which is an indication that he wanted to fight;
 - (6) Victim S did not just push the respondent's friend, it was a double fistful punch to the respondent's friend's chest;
 - (7) the respondent was appropriate in the way he behaved and that is why the respondent was never charged criminally for his conduct;
 - (8) the Police never issued a move on notice to the respondent so it cannot be said that the respondent was causing an issue or being belligerent; and
 - (9) the respondent's training as a licensee has been exemplary.
23. Mr D McNeill referred to there having been cases before the Commission where, in his opinion, the offending by the licensee was more serious than that of the respondent but the disciplinary actions to the licensees in these cases were less serious than permanent disqualification from being a licensee.
24. Mr D McNeill submitted that the respondent does not need to demonstrate remorse because he did nothing wrong which was further reiterated when no criminal charges were filed against the respondent. It was further submitted that the respondent did apologise to his family and that in fact the Victim S and Victim O should apologise to the respondent.
25. Mr D McNeill submitted that permanently disqualifying the respondent from being a licensee would ruin the respondent's future and collapse the family business.
26. The respondent directly addressed the Commission and stated that:
- (1) he should have locked the door;
 - (2) he asked the Victim S and Victim O to leave;
 - (3) Victim S and Victim O were the aggressors; the respondent was passive and he tried to calm the individuals down;
 - (4) even if he had locked the door to the licensed premises, Victim S and Victim O would have barged their way in anyway;
 - (5) he did not pursue Victim S and Victim O to outside the licensed premises to initiate an altercation but he went outside to the area between the bar and the al fresco area to move them away from the general vicinity of the licensed premises and he could not have done any more to diffuse the situation.

Determination

27. Where a complaint has been lodged under section 95 of the Act, the Commission may take disciplinary action provided it is satisfied, on the balance of probabilities, that the ground(s) upon which the complaint is based has, or have, been made out.
28. The purpose of the disciplinary action contemplated in section 95 of the Act is to protect the public by maintaining the standards of behaviour for licensees, or a person holding a position of authority in a body corporate that holds a licence, or who is interested in the business or the profits or proceeds of the business. The object of disciplinary proceedings is not to punish those against whom a complaint has been made out.
29. It is a primary responsibility of the licensing authority to provide adequate controls over the persons directly and indirectly involved in the sale, disposal and consumption of liquor and that the professional standards of the industry and the creditworthiness of the persons in responsible positions must be maintained at the highest level.
30. Section 95(4) of the Act specifies that there shall be proper cause for disciplinary action if:
 - (1) *“the licensee has been convicted of an offence in any jurisdiction, that, in the opinion of the Director may imply that the person is unfit to be the holder of a licence”* (section 95(4)(f)(ii));
 - (2) *“the licensee otherwise is, or becomes, an unsuitable person to hold a licence under the Act”* (section 95(4)(g));
 - (3) *“a person holding a position of authority in a body corporate that holds a licence, or who is interested in the business or the profits or proceeds of the business, is or becomes not a fit and proper person to hold that position or to be so interested”* (section 95(4)(h)).
31. Where there is a wide discretion as to the disciplinary sanction to be imposed, as specified in section 96(1) of the Act, the Commission is required to consider all of the circumstances surrounding the conduct which is the subject of the complaint and to exercise its discretion accordingly.
32. Although section 33(6) of the Act sets out the matters for consideration when determining whether an applicant is a fit and proper person to hold a licence, it also provides some guidance to a determination of a complaint under section 95:

“Where the licensing authority is to determine whether an applicant is a fit and proper person to hold a licence or whether approval should be given to a person seeking to occupy a position of authority in a body corporate that holds a licence, or to approve a natural person as an approved unrestricted manager, an approved manager or a trustee:

 - a) *the creditworthiness of that person; and*
 - aa) *the character and reputation of that person; and*
 - b) *the number and nature of convictions of that person for offences in any jurisdiction; and*
 - c) *the conduct of that person in respect to other businesses or to matters to which this Act relates; and*

d) *any report submitted, or intervention made, under section 69, are relevant and amongst the matters to which consideration may be given.*”

33. There are many authorities concerning the meaning of ‘fit and proper’ and when deciding whether a person is ‘fit and proper’, many factors may be considered including:

- (1) character and reputation (*Australian Broadcasting Tribunal v Bond and others (1990) 94 ALR 11 at 56*);
- (2) honesty (*Simonsen v Rossi, the Registrar, Real Estate and Business Agents Supervisory Board [2005] (WADC 76)*); and
- (3) previous convictions (*Tavelli v Johnson, Unreported, WADC Library No 960693, 25 November 1996*).

34. The purpose of the words ‘fit and proper’ is to give the decision maker the widest possible scope for judgement (*Hughes and Vale Pty Ltd v New South Wales [No 2] {1955} (HCA 28)*).

35. In *Tavelli and Johnson (supra)*, a case relating to an Inquiry Agent Licence under the *Agents Licensing Act 1954*, Wheeler J noted:

“...some factors relevant to prior convictions could be listed. ‘Convictions will, in my view, generally be regarded as more serious in the statutory context if:

- (1) they occur in the course of or relate to the carrying out of the occupation of inquiry agent;*
- (2) they are offences of dishonesty, broadly understood. This is so because, as I apprehend it, the Act is concerned with the integrity of the gathering and presenting of material in Court and that material may be suspect, where the character of the agent suggests dishonesty;*
- (3) they occur whilst the person is the holder of a licence under the Act; and*
- (4) they are otherwise so serious, either in themselves or as representing a course of disregard for the law, as to reflect particularly adversely on the character of the person committing them.”*


36. The Commission also refers to *Australian Broadcasting Tribunal v Bond (supra)* where Toohey and Gaudron JJ held that:

“The expression ‘fit and proper’, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of ‘fit and proper’ cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct or reputation (because it provides indication of likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.”

37. The Commission's primary considerations in deciding whether the respondent is a "fit and proper" person are therefore:
- (1) the relationship between the incidents and the respondent's roles and responsibilities under the *Act*;
 - (2) whether the incidents are of such a nature that they reflect adversely on the character and reputation of the respondent to a serious degree; and
 - (3) whether the actions of the respondent show a course of disregard for the law and/or provide an indication of likely future conduct.
38. The Commission accepts that the respondent's move-on notices on 15 July 2013 and 19 October 2014 were quite some time ago when the respondent was much younger. However, the Commission notes that the respondent still has a tendency to be belligerent and violent as demonstrated by the incident on 22 January 2019 where the respondent was in a physical altercation with members of the public outside the licensed premises and swore at the Police. This incident is of particular concern as the respondent, in his role as licensee, is required to deal with public officials on a consistent basis and with a balanced approach.
39. In respect of the incident on 11 February 2018, the Commission:
- (1) accepts that the respondent was in a difficult situation as the Victim S and Victim O were intoxicated and were attempting to enter the licensed premises which was closed and attempted to do so twice;
 - (2) accepts that the al fresco area forms part of the licensed premises so the respondent and his friend were outside the licensed premises in the middle of the 2 licensed areas so that the respondent could get Victim S and Victim O to leave the general vicinity;
 - (3) rejects the respondent's submissions that:
 - (a) *the Respondent could not have done any more to diffuse the situation. The respondent has admitted that the doors to the licensed premises should have been locked before the Victim S and Victim O arrived at the door. However, the Respondent could have attempted to lock the door while these individuals were there or locked the door after they had left the licensed premises the first time, and if that didn't work, the Respondent should have contacted the police;*
 - (b) *the Respondent was passive and tried to calm the Victim S and Victim O down. The CCTV footage shows the Respondent behaving aggressively towards them;*
 - (c) *even if the Respondent had locked the door to the licensed premises, these individuals would have barged their way in anyway. This is pure speculation;* and
 - (d) *just because the Police did not charge the Respondent or issue a move on notice to the Respondent, that means that the Respondent's behaviour was acceptable and appropriate for a licensee. The standard of proof and procedure for criminal proceedings and the standard of proof and procedure for these civil disciplinary proceedings are different;* and
 - (4) notes that the respondent has not demonstrated any remorse for the above incident; and
 - (5) notes that while Victim S and Victim O were clearly difficult to deal with, the respondent needs to learn to deal with these difficult situations better by being more

mature and by controlling his emotions so as to de-escalate such situations even if members of the public are acting unreasonably, especially as these persons will often be intoxicated.

40. In the circumstances, the Commission determines that there are sufficient grounds for disciplinary action, however, the disciplinary action sought by the Police is not considered justified because there are not sufficient grounds to find that the respondent is not a fit and proper person to hold a licence for the following reasons:
- (1) the respondent was in difficult situation as he had two intoxicated individuals attempting to enter the licensed premises several times and while the respondent stepped out of the licensed premises area to engage the individuals, he did so to get these individuals to leave the general area between the 2 licensed premises (between the bar and the al fresco area);
 - (2) the respondent has admitted that the door to the licensed premises should have been locked which indicates to the Commission that the respondent now appreciates that in the future the respondent will know how to deal with such a situation better;
 - (3) the respondent has not had any infringements on his record as licensee since the licence was issued on 11 October 2017;
 - (4) the respondent is only 24 years old and should be offered an opportunity to learn from this experience. The object of disciplinary proceedings is not to punish the respondent; and
 - (5) permanently disqualifying the respondent from being a licensee would adversely affect the Respondent's welfare and have a disproportionate impact on the respondent's future.
41. While the Commission has not found that the respondent is not a fit and proper person to hold a licence, there is some disciplinary action warranted arising from the incidents on 11 February 2018 and 22 January 2019.
42. Consequently, the Commission requires the respondent to:
- i. pay a monetary penalty of \$3,000 within 60 days of the date of this determination and to lodge with the Commission evidence of payment of the penalty within 28 days of making the payment; and
 - ii. undertake an anger management course and provide evidence to the Commission within 6 months of the date of this decision that the respondent has completed such a course.
43. The respondent is also on notice that any further breaches under the Act will be viewed gravely by the Commission and without pre-empting matters, there would be a strong likelihood that the Commission, if satisfied that there were further grounds for disciplinary action, would impose the penalty advocated by the Police in this matter.



EDDIE WATLING
DEPUTY CHAIRPERSON