

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr K I M

Respondent: Commissioner of Police
(represented by Mr Andrew Mason of State Solicitor's Office)

Commission: Mr Seamus Rafferty (Chairperson)

Matter: Application seeking review of a barring notice issued pursuant to section 115AA(2) of the *Liquor Control Act 1988*

Date of lodgment of Application: 20 May 2016

Date of Determination: 3 August 2016
(on papers)

Determination: The application is dismissed.

- 1 This is an application for the review of a barring notice pursuant to section 115AD of the *Liquor Control Act 1988* (“the Act”) made by Mr K I M (“the applicant”). The history of the matters is as follows:
 - **20 February 2016:** Alleged incidents involving the applicant at the Gosnells Hotel;
 - **3 March 2016:** Applicant charged with four (4) counts of indecent assault contrary to s.323 of the *Criminal Code*;
 - **14 April 2016:** Inspector M.H. Longman of the Western Australia Police signs a barring notice pursuant to section 115AA of the Act on behalf of the Commissioner of Police;
 - **6 May 2016:** The applicant is served with a copy of the barring notice;
 - **20 May 2016:** The applicant applied to the Liquor Commission of Western Australia for a review of the barring notice pursuant to section 115AD of the Act.
- 2 The Commission has been provided with the following materials to determine the application:
 - a) barring notice dated 15 April 2016;
 - b) notice of application dated 20 May 2016;
 - c) WAPOL Running Sheet for Incident Report 220216 1700 15755;
 - d) photographs of the incident;
 - e) unsigned statement of Suzanne Leigh Crosbie;
 - f) statement of Material Facts;
 - g) incident Report number 220216 1630 11972;
 - h) respondent’s outline of submissions dated 9 June 2016;
 - i) applicant’s submissions and attachment of various photographs dated 28 June 2016.
- 3 All of the materials referred to were before the respondent at the time of making a decision to issue a barring notice.
- 4 The Commission has determined that the matter can properly be dealt with on the papers.

STATUTORY FRAMEWORK

- 5 The Commissioner of Police (“the Commissioner”) has the power to ban people from licensed premises pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises:
- a) been violent or disorderly; or
 - b) engaged in indecent behaviour; or
 - c) contravened a provision of any written law.
- 6 The Commissioner may delegate the power conferred by section 115AA of the Act on any member of the Police Force or or above the rank of Inspector pursuant to section 115AB of the Act.
- 7 The underlying purpose of a barring notice is not to penalise an individual but to act as a protective mechanism.¹

BASIS OF THE APPLICATION

- 8 In his written submissions, the applicant effectively argues that the barring notice should not have been issued on the basis that:
- a) he is an avid supporter of live music;
 - b) his whole social life revolves around attending licensed premises for social activities not associated with consuming alcohol;
 - c) his intoxication on the night of the offending behaviour was out of character and potentially due to various reasons out of his own control;
 - d) there is no possibility that he will act in the same way again.

NATURE OF THE INCIDENT

- 9 the Statement of Material Facts in respect to the four (4) charges of indecent assault contrary to section 323 of the *Criminal Code* reveals that during the course of a concert at the Gosnells Hotel on 20 February 2016, the applicant:
- a) touched the breast, stomach and thigh of the complainant without her consent;

¹ *Van Styn v Commissioner of Police* (LC19/2011)

- b) shortly after the first incident, he forcibly inserted his tongue into the complainant's mouth;
 - c) placed his hands on the breasts of another complainant without her consent;
 - d) placed his hands on the breasts of the first complainant without her consent.
- 10 The applicant pleaded guilty to the four (4) charges in the Magistrates Court and fines were imposed.
- 11 Based on the totality of information before the Commission, I am of the view that the conduct of the applicant was serious as it interfered with the enjoyment of others, was of an overtly sexual nature and committed at a time when the applicant was highly intoxicated. His level of intoxication is best reflected by the notation in the Statement of Material Facts that, 'he stated he could not remember what had happened that evening.'

DETERMINATION

- 12 I am satisfied that there was a proper basis for the delegate of the Commissioner to exercise the power conferred by section 115AA of the Act on the basis that there were reasonable grounds to conclude that the applicant had, on licensed premises engaged in indecent behaviour. Those grounds included:
- a) the information that had been provided by the complainants as to the actions of the applicant at the Gosnells Hotel on 20 February 2016;
 - b) the Gosnells Hotel is a licensed premise;
 - c) the touching of intimate areas of females without their consent by a highly intoxicated individual when viewed objectively falls within the definition of "indecent". Indecency is that which offends contemporary moral standards and the behaviour of the applicant clearly fell within that category of behaviour.
- 13 The basis upon which the applicant contends that the barring notice should be varied or quashed is not compelling. To the contrary, the only basis upon which the Commission can consider his application is a number of subjective assertions that are purely self-serving in nature. There is nothing put before the Commission by the applicant that corroborates his assertions that his conduct was out of character and that he will not engage in such conduct again.
- 14 Section 5(1)(b) of the Act sets out that one of the primary objects of the Act is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. In the absence of any specific statutory criteria that sets out the basis upon which a review of a barring notice should be determined, I consider that section 5(1)(b) of the Act is the primary criteria upon which this review is to be determined.

- 15 In the absence of any evidence that indicates that it is unlikely that the applicant will engage in the type of behaviour involving unwarranted touching of females in the future, other than his own self-serving assertions, there is no basis to vary or quash the decision made at first instance. The making of the barring notice was in accordance with the primary object of the Act referred to in that it will protect other members of the public from being subjected to the same type of behaviour by the applicant whilst on licensed premises.
- 16 The application for review is dismissed.



SEAMUS RAFFERTY
CHAIRPERSON