

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: JW
(represented by Mr Ben Jackson of Holborn Lenhoff Massey)

Respondent: Commissioner of Police
(represented by Ms Angelyn Seen of State Solicitor's Office)

Commission: Ms Elanor Rowe (Presiding Member)

Matter: Application seeking review of a barring notice pursuant to section 115AD of the *Liquor Control Act 1988*.

Date of Hearing: On papers

Date of Determination: 18 May 2020

Determination:

1. The barring notice issued by the Commissioner of Police to JW on 4 January 2020 is varied to permit the Applicant to enter the licensed areas located at:
[REDACTED]
[REDACTED]
2. JW is precluded from consuming alcohol at both venues as permitted in Order 1.
3. The remainder of the Barring Notice is to remain.

Authorities referred to in determination:

- *Van Styn v Commissioner of Police* (LC19/2011)
- *Batty v Commissioner of Police* (LC 33/2011)
- *Quartermaine v Commissioner of Police* (LC 46/2011)
- *Piscopo v Commissioner of Police* (LC 55/2011)
- *Lewer v Commissioner of Police* (LC 58/2011)

Background

- 1 On [REDACTED], an incident ("the Incident") occurred at licensed premises, namely [REDACTED] ("the Venue") involving the Applicant (aged [REDACTED] at the time).
- 2 As a result of such Incident, the Applicant was charged with assault occasioning bodily harm, contrary to section 317(1) of the *Criminal Code* ("Charge").
- 3 At the time of the Application, a plea had not been entered by the Applicant to the Charge.
- 4 As a further result of the Incident, the Commissioner of Police ("the Respondent") issued a barring notice ("Barring Notice") pursuant to section 115AA(2) of the *Liquor Control Act 1988* ("the Act") prohibiting the Applicant from entering specified licensed premises in Western Australia for a period of six months, namely:
 - a. all hotel licences issued under section 41;
 - b. all small bar licences issued under section 41A;
 - c. all nightclub licences issued under section 42;
 - d. casino licences issued under section 44;
 - e. all liquor store licences issued under section 47;
 - f. all club licences issued under section 48;
 - g. all restaurant licences issued under section 50;
 - h. all producer's licences issued under section 55;
 - i. all wholesaler's licences issued under section 58;
 - j. all occasional licenses issued under section 59; and
 - k. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
- 5 The Barring Notice was served on the Applicant on 4 January 2020 and will expire on 30 June 2020.
- 6 On 30 January 2020, the Applicant lodged an Application for Review in respect of the Barring Notice pursuant to section 115AD of the Act. The Applicant has elected to have the review determined on the papers.
- 7 The Incident which gave rise to the Barring Notice is referred to in the following documents:
 - a. The Application for Review ("Application");
 - b. The material relied upon by the Respondent's delegate when the Barring Notice was issued:
 - i. Brief Jacket [REDACTED]
 - ii. Statement of Material Facts;
 - iii. WA Police Incident Report;
 - iv. Victim Statement dated 12 August 2019

- v. WA Police Authority to Release Medical Information [REDACTED];
 - vi. Photograph showing the Victim's injuries;
 - vii. CCTV footage and a set of still images from the footage; and
 - viii. Copy of the Applicant's Court Outcomes – Criminal and Traffic.
- c. The Applicant's further submissions dated 26 February 2020; and
 - d. The Respondent's outline of submissions dated 27 February 2020.

The Incident

- 8 The circumstances of the Incident are summarised in the Statement of Material Facts as follows:
- a. At about 12.40am on Sunday 11 August 2019, the Applicant was standing in the line to the nightclub and was standing in front of the Victims group.
 - b. At about 12.40am the Applicant and the Victim's group provided their details to nightclub staff before entering the nightclub separately and heading to different areas of the club.
 - c. At about 1.15am, the Applicant was standing on the upper level outdoor terrace of the nightclub and after a few minutes the Victim arrived in the same area.
 - d. A friendly natured conversation took place, and then without warning, the Applicant head butted the Victim, with a forceful motion causing the Victim's nose to bleed and to experience pain.
 - e. The Victim attended [REDACTED] soon after and was advised he had a fractured nose requiring an operation. The operation was carried out on 22 August 2019 at [REDACTED] where the victim incurred [REDACTED] out of pocket expenses.
- 9 The evidential material (including the incident report and the CCTV material) is largely consistent with the summary as set out above.

Submissions by the Applicant

- 10 The Applicant submits that there is no utility or purpose in the Barring Notice. Furthermore, or alternatively, it is submitted that the Barring Notice is too broad and should be limited to the Applicant being prohibited from attending nightclubs (which is the type of venue where this incident is alleged to have occurred).

Personal Circumstances of the Applicant

- a. At the time of the Application, the Applicant was [REDACTED] years of age and had no criminal record.
- b. At school he was highly involved in extra-curricular activities such as [REDACTED].

- He went on to study a [REDACTED] course at the [REDACTED] [REDACTED] and continued to be involved in playing and coaching [REDACTED] [REDACTED]
- d. While at university he also began working as an [REDACTED] [REDACTED] where he continues to work and has gained a reputation as a diligent, hardworking and compassionate member of the team.
- e. After obtaining his [REDACTED] the Applicant began studying a [REDACTED]. While he was there he volunteered to work with a number of charitable organisations.
- f. On 14 January 2020, the Applicant began employment with a [REDACTED] as a [REDACTED]. He also continues to work as a volunteer.
- g. The Applicant attached a number of character references to the Application and submitted that the following can be gleaned from the various references:
- the Applicant is well thought of by his peers and by adults who know him;
 - he is generous with his time and in volunteering to assist others;
 - he has a responsible attitude towards alcohol; and
 - he does not have a history of aggressive or violent behaviour, even when drinking alcohol.

Effects of the Barring Notice on the Applicant

- h. Ever since arriving [REDACTED], the Applicant has played [REDACTED] for either [REDACTED] and he wishes to continue to be involved with those clubs. However, both clubs have licensed bars and the team is encouraged to attend team meals in these areas after every game (both home and away).
- i. The Barring Notice in its current form will prohibit him from attending the sporting clubs of which he is a member and will prohibit him from attending any other sporting facilities that have liquor licences attached to them.
- j. The [REDACTED] with which the Applicant works strongly encourages team members to attend Friday night drinks or have a meal in the city in order to build team rapport. The Applicant is concerned that if he is unable to do so, it will have a negative effect on his prospects of gaining employment with the firm.
- k. The Applicant has an active social life that includes going to restaurants with his friends at least once a month. The Barring Notice would have the effect of prohibiting him from doing so.
- l. The Applicant refers to a specific visit from family in [REDACTED] and a [REDACTED] [REDACTED] that he would be prevented from attending.

- m. It is submitted that the Barring Notice will have a significant effect on the Applicant and that it is in the community's best interest for the Applicant to be able to attend sporting clubs such as his [REDACTED] in order to play sport.

Circumstances of the Offence and relevance to the Barring Notice

- n. At the time of the Application, the matter had not been dealt with in the criminal courts; it was submitted therefore that the Applicant was circumscribed from providing much detail relating to the offence.
- o. There is CCTV footage that shows the Incident. However, it is unclear from the footage whether it is the Applicant that was involved in the Incident or another person.
- p. There is no evidence that the offence allegedly committed by the Applicant was because of any consumption of alcohol and there is no evidence that the Applicant was intoxicated on the night of the Incident. Furthermore, when the circumstances of the alleged offence are considered in conjunction with the Applicant's personal circumstances, there is no utility or purpose in the Barring Notice.
- q. Furthermore, or alternatively, it is submitted that the Barring Notice is too broad and should be limited to only preventing the Applicant from attending nightclubs (which is the type of venue where this Incident is alleged to have occurred). If the Barring Notice was limited only to nightclubs, the Applicant would then be able to play his chosen sport, go to licensed restaurants and attend family and social events held away from nightclubs.
- r. It is also submitted that if the Barring Notice is to remain then it should be for a much more limited timeframe, bearing in mind the relatively limited nature of the offending, the lack of evidence that excessive consumption of alcohol was responsible for the alleged assault and the Applicant's prior good history.

Submissions by the Respondent

- 11 The Respondent submits that the circumstances of the case warrant the exercise of the Respondent's discretion to issue a barring notice. The decision of the Respondent should not be quashed or varied, and the Barring Notice should be affirmed.

Why there are reasonable grounds to believe the Applicant has been violent or disorderly or contravened a provision of any written law

- a. In the present circumstances and on the evidence before the Respondent, a reasonable person would have been inclined to assent to, and not reject, the proposition that the Applicant had engaged in violent or disorderly conduct on licensed premises, or contravened a provision of any written law, being the *Criminal Code*.
- b. The Respondent refers to the materials relied upon when making the decision to issue the Barring Notice which demonstrate the following:
- the Applicant was involved in an altercation with the Victim at the Venue where the Applicant head butted the Victim; and
 - as a result of the head butt, the Victim suffered a fracture to his nose.