

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: [REDACTED]
(represented by Mr Jeremy Scudds of Porter Scudds Barristers & Solicitors)

Respondent: Commissioner of Police
(represented by Mr John Carroll and Mr Lachlan Geddes of State Solicitor's Office)

Commission: Ms Sarah Oliver (Presiding Member)

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

Date of lodgement of Application: 24 June 2020

Date of Determination: 5 November 2020

Determination: The decision under review is varied to include the words "(except for the sole purpose of competing in a bowling tournament)", immediately after the words "All club licences issued under section 48" in the Barring Notice issued on 20 May 2020.

Authorities referred to in Determination:

- *KRB v Commissioner of Police* (LC 33/2011)
- *LMC v Commissioner of Police* (LC 05/2012)
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *GML v Commissioner of Police* (LC 58/2011)
- *MP v Commissioner of Police* (LC 55/2011)
- *AQ v Commissioner of Police* (LC 46/2011)
- *SVS v Commissioner of Police* (LC 19/2011)
- *YZ v Commissioner of Police* (LC 13/2013)

Background

1. At around 7pm on Tuesday, 18 February 2020, an incident occurred outside the [REDACTED] [REDACTED] ("the Club"). The Club is a licensed premise for the purposes of the *Liquor Control Act 1988* ("the Act").
2. Following that incident, the applicant was charged with one offence of aggravated grievous bodily harm and one offence of aggravated assault, contrary to sections 297 and 313 of the *Criminal Code (WA)* respectively. The applicant has entered pleas of not guilty to these charges and they are currently pending before the Courts.
3. As a result of that incident, a delegate of the Commissioner of Police issued a barring notice under section 115AA(2) of the Act in respect of the applicant dated 20 May 2020 ("the Barring Notice"). The Barring Notice was served on the applicant on 12 June 2020.
4. The Commission of Police, or his delegate (pursuant to section 115AB), has the power to ban people from licensed premises, pursuant to section 115AA(2) of the Act, if he believes on reasonable grounds that the person has, on licensed premises "or in the vicinity of licensed premises":
 - (a) been violent or disorderly; or
 - (b) engaged in indecent behaviour; or
 - (c) contravened a provision of any written law.
5. A single incident can be sufficient to found a barring notice.
6. The underlying purpose of a barring notice is not to penalise an individual but to act as a protective mechanism (*SVS v Commissioner of Police* (LC 19/2011) at [12]; *KRB v Commissioner of Police* (LC 33/2011) at [35]; *MP v Commissioner of Police* (LC 55/2011) at [22]; *LMC v Commissioner of Police* (LC 05/2012) at [14]; *GML v Commissioner of Police* (LC 58/2011) at [20]).
7. The Barring Notice issued in this case (which remains in force until 19 May 2021) prohibits the applicant from entering licensed premises in Western Australia of the following licence classes:
 - (a) All hotel licences issued under section 41 of the Act (including hotel, hotel restricted, tavern and tavern restricted licences);
 - (b) All small bar licences issued under section 41A;
 - (c) All nightclub licences issued under section 42;
 - (d) Casino licence 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 licences issued under section 59; and
 - (k) All special facility licences issued under section 46 of the Act and regulation 9A of the *Liquor Control Regulations 1989* (WA).

Application for Review

8. On 24 June 2020, the applicant applied to the Commission for review of the decision to issue the Barring Notice, pursuant to section 115AD(3) of the Act. That application was filed within the time specified in section 115AD(4).

9. The applicant has now elected to have the review determined on the papers, and the matter was referred to me on 14 September 2020 for that purpose.
10. The primary issue for determination by the Commission on review, on the balance of probabilities (section 16(1)(b)(ii) of the Act), is whether there are reasonable grounds for believing that the barred person has been violent, disorderly or engaged in indecent behaviour on licensed premises or in the vicinity of licensed premises (*YZ v Commissioner of Police* (LC 13/2013) at [15]). In considering that issue, the relevant considerations include the nature and circumstances of the incident/s giving rise to the issue of the barring notice, the risk of the applicant behaving in a similar manner and the need to protect the general public, the licensee and the applicant themselves (*KRB v Commissioner of Police* (LC 33/2011) at [34]; *AQ v Commissioner of Police* (LC 46/2011) at [34]; *MP v Commissioner of Police* (LC 55/2011) at [21]; *GML v Commissioner of Police* (LC 58/2011) at [19]; *YZ v Commissioner of Police* (LC 13/2013) at [19]).
11. On review, the Commission can affirm, vary or quash the decision under review (section 115AD(3)). The Commission is to undertake full review of the materials before it and to make its own determination on the basis of those materials (*Hancock v Executive Director of Public Health* [2008] WASC 224 at [54] per Martin CJ, who was considering section 25(4) of the Act, which also includes a power to affirm, vary or quash a decision). The discretion to affirm, vary or quash a barring notice must be exercised consistently with the objects and purposes of the Act.
12. In conducting a review of the decision in this case, the Commission can only have regard to material that was before the delegate and “any information or document provided by the applicant” (section 115AD(6)). In the present case, the applicant has provided the Commission with one further document that was not before the delegate, being the transcript of the applicant’s interview with the Police conducted on 26 February 2020.
13. In the circumstances, I have had regard to the following material (pursuant to section 115AAD(6) of the Act):
 - (a) the material that was before the delegate of the Commissioner of Police when making the decision, consisting of:
 - i. brief jacket for brief number 1994628-1;
 - ii. statement of material facts for brief number 1994628-1;
 - iii. brief jacket for brief number 1994628-2;
 - iv. statement of material facts for brief number 1994628-2;
 - v. incident report prepared by Mr Johnston;
 - vi. CAD incident brief report LWP20021800138322;
 - vii. Incident report 180220 2110 14120 (redacted);
 - viii. a witness statement by the complainant, Mr Fairclough;
 - ix. authority to release medical information regarding the complainant;
 - x. four photographs of the complainant’s injuries;
 - xi. Global Diagnostics CT Scan report;
 - xii. a report by Dr Cooper;
 - xiii. a witness statement by Ms Elward;
 - xiv. a witness statement by Mr Johnston;
 - xv. a witness statement by Ms Brown;
 - xvi. a witness statement by Detective Senior Constable Hawley;
 - xvii. a photograph of the applicant; and
 - xviii. the applicant’s criminal history as at 20 February 2019.
 - (b) the Barring Notice;

- (c) the application for review filed by the applicant, the transcript of the applicant's interview with Police (which was sent to the Commission by the applicant's lawyer on 12 August 2020), and the outline of submissions filed on behalf of the applicant (received 13 August 2020); and
 - (d) the outline of submissions filed by the respondent (dated 3 September 2020).
14. I note that, in relation to the material that was before the delegate, the delegate indicated that he had before him at the time he made his decision, "Other: CCTV stills". By letter dated 3 September 2020, I have been advised by the respondent's lawyer that the reference to "Other: CCTV stills" is an error and that "no CCTV was before the delegate". Therefore, in conducting this review, I have not had access to any CCTV footage of the relevant incident.

Submissions of the Parties

15. The applicant submits that the Barring Notice is invalid and ought to be quashed.
16. The applicant raises, as a preliminary point, an argument that the Barring Notice is invalid as his conduct did not occur on a licensed premises, and therefore the Commissioner of Police had no jurisdiction to issue a Barring Notice. This submission is based on a misreading of the legislation. As set out at [4] above, the relevant conduct can occur at a licensed premise "or in the vicinity of licensed premises". In the present case, the incident occurred on a street that borders the Club, and immediately followed an incident at the Club. In the circumstances, I am satisfied that the relevant conduct occurred "in the vicinity of licensed premises", such that it could be the subject of a barring notice, assuming the other relevant requirements of the Act were met (which I will consider further below).
17. The applicant submits that there are no reasonable grounds to believe that the applicant's behaviour on the day in question was violent such as to warrant a barring notice, or even disorderly or indecent. It is submitted that he was at all material times a victim of abuse and violent / inappropriate actions committed against him. It is said that, in hitting the complainant once to the face, the applicant was acting in self-defence and not unlawfully.
18. The applicant argues that, at a criminal trial, the prosecution will bear the onus of proving beyond reasonable doubt that the applicant was not acting in self-defence. He is presumed to be innocent. It is argued that his actions were lawful and that he did not engage in any illegal violent or disorderly or indecent behaviour, other than to lawfully defend himself.
19. It is submitted that there is no need to protect the public from the applicant, because he has a limited criminal record. It is submitted that, by contrast, the complainants are known to Police, and that the public need protection from them rather than the applicant. It is said that this is "one clear case where unprovoked violence was used against a man going about his lawful business", and that it is not in the public interest that a person be punished for being the recipient of abusive/violent behaviour.
20. Further, whilst the applicant seeks review of the decision to issue the Barring Notice *in toto* (assuming it is validly issued), he is concerned in particular with the breadth of the notice. Relevantly, in his application for review (which has not been relevantly amended), he seeks a variation to the Barring Notice such as to allow him to enter the Club and other licensed bowling clubs. It is said in his application:

██████████ has qualified for the ██████████ to try and get into the ██████████ lawn bowls side for the ██████████ for lawn bowls. We seek to have the Notice varied to allow him to bowl but not drink on any lawn bowl premises.