

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

Applicant: KVK
(represented by Mr Frank Mestichelli of Corporate Counsel Lawyers)

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

Commission: Ms Kirsty Stynes (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: 30 August 2018

Date of Determination: 12 November 2018

Determination: The application for review is dismissed.

Authorities referred to in determination:

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

Background

- 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 KVK (“the Applicant”).
- 2 The history of this matter is as follows:
 - a. On 22 April 2018, there was an incident at the [REDACTED] involving the Applicant (“the Incident”);
 - b. As a result of his alleged participation in the Incident the Applicant was subsequently charged with Assault Occasioning Bodily Harm;
 - c. On 27 July 2018 Superintendent Gilbert on behalf of the Commissioner of Police issued a barring notice pursuant to section 115AA(2) of the Act (“Barring Notice”);
 - d. On 9 August 2018 the Applicant was served with the Barring Notice; and
 - e. On 30 August 2018 the Applicant applied to the Liquor Commission of Western Australia for a review of the Barring Notice pursuant to section 115AD of the Act.
- 3 The terms of the Barring Notice prevent the Applicant from entering the following licensed premises:
 - a. all hotel licences, however referred to, issued under section 41;
 - b. all nightclub licences issued under section 42;
 - c. Casino licence issued under section 44;
 - d. all club licences issued under section 48;
 - e. all restaurant licences issued under section 50;
 - f. all occasional licences issued under section 59; and
 - g. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulation 1989*.
- 4 The Barring Notice expires on 22 January 2019.
- 5 The Applicant has elected for the matter to be determined on the papers.
- 6 The Commission has been provided with the following material to determine the application:
 - a. Barring Notice dated 27 July 2018;
 - b. Service endorsement dated 9 August 2018;
 - c. Application for review dated 30 August 2018;
 - d. Document on behalf of the Applicant filed on 30 August 2018 and headed “Grounds for Application” with enclosing annexures:
 - A: Statement of Material facts;
 - B: Criminal History of Applicant dated 27 June 2018;

C: Form 6 Bail undertaking of the Applicant

- e. Respondent's Outline of Submissions dated 20 September 2018;
- f. Email of the Applicant dated 28 September 2018 in response to the Respondent's Outline of Submissions;
- g. Brief Jacket;
- h. Running Sheet dated 19 July 2018;
- i. Four photos of [REDACTED];
- j. Statement of [REDACTED] dated 22 April 2018;
- k. Incident Report from [REDACTED] dated 22 April 2018;
- l. WAPOL incident report [REDACTED];
- m. Incident brief report [REDACTED];
- n. Letter to [REDACTED] from WAPOL Licensing Enforcement Unit requiring CCTV footage;
- o. Document titled "CCTV timeline of evidence";
- p. [REDACTED] CCTV footage;
- q. Photograph of Applicant [REDACTED];
- r. Details of a Restraining Order issued in Magistrates Court at Perth on 27 April 2018; and
- s. Details of Police 72hr order issued on 21 August 2017.

Statutory Framework

- 7 The Commissioner of Police ("the Commissioner") has the power to ban persons from licensed premises pursuant to section 115AA of the Act if the Commissioner 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.
- 8 The Commissioner may delegate the power conferred by section 115AA of the Act on any member of the Police Force of or above the rank of Inspector pursuant to section 115AB of the Act.
- 9 The underlying purpose of a Barring Notice is not to penalise an individual but to act as a protective mechanism.¹

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

Applicant's submissions

- 10 In the Applicant's written submissions received on 30 August 2018, the Applicant outlines the following relevant matters:
- a. The Applicant was at the time of the incident under the influence of alcohol;
 - b. The incident was isolated but not uncommon arising out of an acrimonious breakup with the Applicant's former girlfriend;
 - c. A verbal altercation between all persons commenced;
 - d. The Applicant struck [REDACTED] once to the mouth;
 - e. The Applicant advances a number of reasons for the punch including the following:
 - the Applicant acted before "he had time for his passion to cool";
 - the Applicant formed the view that he was going to be attacked;
 - the Applicant felt directly threatened;
 - it was the acrimonious history and the verbal provocation that caused the physical response;
 - he was in the wrong place at the wrong time;
 - f. [REDACTED] required three sutures;
 - g. the Applicant regrets his actions;
 - h. the aggression was not directed at an unknown third party;
 - i. the Applicant does not have a history of violence; and
 - j. the Barring Notice is too broad and onerous on the Applicant.
- 11 The Applicant requests that the Barring Notice be varied so as to preclude the Applicant from entering the Northbridge and Perth Central District bounded by Mitchell Freeway, Fitzgerald Street, Bulwer Street, Lord Street, Victoria Avenue, Riverside Drive and Mounts Bay Road ("the Location").

Submissions on behalf of the Commissioner of Police

- 12 The Commissioner of Police outlines the following:
- a. there is sufficient evidence to establish that the applicant engaged in an act of violence on the licenced premises;
 - b. the conduct giving rise to the barring notice is the very type of behaviour the Act was designed to overcome;
 - c. there is a real and not insubstantial risk the Applicant is likely to engage in similar behaviour in the future;
 - d. imposition of the notice for a period over five months will serve as an important reminder to the Applicant of the importance of behaving appropriately on licensed premises, and will provide a level of protection from the public for this type of behaviour; and

- e. the factor leading to the Applicant's behaviour appears to have been the particular person subject to the behaviour rather than a geographical location.

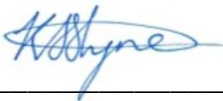
Determination

- 13 Notwithstanding the Applicant's submissions to vary the Barring Notice, the Commission in considering an application pursuant to section 115AD is to review the decision and determine whether to affirm, vary or quash the decision.²
- 14 On the evidence provided it is clear that the circumstances which gave rise to the Incident were as a result of the history between the Applicant, his ex-partner and the complainant. It seems the animosity had been ongoing for some time.
- 15 The exact verbal actions of the Applicant and the complainant during the Incident, are unclear on the evidence.
- 16 The Applicant refers to the CCTV footage outside the [REDACTED] where another male can be seen approaching the Applicant to suggest that a number of friends of [REDACTED] were looking menacingly towards him inside the [REDACTED]. There is no foundation provided by the Applicant as to how he is aware that the male is a friend of [REDACTED].
- 17 The CCTV footage from inside the [REDACTED] is of poor quality and relevant persons are obscured from view for portions of the footage. However, the footage clearly shows the Applicant punch the complainant after the complainant has stepped backwards.
- 18 The Applicant's submissions accompanying the original application and subsequent email provides a number of reasons as to why he punched Mr [REDACTED]. The reasons are devoid of consistency. The Applicant advances that he was threatened and on the other hand was acting in response to provocation and before "he had time for his passion to cool."
- 19 I am satisfied that there was a proper basis for the delegate of the Commissioner of the Police to exercise the power conferred by section 115AD as there were reasonable grounds to conclude that the Applicant had, on licensed premises acted in a violent manner.
- 20 One of the primary objectives of the Act is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. The Barring Notice was issued in accordance with a primary objective of the Act.
- 21 I accept that the Applicant does not have a history of violent or disorderly conduct having regard to a copy of the Applicant's criminal history. However, the Applicant asserts whilst the incident was isolated it is not uncommon following an acrimonious breakup with the Applicant's former girlfriend.
- 22 Barring notices are intended as a protective mechanism for the public and to assure members of the public that licenced premises are environments where they can remain safe from violent

² Liquor Control Act 1988, at section 115AD(7).

or antisocial behaviour. The protection of the licensee and applicant must also be considered.³

- 23 I have considered the Applicants submissions in relation to the variation of the Barring Notice to the Location only. The variation is not consistent with minimising harm or ill-health caused to people or any group of people due to the use of liquor. The Applicant's actions were not dependant on geographical location.
- 24 I note that the Barring Notice expires on 22 January 2019. Considering the violent behaviour and the risk of re-offending the period of the Barring Notice is justified.
- 25 The application for review is dismissed.



KIRSTY STYNES
PRESIDING MEMBER

³ LC19/2011.