

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: CBG
(Represented by Mr Brendon Slattery of Mackenzie & Mackenzie Barristers & Solicitors)

Respondent: Commissioner of Police
(represented by Ms Isabel Inkster of the State Solicitor's Office)

Commission: Ms Pamela Hass (Presiding Member)

Matter: Application seeking review of Barring Notice issued pursuant to section 115AD of the *Liquor Control Act 1988*.

Date of lodgement of Application: 5 July 2022

Date of Hearing: 24 October 2022

Date of Determination: 15 November 2022

Determination: The Application for review is dismissed and the barring notice is affirmed in accordance with section 115AD(7) of the *Liquor Control Act 1988*.

Authorities referred to in Determination:

- *SVS v Commissioner of Police* (LC 19/2011)
- *KRB v Commissioner of Police* (LC33/ 2011)
- *BEL v Commissioner of Police* (LC 37/2018)
- *That's Entertainment (WA) Pty Ltd v Commissioner of Police* [2013] WASC 75; 228 A Crim R 201

BACKGROUND

1. On 30 April 2022, an Incident (“the Incident”) occurred at licensed premises, namely the [REDACTED] (“the Premises”), involving the Applicant.
2. As a result of such Incident, the Applicant was charged with unlawful wounding contrary to section 301(1) of the *Criminal Code*. At the date of this Liquor Commission hearing this charge had not been dealt with by the courts.
3. As a result of such Incident(s) the Commissioner of Police (“the Respondent”) has issued a Barring Notice (“the Barring Notice”) dated 1 June 2022, pursuant to section 115AA(2) of the *Liquor Control Act 1988* (“the Act”), prohibiting the Applicant from entering specified licensed premises of the following classes in Western Australia for a period of approximately 10 months, expiring 30 April 2023:
 - 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 licence issued under section 44;
 - e) All liquor store licences issued under section 47;
 - f) All club licences issued under section 47;
 - 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 and regulation 9A of the *Liquor Control Regulations 1989*.
4. The Barring Notice was served on the Applicant on 14 June 2022.
5. On 5 July 2022, the Applicant lodged an Application for Review of the Barring Notice under section 115AD of the Act. The Applicant has elected to have the review determined by hearing.
6. The Incident(s) giving rise to the Barring Notice is referred to in the following documents:
 - a) The Application for review dated 5 July 2022 (“the Application”).
 - b) The evidential material relied on by the Respondent:
 - i. Brief Jacket [REDACTED];
 - ii. Statement of Material Facts;

- iii. W.A Police Detected Incidents Report;
 - iv. Statement of [REDACTED];
 - v. Statement of [REDACTED];
 - vi. Photographs of the Victim;
 - vii. Photographs of the Applicant from CCTV stills;
 - viii. Disclosable Court Outcomes for the Applicant – Criminal and Traffic; and
 - ix. Footage of CCTV camera.
- c) Application for Review lodged by the Applicant dated 5 July 2022 with grounds for the Application and the Applicant's submissions filed 19 September 2022; affidavit of [REDACTED]; letter of offer of employment from [REDACTED]; and confirmation of resignation letter [REDACTED].

THE INCIDENT

7. The circumstances of the Incident are summarised in the Statement of Material Facts as follows:
- a) At about 9:00pm on Saturday 30 April 2022 the Applicant was at the Premises.
 - b) Also present at the Premises was [REDACTED] (the Victim) who was with a group of friends celebrating a [REDACTED].
 - c) An altercation (verbal) broke out among a group of people at the Premises.
 - d) The Victim approached that group to attempt to diffuse the situation.
 - e) The Applicant approached the Victim and a heated verbal exchange occurred.
 - f) During this interaction, the Applicant had been holding a glass. The Applicant threw the glass at the victim. The glass made contact with the Victim's left eyebrow and shattered on impact.
 - g) The glass caused a 3-4 cm laceration.
 - h) The Victim attended [REDACTED] where she received seven stitches and later returned to the hospital where she was advised she had a fractured eye socket. The Victim has also noticed an impact on her left peripheral vision since the Incident.

SUBMISSIONS BY THE APPLICANT

8. The Applicant initially listed her Grounds for Application on 5 July 2022 as follows:
 1. *"[The] Applicant objects to Barring Notice dated on 1 June 2022, posted on 2 June 2022 and received on 14 June 2022 as the Applicant intends to plead not guilty to the alleged offence.*
 2. *The Applicant is not in receipt of full disclosure by prosecution in relation to the alleged offence and is at the present time unable to provide full and comprehensive submissions as to the grounds of objection.*
 3. *In the alternative the Barring Notice is too onerous on the Applicant. The Applicant lives and works [REDACTED] region and is limited to only a few social activates where alcohol is not served reducing her quality of life and enjoyment.*
 4. *The Applicant seeks leave to provide comprehensive grounds in due course upon full disclosure of the offence."*
9. The Applicant is represented by Mr Brendon Slattery of McKenzie & McKenzie Barristers & Solicitors.
10. Further grounds are set out in submissions from Mr Slattery filed on 19 September 2022 dated 17 May 2019.
11. These grounds state that the Applicant has pleaded not guilty to the charge and if acquitted she would have been unjustly subject to the Barring Notice.
12. The Barring Notice is too wide and given the place of residence it severely restricts her ability to attend restaurants and eateries for family gatherings as most are licensed.
13. There is no suggestion that the Applicant was intoxicated at the time and no evidence that she will behave in a similar manner as alleged in other licensed premises.
14. The Applicant is of prior good character. Reference is made to her previous [REDACTED] in her affidavit.
15. The Barring Notice has affected her income. The Applicant indicates that she had to resign from employment which required her attendance at licensed premises to undertake a course. This resulted in a significant diminution of earnings.
16. The Applicant has provided affidavit evidence sworn in September 2022 denying that she knows [REDACTED] who allegedly witnessed the interaction with the Victim, who had signed a statement that she was able to identify the Applicant [REDACTED].
17. The Applicant has further provided a list of licensed premises, a letter from [REDACTED], and a contract of employment and letter of offer [REDACTED].

SUBMISSIONS BY THE RESPONDENT

18. The Respondent is represented by the State Solicitor's Office.
19. The Respondent states that there is sufficient material before the Commission to establish that there are reasonable grounds that the Applicant has, on licensed premises, engaged in violent or disorderly behaviour, or contravened a written law, and that the Commission's discretion should not be exercised to quash or vary the Barring Notice.
20. The Respondent asserts that the materials before it when making the decision the subject of the Application (referred to at paragraph 6) demonstrate that:
 - a) the Applicant can be identified as the aggressor in the altercation with the Victim at the Premises;
 - b) the Applicant threw a glass at the Victim's face;
 - c) the glass broke on impact; and
 - d) the Victim suffered a 3-4cm laceration to the left eyebrow, a fractured eye socket and loss of vision.
21. From this material the Respondent concludes that there is support for the belief that the Applicant has unlawfully wounded the Victim and thereby contravened a written law, i.e., section 301(1) of the *Criminal Code*.

22. Further, the Respondent says that:

"There is also evidence that the Applicant was violent and disorderly at the Premises. The act which forms the basis of the unlawful wounding charge was clearly violent. Further, the Applicant's behaviour before and after the unlawful wounding can reasonably be described as disorderly. The Incident Report records that the Applicant, in company with at least two males, made multiple attempts to join [REDACTED] [REDACTED]... The Incident Report also records that another person reported to the police that she had been punched in the face by the Applicant at the Premises on 30 April 2022, after the altercation with the Victim.

It is understood that, to date the Applicant has been charged with but not convicted of an offence contrary to s 301(1) of the Code. However, a conviction is not a pre-requisite for the Commissioner to consider a person's conduct for the purposes of a barring notice.

Collectively, the above evidence establishes reasonable grounds for the belief the Applicant has, on a licensed premises, been violent or disorderly and/or contravened a provision of a written law."

23. The Respondent then asserts that the next question for the Commission is whether to quash, vary or affirm the Barring Notice. The purpose of the Barring Notice is to protect the general public, the licensee and the Applicant herself. The nature of the Incident indicates that the Barring Notice is warranted to ensure those purposes are achieved.