

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

Applicant:



Respondent:

Commissioner of Police
(*represented by State Solicitor's Office*)

Commission:

Ms K 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:**

3 November 2020

Date of Hearing:

On the papers

Date of Determination:

4 May 2021

Determination:

The barring notice is affirmed and remains in place ending on 8 May 2021.

Authorities considered in the determination:

- *SVS v Commissioner of Police (LC19/2011)*

Review of Barring Notice

Background

1. This is an application for the review of a barring notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* (WA) (**the Act**) submitted by [REDACTED] (**the applicant**).
2. The history of this matter is as follows:
 - a. The applicant was served with a notice under s 115AA of the Act (**barring Notice**) prohibiting the applicant from entering the following specified class of licensed premises:
 - i. all hotel licences, however referred to, issued under section 41;
 - ii. all small bar licences issued under section 41A;
 - iii. all nightclub licences issued under section 42;
 - iv. casino licence issued under section 44;
 - v. all liquor store licences issued under section 47;
 - vi. all club licences issued under section 48;
 - vii. all restaurant licences issued under section 50;
 - viii. all producer's licences issued under section 55;
 - ix. all wholesaler's licences issued under section 58;
 - x. all occasional licences issued under section 59; and
 - xi. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulation 1989*.
 - b. It is unclear when the Barring Notice was served on the applicant as the Service Endorsement is blank save for the name of the applicant. I accept the Barring Notice was served for the purpose of this application for review as the applicant has not raised a dispute as to service and self-evidently is aware of the Barring Notice.
 - c. The Barring Notice expires on 8 May 2021. By letter to the applicant dated 19 October 2020, the Inspector advised the applicant in writing that the Barring Notice comes into effect from the day of service to 8 May 2021.
3. On 3 November 2020, the applicant applied to the Liquor Commission of Western Australia for a review of the Barring Notice pursuant to section 115AD(3) of the Act. The Application was supported by [REDACTED] and enclosed a number of character references.
4. On 23 November 2020 the respondent's Primary Submissions were received by the Commission.

5. On 27 November 2020 the applicant requested an extension as material lodged by the respondent was not received by the applicant.
6. On 3 December 2020 I granted an extension for submissions to be received.
7. On 22 December 2020 the applicant filed responsive submissions.
8. On 4 January 2021 the respondent requested the opportunity to provide a brief response to the applicant's responsive submissions. The application was granted.
9. On 18 January 2021 the respondent's responsive submissions were received.
10. The Commission has determined that the matter can be dealt with on the papers.
11. The Commission has been provided with the following material to determine the application:
 - a. Application for review dated lodged 3 November 2020;
 - b. Copy of the Barring Notice;
 - c. Statement of applicant's Primary Submissions including letters from the following:
 - i. Letter from [REDACTED] dated 3 September 2020;
 - ii. Letter from [REDACTED] dated 17 August 2020;
 - iii. Letter from [REDACTED] dated 19 August 2020.
 - d. Letter from the State Solicitors Office dated 19 November 2020 enclosing a USB of evidentiary material as follows:
 - i. Barring notice issued with service Endorsement;
 - ii. Statement of Material Facts;
 - iii. Statement of [REDACTED] with photographs dated 14 August 2020;
 - iv. Photographs of CCTV footage [REDACTED] and of applicant at [REDACTED] Police Station;
 - v. Criminal and Traffic report of applicant;
 - vi. Body worn camera footage (BWC footage);
 - vii. Video footage of [REDACTED] [REDACTED] (CCTV footage).
 - e. The respondent's Primary Submissions dated 24 November 2020;
 - f. The applicant's Responsive submissions dated 22 December 2020;
 - g. The respondent's Responsive submissions dated 18 January 2021.

Nature of the Incident

12. The applicant was charged with Assaulting a Public Officer and the allegation can be summarised as follows (Incident):
 - a. On 8 August 2020 the applicant was at [REDACTED] (Licensed Premises);

- b. There was an altercation inside the premises with a [REDACTED] patron ([REDACTED] Patron) and the applicant was evicted by a security officer;
- c. Police arrived and attempted to separate persons outside;
- d. The applicant punched [REDACTED] (Victim) twice to the face with a closed fist;
- e. The applicant was detained, handcuffed and escorted to a Police van;
- f. The applicant was conveyed to [REDACTED] Police Station.

Statutory Framework

- 13. The Commissioner of Police (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.
- 14. 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.
- 15. The underlying purpose of a barring notice is not to penalise an individual but to act as a protective mechanism.¹
- 16. A single incident is sufficient to give rise to a barring notice.²

Primary Submissions of the applicant

- 17. In the applicant's primary submissions received by letter dated 29 October 2020, and [REDACTED] the applicant argues that the Barring Notice should be varied in the following terms:
 - a. to cease on 31 December 2020; and
 - b. to restrict the applicant from attending pubs/hotels in the [REDACTED] area between the hours of 9pm to 7am.
- 18. The applicant's primary submissions outlined the following:
 - a. on the night the applicant had attended several pubs;
 - b. at [REDACTED], the applicant had a verbal argument with the [REDACTED] Patron at the Licensed Premises;
 - c. the applicant attempted to call [REDACTED] to leave when she was forcefully grabbed with her hands behind her back by a security guard;
 - d. [REDACTED];
 - e. the applicant was immediately surrounded by Police, and not realising it was Police, lashed out wildly with her fists connecting with the Victim's face twice;
 - f. the applicant [REDACTED] when she got home;

¹ *SVS v Commissioner of Police* (LC19/2011).

² *Supra*.

- g. in considering the Barring Notice, the applicant requests that the following to be taken into account:
 - i. the letter from [REDACTED] dated 3 September 2020;
 - ii. during the applicant's two month bail period, the applicant was given the same ban and abided by it;
 - iii. the impact the ban has had on the applicant and her family, namely that it is difficult to find a café that is not a licenced venue;
 - iv. the Victim suffered no injuries;
 - v. the Incident occurred during [REDACTED] and therefore the ban should be restricted to this time frame;
 - vi. the Magistrate took into account the applicant's [REDACTED] age, immediate remorse and the applicant's personal circumstances addressed in the letter from [REDACTED] dated 3 September 2020; and
 - vii. the applicant has been a patron of various other licensed premises without incident.
19. The applicant's submissions were supported by several letters, namely:
- a. letter from [REDACTED] dated 3 September 2020 outlining that matters personal to the applicant appear to have caused her [REDACTED]
 - b. letter from [REDACTED] dated 17 August 2020, in which [REDACTED] speaks highly of the applicant and asserts the applicant's behaviour in the Incident was out of character; and
 - c. letter from [REDACTED] dated 19 August 2020, in which [REDACTED] speaks very highly of the applicant and her deep remorse.

Submissions on behalf of the Commissioner of Police

20. The respondent submits that a reasonable person would have been inclined to assent to, and not reject, the proposition that the applicant has, on or in the vicinity of the Licensed Premises, engaged in violent or disorderly conduct, or contravened a provision of any written law, being the *Criminal Code*. The respondent submits the following in support:
- a. the applicant was at the Licensed Premises;
 - b. the applicant became involved in an altercation with a [REDACTED] Patron at the Licensed Premises, and was ejected by security;³
 - c. the applicant shoved the security officer;⁴
 - d. the applicant punched the Victim in the face with a closed fist, verbally abused police officers and initially resisted arrest;⁵ and
 - e. the Victim was punched whilst acting in the course of his duties.
21. In considering whether to exercise a discretion to quash, vary or affirm the Barring Notice, the respondent suggests the Commission ought to consider:
- a. **The nature and circumstances of the Incident giving rise to the Barring Notice**
 - i. the applicant punched the Victim, was verbally abusive and shoved a security officer as well as a [REDACTED] Patron involved in the initial altercation;

³ Statement of [REDACTED].

⁴ CCTV footage.

⁵ Statement of [REDACTED], CCTV and BWC footage.

- ii. the applicant accepts, given the letter from [REDACTED] dated 3 September 2020, that [REDACTED] may well have increased her agitation to some degree. However, the applicant had already had an altercation with a [REDACTED] Patron sufficient enough to be ejected;
- iii. When police arrived, the applicant was released by security and then looked directly at the Victim's face and subsequently punched him twice;⁶
- iv. [REDACTED] the applicant continued to verbally abuse Police.

The respondent submits when the above is considered, it cannot be accepted that [REDACTED] was the catalyst for the assault on the Victim. The security guard was the person involved [REDACTED] rather than the Victim. The applicant also then attempted to attack the [REDACTED] Patron from the original altercation before the Victim was assaulted. The CCTV footage shows the applicant being violent towards anyone attempting to restrain her whilst in her aggressive state.

The [REDACTED] does not support an assertion that the applicant was violent as a result of [REDACTED]. The applicant was significantly intoxicated and highly agitated from her altercation with the [REDACTED] Patron inside the Licensed Premises. The BWC audio reveals that while the applicant was at the Police vehicle, she refers to [REDACTED] and yelled [REDACTED]. At the time there is no suggestion that the applicant was violent due to [REDACTED] being removed by the security guard.

b. The risk of the applicant behaving in a similar manner

- i. the respondent accepts the applicant does not have a criminal record;
- ii. the applicant has provided character references that suggests the applicant's behaviour was out of character and that the applicant is deeply remorseful;
- iii. no submission was written by the applicant herself;
- iv. the [REDACTED] was likely to be a minor factor given the applicant's explanation to Police officers' at the time of the Incident;
- v. the applicant's behaviour demonstrated a disregard towards reasonable and lawful directions of those in authority;
- vi. the Incident demonstrates the applicant may have a tendency to become aggressive and violent when intoxicated, and to lose control so as to become prone to lashing out indiscriminately.

c. The need to protect the public and the Licensee;

- i. there is a significant role that the Barring Notice has to play in terms of its protective purpose with regard to the public, those in authority who are trying to manage licensed premises, and the Police;
- ii. the Barring Notice serves a protective role for the [REDACTED] Patron with whom the applicant had the original altercation. Moreover, for the duration of the Barring Notice, there is a significantly reduced prospect of the applicant and the [REDACTED] Patron encountering one another in circumstances where it is likely that either or both are intoxicated.

⁶ Statement of [REDACTED].

22. In determining whether to vary the Barring Notice, the respondent submits its subsidiary power should only be exercised in certain cases. The respondent submits the applicant's personal circumstances do not warrant variation of the Barring Notice and that nothing in the Act suggests that upon review the Commission is to balance the personal interests of the applicant with the purposes of the Act. The purposes of the Act are paramount. Little weight should be given to it being difficult for the applicant and her family to select appropriate venues in which to enjoy a meal together.

Responsive Submissions of the applicant

23. The applicant relevantly asserts the following in response:
- a. the applicant was [REDACTED];
 - b. there are discrepancies in the evidence as to whether the Victim received an injury, there is no injury noted in the Statement of Material Facts;
 - c. the applicant initially resisted Police as she believes she was taken by surprise, was confused, and was [REDACTED]. The applicant became less agitated as the Police handcuffs were applied and had been eased on her wrists;
 - d. the applicant accepted that her behaviour was serious, however says that swinging her arm was not done with force and that it looked worse given no injury was sustained by the Victim;
 - e. the fact that the applicant was surprised about being arrested and that the applicant's instant apology indicated her immediate remorse;
 - f. that the applicant's behaviour does not demonstrate a tendency to be violent (given her history of being a patron of various licensed premises) and that it was the first time she had acted in such a violent manner;
 - g. including all licensed premises is "*an over the top response*";
 - h. the applicant suggests the respondent's assertion that the Barring Notice ought to protect the general public is "*absurd*", as the [REDACTED] Patron was known to the applicant;
 - i. the applicant says that whether the security guard [REDACTED] is immaterial;
 - j. the applicant has not submitted a response to the Commission due to her limited experience in these matters. Further, a letter was not required for court and her decision was informed by the court process;
 - k. the applicant claims she is not a violent, aggressive, unstable or abusive patron and that a single poor decision is not indicative of future behaviour.

Responsive submissions of the respondent

24. The respondent's responsive submissions were tailored to two points raised by the applicant in her responsive submissions provided on 22 December 2020, and concern the following:
- a. the role the applicant's altercation with the [REDACTED] Patron played in relation to the assault on the Victim;
 - b. the role that the Police handcuffs may have played in the applicant's continued aggressive behaviour after she had been restrained and arrested.
25. The respondent asserts the applicant understood she was under arrest for her assault on the Victim rather than the incident inside the Licensed Premises with the [REDACTED] Patron. The

applicant was informed of this by the Victim [REDACTED]. When informed, the applicant appears stunned and, for the first time, apologises. The Victim then states, [REDACTED]. In response, the applicant states [REDACTED]. This explanation is repeated at [REDACTED] in the [REDACTED] footage. [REDACTED]

26. The applicant, at paragraph [7] of her primary submissions suggests that her agitated and aggressive behaviour, after her arrest, was at least, in part, because of the discomfort of being handcuffed by the Police. However, the respondent asserts the applicant had been behaving in an aggressive manner in the time leading up to her arrest. The applicant had been engaged in an altercation inside the Licensed Premises, had looked at the Victim directly in the face, and then punched him twice. The applicant continued to abuse Police after her arrest [REDACTED]
27. The respondent accepts the discomfort sustained as a result of being handcuffed may have played a minor role in exacerbating the aggressive behaviour, however, says that the applicant's behaviour inside and outside the Licensed Premises, particularly towards the Victim, has greater relevance to the Barring Notice. Even if the handcuffs played a significant role, the applicant's behaviour was an overreaction that arguably demonstrates a tendency to lose self-control and behave aggressively, at least while intoxicated. The respondent argues it is relevant that the applicant had been restrained and continued to behave abusively and aggressively.

Determination

28. I am satisfied having regard to the material before me that there are reasonable grounds to conclude that the applicant was violent or disorderly on a licensed premises.
29. Having found there were reasonable grounds it follows for the Commission to consider whether to exercise its discretion to quash, vary or affirm the Barring Notice.
30. When considering whether to exercise my discretion I have had regard to the primary and secondary objects of the Act. In particular, section 5(1)(b) of the Act, "to minimise harm or ill health caused to people, or any group of people, due to the use of liquor" and 5(2)(d) of the Act "to provide adequate controls over, and over the person directly or indirectly involved in, the sale, disposal and consumption of liquor".
31. In considering whether to quash, vary or affirm the Barring Notice, I have considered all materials, the nature and circumstances of the incident, the need to protect the public, and the risk of the applicant behaving in a similar manner.
32. I note the primary purpose of a Barring Notice is to protect the public or a licensee and it is not to act as a punishment to the applicant.
33. There were three different persons involved in an altercation with the applicant on the night, being:
 - a. the initial [REDACTED] Patron, which led to a security officer from the Licensed Premises becoming involved,

- b. the security officer, who ejected the applicant [REDACTED]
[REDACTED] and
c. the Victim [REDACTED]
34. Having regard to the statement of the Victim and CCTV footage, I reject the suggestion put forward by the applicant that she did not know that Police officers were involved.
35. I accept the letter from [REDACTED] dated 3 September 2020 which claimed that [REDACTED]
[REDACTED]
[REDACTED] However, I reject the assertion that the applicant's punches were in response [REDACTED] as the applicant does not refer to this when giving an explanation to Police immediately after the event. The applicant states in one portion of the Body worn camera footage (BWC) [REDACTED]
[REDACTED] referring to the [REDACTED] Patron. Whilst it is understandable that the applicant may not have wanted to discuss [REDACTED] with Police, I find, having regard to the behaviour of the applicant and the balance of the evidence, that [REDACTED]
[REDACTED] was not the primary factor that contributed to the actions of the applicant towards the Victim.
36. After the applicant punched the Victim twice to the face, the applicant also acted in a disorderly manner with officers in attendance. I accept, that the handcuffing of the applicant may have contributed to her behaviour however it is clear from the [REDACTED] footage that she wanted to be let go entirely and was frustrated with being detained by Police. The statement of material facts reflects that no injuries were sustained however the Victim in his sworn Police statement stated, [REDACTED] The minor laceration is difficult to see on the photo provided of the Victim. However, I accept the Victim's account as to the injury sustained and observe that it may be, given the Victim did not suffer long lasting injuries and did not seek medical attention, that the statement of material facts reflected no injuries being sustained. However, my determination as to the injury sustained does not make a material difference to my determination as to whether or not there should be a variation to the Barring Notice. The violent behaviour is the act of punching the Victim to the face twice.
37. The applicant has no prior criminal record. The applicant is a [REDACTED] at the time of the offending. The applicant's character references speak very highly of the applicant. Whilst I accept that this may be out of character for the applicant, her behaviour on this night was appalling. The paramount objective of the Act is to protect the public and the current terms of the Barring Notice ensures the objectives of the Act are met. I am not satisfied that varying the Barring Notice is appropriate. The behaviour of the applicant exhibited on the night and in particular towards the Victim cannot be diminished and the protection of the public is paramount.
38. The Barring Notice is affirmed.


K STYNES
PRESIDING MEMBER