

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Ms A B
(self represented)

Respondent: Commissioner of Police
(represented by Mr Nikolas Barron of State
Solicitor's Office)

Commission: Mr Eddie Watling (Acting Chairperson)
Mr Evan Shackleton (Member)
Mr Alastair Bryant (Member)

Matter: Application pursuant to section 25 of the
Liquor Control Act 1988 for a review of a
decision by the delegate of the Director of
Liquor Licensing to find the applicant not a fit
and proper person to be approved as an
unrestricted manager.

Date of Determination: 28 May 2014
(on papers)

Determination: Decision of the delegate of the Director of
Liquor Licensing is affirmed.

Authorities referred to in the determination:

Tavelli v Johnson (Unreported, WASC Library No 960693, 25 November
1996)

Background

1. On 8 October 2013, Ms A B (“the applicant”) lodged an application for approval as an unrestricted manager in accordance with section 102B of the *Liquor Control Act 1988* (“the Act”). Included with the application was a copy of a Statement of Attainment for the training unit Management of Licensed Premises - MLP1 (Manage Legislative Responsibilities for the Sale, Supply and Service of Alcohol) and a National Police Certificate valid as at 18 September 2013.
2. The National Police Certificate recorded that the applicant had been convicted of five (5) illicit drug related offences between May 2008 and September 2010 and two “driving under the influence” convictions in September 2009 and January 2011 (excess 0.08% and 0.05% respectively).
3. On 13 January 2013, the Commissioner of Police (“the Police”), pursuant to section 69(6)(c)(i) and (iii) of the Act, lodged a Notice of Intervention for the purpose of making representations on the grounds that the applicant is not a fit and proper person to hold a position of authority in licensed premises, pursuant to section 102B of the Act.
4. The submission lodged in support of the Notice of Intervention listed a further six (6) illicit drug related offences between July 1985 and November 1987 and identified as the most serious and pertinent of those offences in establishing whether the applicant is a fit and proper person to be an approved manager as being:
 - possess a prohibited drug (Cannabis);
 - possess a smoking utensil used for smoking prohibited drug.
5. An additional three (3) traffic convictions between September 1984 and November 1987 were also listed.
6. On 23 January 2014, the Department of Racing, Gaming and Liquor wrote to the applicant to advise of the Police Notice of Intervention and requested the applicant to provide a written submission, outlining the circumstances of these convictions and why she should be considered a fit and proper person under section 33(6) of the Act.
7. An undated response was received from the applicant and on 17 February 2014, a character reference was received from the President of the [name suppressed] Bowling Club.
8. On 5 March 2014, the delegate of the Director of Liquor Licensing refused the application.
9. An application for review of the decision was lodged with the Liquor Commission (“the Commission”) on 4 April 2014.
10. A submission in relation to the question of whether the applicant is a fit and proper person was lodged by the Police on 29 April 2014.
11. At the request of the applicant, this matter before the Commission is to be adjudicated on the papers.

Submissions by the Applicant

12. The applicant submitted that the earlier prohibited drug offences were committed when she was very naive and that she took the blame for so called friends, which she now regrets.
13. The last two offences were at her own indiscretion, however, a lesson was learned and she has now given up smoking drugs.
14. The reason for applying for approval as an unrestricted manager is to be available on the premises of the [name suppressed] Bowling Club to help out on the limited occasions when other staff are unavailable.
15. The applicant advised that she has been the bar chairperson for the last two years and is a very active member of the Club.
16. Should the application be successful she would only operate as an approved manager in the event that the Club had no manager at the time and then try and get someone else as soon as possible. The approved manager status would only be used at the [name suppressed] Bowling Club and nowhere else.

Submissions on behalf of the Intervener

17. It was submitted that the Director's conclusion that the applicant is not a fit and proper person to be approved as an unrestricted manager is persuasive for three primary reasons:
 - i. the applicant's criminal history demonstrates a disregard for the law that reflects adversely on her character;
 - ii. the applicant's criminal history demonstrates qualities that are incompatible with the responsibilities and obligations associated with being an approved manager under the Act; and
 - iii. the Act intends to ensure that persons with a history of drug offences are not placed within positions of authority within licensed premises.
18. With regard to the applicant's criminal history, between 1985 and 2010, she has been convicted of numerous charges related to the use, cultivation and supply of cannabis. This demonstrates that she has used cannabis over a prolonged period of time, notwithstanding the fact that she has been charged and convicted of drug offences at several points within that period. Her most recent convictions were recorded just over two years apart, and both within the last six (6) years.
19. It was submitted that the pattern of offending suggests that the applicant's use of cannabis was not limited to a period of her youth, and not confined to personal use of the drug. It also suggests that the criminal justice system did not dissuade the applicant from using prohibited drugs.
20. As a result, it is submitted that the applicant's criminal record indicates a disregard for the law that would make her other than a fit and proper person to hold a position of responsibility within licensed premises.

Determination

21. On a review under section 25 of the Act, the Commission may –

- a. *affirm, vary or quash the decision subject to the review; and*
- b. *make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance; and*
- c. *give directions –*
 - i. *as to any question of law, reviewed; or*
 - ii. *to the Director, to which effect shall be given; and*
- d. *make any incidental or ancillary order.*

22. By operation of section 33(6) of the Act:

- i. *Where the licensing authority is to determine whether an applicant is a fit and proper person to hold a licence or whether approval should be given to a person seeking to occupy a position of authority in a body corporate that holds a licence, or to approve a natural person as an approved unrestricted manager, an approved restricted manager or a trustee –*
 - (a) the creditworthiness of that person; and*
 - (aa) the character and reputation of that person; and*
 - (b) the number and nature of any convictions of that person for offences in any jurisdiction; and*
 - (c) the conduct of that person in respect to other businesses or to matters to which this Act relates; and*
 - (d) any report submitted, or intervention made, under section 69,*

are relevant and amongst the matters to which consideration may be given.

23. With regard to the status of the applicant as a fit and proper person under the Act, the Commission has closely considered the circumstances and timeframe of the criminal convictions.

24. There have been eleven (11) criminal convictions for drug offences, two (2) driving under the influence convictions and three traffic offences recorded against the applicant between 1985 and 2010.

25. The applicant has stated that following the last two (2) offences (in September, 2010) she “learnt a lesson” and has given up smoking. Even before that decision, not once did she ever smoke drugs before going to the Club.

26. Whilst the applicant is to be commended for this change in lifestyle, the fact remains that these are serious offences over a long period of time, evidencing a

high degree of disregard for the law.

27. The question now to be addressed by the Commission is whether the offences and the disregard for the law are such actions as to render the applicant not a fit and proper person for approval as an unrestricted manager under the Act.
28. As pointed out by the respondent, in *Tavelli v Johnson* (Unreported, WASC Library No 960693, 25 November 1996) Wheeler JA observed that prior convictions may be relevant to an application if those convictions represent a course of disregard for the law so as to reflect adversely on the character of the person committing them.
29. Although there is no evidence that the applicant has committed any offences while working on licensed premises, the nature of offences as referred above are nonetheless highly relevant when considering an application for approval to hold a position of responsibility within a licensed premises.
30. Whilst it is almost four years since the applicant has had a drug related conviction recorded against her, the number and consistency of offences prior to 2010 demonstrate a propensity by her to disregard the law, and raises the question as to whether it is appropriate for her to be deemed a fit and proper person to be engaged in a position of authority at licensed premises.
31. The Commission is cognisant that it is a primary responsibility of the licensing authority to provide adequate controls over the persons directly and indirectly involved in the sale, disposal and consumption of liquor and that the professional standards of the industry and the creditworthiness of the persons in responsible positions must be maintained at the highest level.
32. In light of the several offences committed over a prolonged period of time, the Commission is not persuaded that approval of this application is in the public interest and finds that the applicant is not a fit and proper person under the Act to be approved as an unrestricted manager.
33. The application is therefore refused.



EDDIE WATLING
ACTING CHAIRPERSON