

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

Applicant: Mr A W

Respondent: Commissioner of Police
(*represented by Mr Liam Nicholls of State Solicitor's Office*)

Commission: Mr Jim Freemantle (Chairperson)

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

Date of Determination: 27 March 2015
(on papers)

Reasons for determination: 30 April 2015

Determination: The Application is granted and the decision of the delegate of the Commissioner of Police to issue a barring notice to Mr A W is quashed.

Authorities referred to in the determination:

- *Briginshaw v Briginshaw* (1938) 60 CLR
- *Minister's statement to the House, Western Australia, Parliamentary Debates, Legislative Assembly 19 October 2010, 7925*

Background

- 1 At around 1 a.m. on the morning of 13 December 2014, Mr A W (“the applicant”) was involved in an altercation at the Air Nightclub which also involved a number of other males including Mr C L J (“Mr J”) and Mr K E W (“Mr W”).
- 2 The circumstances of the incident are set out in the statement of First Class Constable Hayes and the incident report from the Air Nightclub.
- 3 The applicant was subsequently served with a barring notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* (“the Act”) barring him from all licensed premises, except those premises licensed under a liquor store licence, for a period of 3 months.
- 4 On 11 February 2015, the applicant lodged an application for review of the barring notice pursuant to section 115AD of the Act with the Liquor Commission requesting the matter be determined on papers.

Applicant’s Submission

- 5 The applicant submits that he was pushed from behind on two occasions in rapid succession.
- 6 An argument then developed during which the applicant attempted to pacify the person who pushed him.
- 7 A third male then entered the argument and pushed the applicant hard enough for him to lose his balance.
- 8 The applicant admits he threw a punch but purely in self-defence.
- 9 His next recollection was being on the floor with several people on top of him; crowd controllers freed him and evicted a number of males involved.
- 10 The applicant was then asked to leave which he did without any show of reluctance or resistance.
- 11 The applicant and others were interviewed by police officers who approached them after they were evicted. During the interview one other police officer approached from the direction of the nightclub and informed these officers that the applicant was the aggressor.
- 12 On 6 January 2015, the applicant received a phone call from a police officer who informed him that the assault charges had been laid, however on review of the CCTV no charges would be proffered as the footage showed the unknown male pushing him.

- 13 The applicant has worked as a crowd controller in Perth over an 8 year period and is concerned that the barring notice will reflect adversely on him and that he will be perceived as a violent person which he claims he is not.

Submissions on behalf of the Commissioner of Police

- 14 The applicant was involved in a fight at the Air Nightclub on the morning in question and was removed from the premises.
- 15 Whilst speaking with another person (identified as Mr K E W) another male (identified as Mr C L J) pushed the applicant and the applicant retaliated by pushing Mr J and another person who is seen on CCTV footage to kick and punch the applicant.
- 16 The fight continues until Mr W tackles the other person to the ground and security staff break up the fight and escort the participants off the premises.
- 17 The premises incident report records that 2 males (1 Caucasian male black shirt and ponytail and 1 African male blue shirt) began striking two other males before other parties also got involved.
- 18 The Commissioner also relies on the statement of First Class Constable Phillip Hayes identifying the applicant as an aggressor.
- 19 Council for the Commissioner of Police also made comprehensive written submissions on the applicable law and I do not consider it necessary or helpful to repeat them, however I will refer to them as necessary during the course of the determination below.

Determination

- 20 Two of the primary objects of the Act at section 5(1) are to minimise harm or ill health caused to people or any group of people due to the use of liquor and to regulate the sale, supply and consumption of it.
- 21 In 2010, the Act was amended “to give protection to the general public from people who have engaged in disorderly or offensive behaviour, who threaten people and who put people in dangerous situations” (*Minister’s statement to the House, Western Australia, Parliamentary Debates, Legislative Assembly 19 October 2010, 7925.*)
- 22 The Minister further stated that the legislation gave the Commissioner of Police the power to issue barring notices to persons engaging in antisocial behaviour at licensed premises and this power is set out in section 115 of the Act.
- 23 It is common ground that Mr J initiated the chain of events leading to the barring notice being issued to the applicant and also that the applicant retaliated.

- 24 The issue for me to determine is whether the applicant's behaviour went beyond reasonable steps to defend himself against attack.
- 25 Even allowing for the likelihood that the applicant's account of events would be framed so as to show himself in the best light possible, I consider his Personal Statement to be an honest account of the incident as he saw it.
- 26 The incident report from the premises gives an account of the incident which quite apparently commences when the altercation had been going for some period of time and makes no mention of the initiating events as recorded in the police evidence, no doubt because the Approved Manager signing the report, and the crowd controllers involved in the incident did not arrive on the scene until the fight was underway.
- 27 The statement of First Class Constable Hayes is necessarily in part reflecting what he was told by others. He also viewed the CCTV footage and drew certain conclusions, one of which was that the Applicant threw punches.
- 28 I found the CCTV footage somewhat poor in quality and had great difficulty in satisfying myself as to the amount of aggression exhibited by the Applicant.
- 29 In weighing up the evidence I was conscious of the applicant's concern as to the possible consequences of the barring notice. Hence I took note of the statement by *Latham CJ in Briginshaw v Briginshaw at 343.4* "*the standard of proof required by a cautious and responsible tribunal will naturally vary in accordance with the seriousness of the issue....*."
- In the same case Dixon J at 362.3 stated "*.... the gravity of the consequences flowing from a particular finding (is a) consideration which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.*"
- 30 I accept that consequences are potentially serious for the applicant.
- 31 I accept in large measure his version of events and conclude that he acted reasonably in his own defence.
- 32 It should not be inferred that First Class Constable Hayes' statement is anything but the truth of what was conveyed to him nor that he lacked diligence as he attempted to verify events from the CCTV footage.
- 33 I discounted the Incident Report for the simple reason that it was incomplete for the reasons I gave earlier (refer paragraph 26 above). Once again this should not be taken as any reflection on the relevant staff in the discharge of their responsibilities.

34 In making this finding, the other matters raised by the respondent fall away.

35 The application is therefore granted.

A handwritten signature in black ink, consisting of a cursive 'J' followed by 'F', 'R', 'E', 'E', 'M', 'A', 'N', 'T', 'L', 'E'.

JIM FREEMANTLE
CHAIRPERSON