

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

Applicant: Mr S V S
(represented by Mr Peter Fraser of Dwyer Durack)

Respondent: Commissioner of Police
(represented by Ms Leanne Atkins of WA Police)

Commission: Mr Jim Freemantle (Chairperson)
Mr Greg Joyce
Ms Helen Cogan

Matter: Application seeking review of barring notice pursuant to section 115AD of the *Liquor Control Act 1988*

Date of Hearing: 11 May 2011

Date of Determination: 17 May 2011

Determination: The decision of the Delegate of the Commissioner of Police to issue a Barring Notice to Mr S V S is quashed

Introduction

- 1 On 24 February 2011 a delegate of the Commissioner of Police issued a Barring Notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* (the Act) to prohibit Mr V S from entering any licensed premises in Western Australia, except those premises licensed under a liquor store licence, for a period of six months.
- 2 On 4 March 2011 Mr V S lodged a Notice of Appeal in respect of the Barring Notice pursuant to section 115AD(3) of the Act.
- 3 The appeal was heard by the Commission on 11 May 2011. At the end of the hearing the Commission advised the parties that the decision to issue the Barring Notice would be quashed and reasons would be published in due course. These are those reasons.

Submissions on behalf of the Commissioner of Police

- 4 It was submitted that there is nothing in the Act which requires the Commissioner of Police to demonstrate multiple, serial, habitual or repetitious conduct in order to ground the making of a Barring Notice. A single incident is sufficient to establish the belief based on reasonable grounds required by section 115AA(2).

- 5 The Barring Notice was issued following an incident that occurred on 15 February 2011 at licensed premises (the Camel Bar, Geraldton) where it is alleged that Mr V S unlawfully assaulted a person.
- 6 The victim, in his witness statement, alleges that Mr V S punched him to the jaw, causing the victim to be knocked to the floor. The victim declined to make any formal complaint of assault. Although CCTV footage of the incident is unclear, the recording shows a forceful movement of Mr V S's right arm towards the victim, causing the victim to stumble and fall.
- 7 It was therefore submitted that the actions shown on the CCTV footage, taken with the statement of the victim confirming a punch to the jaw, amount to violence on licensed premises which consequently justifies the Barring Notice that was issued.

Submissions on behalf of Mr S V S

- 8 Section 115AA has only recently been inserted into the Act. The purpose of a Barring Notice issued under this section is to protect the public from people who have engaged in disorderly or offensive behaviour, who threaten people and who put people in dangerous situations. This is gleaned from the Minister's comments in the Second Reading Speech to the Parliament on 19 October 2010.
- 9 Consequently, it is submitted that the issuing of a Barring Notice is not a "penalty" imposed by the Commissioner of Police on a person, but is a mechanism to protect the general public, a licensee or indeed, the perpetrator from his own actions.
- 10 Mr V S was issued with a Barring Notice, prohibiting him from entering most licensed premises following a single incident that occurred on 15 February 2011. Although it is alleged by the Commissioner of Police that Mr V S punched the victim, Mr V S asserts that he pushed the victim and was acting in self defence as a result of provocation by the victim, which is supported by the CCTV footage when viewed in the context of the various witness statements that have been submitted to support Mr V S's version of events.

Determination

- 11 Section 115AA of the Act authorises the Commissioner of Police to issue a notice to a person prohibiting the person from entering specified licensed premises, or a specified class of licensed premises, for a period of up to 12 months 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.

- 12 This provision is clearly designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and is not focused on punishing an individual for their actions. During the parliamentary debate on the amendments to section 115AA, the Minister for Racing and Gaming stated that ...”the whole idea of this legislation is to protect the general public, the licensee, which is pretty important, and also the person.”
- 13 In deciding to issue Mr V S with a notice under section 115AA of the Act, the delegate of the Commissioner of Police has relied upon the CCTV footage of the incident; a statement from the victim, a statement from the duty manager of the premises on the night; the Police Incident Report; and the Incident Report from the licensed premises.
- 14 The CCTV footage is inconclusive and the Commission cannot determine, on the balance of probabilities, whether the victim was punched as he alleges or pushed, as asserted by Mr V S. However, it is clear from the CCTV footage that the victim suffered no injuries because after stumbling backwards and falling to the ground he immediately got to his feet and showed no sign of distress which he most likely would if he had been punched by a man of Mr V S’s physical stature. This is supported by the Police Incident Report which states that the complainant (the victim) sustained no injury. The duty manager on the night stated at paras 13 to 16 of her statement:
- 13 They both faced each other. Mr V S had his arms stretched out as if to say ‘leave me alone’.
- 14 Next thing I saw the male falling backwards onto the floor.
- 15 I did not see Mr V S actually push or hit him.
- 16 To me, it looked like Mr V S pushed him away to get him away.
- 15 The evidence supports the contention that Mr V S may have been responding as a result of some provocation from the victim. First, the victim in his statement indicates that he had been consuming alcohol for eight hours prior to the incident and the duty manager believed that the victim was intoxicated (para 18 of her statement); secondly, a number of witnesses refer to the inappropriate language used by the victim which may or may not have been directed at Mr V S; thirdly, there is evidence that the victim tried to intrude on a conversation between Mr V S and another patron and made some physical contact with Mr V S; and fourthly, the victim followed Mr V S, who had moved away following the initial intrusion from the victim, and persistently stood in very close proximity to him.
- 16 The actions of the victim on the night of the incident could certainly be described as that of an irritant. The evidence would appear to support Mr V S’s version of events. A number of character references submitted indicate that Mr V S is not an angry, aggressive or violent person.

- 17 Although not condoning Mr V S's actions, the Commission is nonetheless of the view that, based on the evidence submitted and the incident which led to the issuing of the Barring Notice, Mr V S poses no risk to public safety. Consequently, the underlying public interest consideration that section 115AA of the Act is founded upon does not exist in this case. Overall, the Commission does not consider that the evidence supports the issue of a Barring Notice in this instance.
- 18 Accordingly, the decision of the Delegate of the Commissioner of Police to issue a Barring Notice to Mr V S is quashed.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a long horizontal stroke.

JIM FREEMANTLE
CHAIRPERSON