

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

Applicant:

[REDACTED]

Respondent:

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

Commission:

Ms Elanor Rowe (Presiding Member)

Matter:

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

Date of Hearing:

On the papers

Date of Determination:

14 December 2020

Determination:

1. The Barring Notice issued by the Commissioner of Police to [REDACTED] on 31 July 2020 and served on the Applicant on 9 August 2020 is varied as follows:
 - a. delete the words "*until it expires on 29 March 2021*" and insert in their place "*until it expires on 31 January 2021*"; and
 - b. delete the words "*All restaurant licences issued under section 50*".

Authorities referred to in determination:

- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC 33/2011)
- *AQ v Commissioner of Police* (LC 46/2011)
- *MP v Commissioner of Police* (LC 55/2011)
- *GML v Commissioner of Police* (LC 58/2011)

Background

1. On 6 June 2020, an incident (“the Incident”) occurred at licensed premises, namely the [REDACTED] (“the Venue”) involving the Applicant (aged 24 at the time).
2. As a result of such Incident, the Applicant was charged with:
 - a. common assault, contrary to section 313(1)(b) of the *Criminal Code Act Compilations Act 1913 (WA)* (“the Code”); and
 - b. unlawful damage, contrary to section 445 of the Code, (together “the Charges”).
3. As a further result of the Incident, the Commissioner of Police (“the Respondent”) issued a barring notice (“Barring Notice”) dated 31 July 2020 pursuant to section 115AA(2) of the *Liquor Control Act 1988* (“the Act”) prohibiting the Applicant from entering specified licensed premises in Western Australia for a period of approximately eight (8) months, namely:
 - 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 licences issued under section 44;
 - e. all liquor store licences issued under section 47;
 - f. all club licences issued under section 48;
 - 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 licenses 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 9 August 2020 and will expire on 29 March 2021.
5. On 17 August 2020, the Applicant lodged an Application for Review in respect of the Barring Notice pursuant to section 115AD of the Act. The Applicant has elected to have the review determined on the papers.
6. The Incident which gave rise to the Barring Notice is referred to in the following documents:
 - a. The Application for Review (“Application”);
 - b. The evidential material relied upon by the Respondent’s delegate when the Barring Notice was issued:
 - i. Brief Jacket (Brief No. 2031853-1);
 - ii. Statement of Material Facts;

- iii. WA Police Incident Report;
 - iv. Photographs showing the Victim's injury and damage to iPhone;
 - v. Victim Statement dated 8 June 2020;
 - vi. Venue Incident Report dated 6 June 2020;
 - vii. Disclosure of Court Outcomes for the Applicant – Criminal and Traffic.
- c. Letter from the Applicant dated 24 August 2020 with submissions in support of the Application including footage of the Applicant's interview with Police;
 - d. The Respondent's outline of submissions dated 2 September 2020; and
 - e. Letter from the Applicant dated 4 September 2020 with further submissions in support of the Application.

The Incident

- 7. The circumstances of the Incident are summarised in the Statement of Material Facts as follows:
 - a. At 9.30pm on Saturday 6 June 2020, the Applicant and the Victim were at the Venue. The Applicant approached the Victim inside the Venue and a verbal argument commenced. The Applicant spilt a drink of coke on the Victim and left the Premises.
 - b. The Victim followed the Applicant out to the car park of the premises and confronted the Applicant where the verbal argument continued.
 - c. The Applicant became angry and upset and kicked the Victim once on the leg causing immediate pain to the Victim's thigh. As a result of the kick the Victim received bruising to her left thigh.
 - d. The Applicant then removed the Victim's Apple iPhone 11 Pro Max ("iPhone") from the Victim's back pocket and ran across the car park carrying it. The Victim ran after the Applicant, who in turn threw away the Victim's phone, which landed on the ground of the car park.
 - e. The Victim's iPhone was damaged with the front screen smashed. The iPhone could not be fixed, and a replacement was valued at \$969.00.
- 8. The evidential material is partially consistent with the summary set out above.

Submissions by the Applicant

- 9. The Applicant submits that the Barring Notice should be cancelled or varied as it is overly harsh for her to be banned from every licensed premises in Western Australia until 29 March 2021.

Personal circumstances of the Applicant and background

- a. At the time of the Application, the Applicant was 24 years of age.
- b. The Incident was out of character for her and she has never been in a verbal or physical altercation before. She has no prior criminal record and is of good character.

- c. The Applicant is happy to provide employment references from the hospital where she works as well as other business and former workplace references.
- d. She is remorseful for what happened. As much as she wishes that it did not happen, all she can do now is take responsibility for what she did and move on with her life.
- e. It was a one-off occurrence that only happened due to extenuating circumstances that were occurring in her personal life involving the Victim. She believed that the Victim had been in a sexual relationship with her ex-partner of six (6) years while they were still together. She stated that she had found out that particular information, only two (2) weeks prior to seeing the Victim at the Venue on the day of the Incident.
- f. Following the Incident, the Applicant was charged with common assault and unlawful damage and the Charges were dealt with on 14 August 2020. She took responsibility for her actions at the first instance and pleaded guilty. She was issued a fine, given a spent conviction and ordered to pay the cost of a replacement phone.
- g. She apologised during the court proceedings and accepted responsibility for her actions. She has learned from her mistakes.
- h. She is taking the necessary steps to move on from this which include attending court, paying the court fines, and seeing a counsellor to process her feelings in an emotionally safe environment.
- i. She is not a threat to the public; she feels a more appropriate barring notice would be to bar her from the Venue or any bar / tavern in her local area.

The Incident

- j. In her letter dated 24 August 2020, the Applicant acknowledged that the Incident occurred on licensed premises. However, later in the letter she then submitted that it occurred outside the Venue (in the nearby shopping centre car park) and, therefore, the Incident did not occur on licensed premises.
- k. She had not had anything alcoholic to drink at the Venue and was only there for dinner with her sister. There was no alcohol involved and she was not intoxicated or inebriated in any way.
- l. The Applicant agreed with the summary of events as set out in the Statement of Material Facts.
- m. The Applicant disputed some of the information contained in the Police Incident Report and submitted the following:
 - The Victim confronted the Applicant once the parties were outside the Venue and taunted her by saying things she knew the Applicant would react to.

- She only kicked the Victim once in the leg. Somebody else, that the Applicant was with, grabbed the Victim's hair, but no one punched her.
 - She did remove the iPhone from the Victim's pocket and then ran with it. When the Victim chased after her, she threw away the iPhone. She did not step on it or intentionally break the phone; it smashed when it hit the floor. She threw it because the Victim was running towards her.
 - After she threw the iPhone, she walked away from the car park and left the area.
- n. The Applicant also disputed several of the statements made by the Victim in her Witness Statement in relation to:
- The circumstances of the Victim's relationship with the Applicant's ex-partner. The Applicant submitted that this information was important as it helps explain why she was so emotional and traumatised and that was what led to the Incident happening in the first place.
 - The circumstances of the Victim leaving the Venue and the interaction between the two parties in the car park.
 - The nature of the attack. The Applicant submitted that she only kicked the Victim once and there were no punches to the Victim's head (which is different to what the Victim claims).
 - Her actions in relation to the iPhone. She submitted that she did not "*stomp*" on it.

Submissions by the Respondent

10. The Respondent submits that the circumstances of the case warrant the exercise of the Respondent's discretion to issue a barring notice. The decision of the Respondent should not be quashed or varied, and the Barring Notice should be affirmed.

Why there are reasonable grounds to believe the Applicant has been violent or disorderly or contravened a provision of any written law

11. In the circumstances presented and on the evidence before the Respondent, a reasonable person would have been inclined to assent to, and not reject, the proposition that the Applicant had engaged in violent or disorderly conduct on or in the vicinity of licensed premises (the Venue), or contravened a provision of any written law, being the Criminal Code specifically section 313(1)(b) (common assault) and section 445 (unlawful damage):
- a. The Respondent refers to the materials that were before the Respondent's Delegate when he issued the Barring Notice which demonstrate that:
- the Applicant was involved in an altercation with the Victim in the vicinity of the Venue;
 - the Statement of Material Facts (relied on by the Applicant as evidence) outlines what occurred during the altercation; and

- as a result, the Victim suffered bruising to her left thigh and her iPhone was damaged and required replacement.
- b. There was no CCTV footage of the Incident and the Venue Incident Report is vague. However, the Victim's Witness Statement and the photos of her injuries and phone damage, provide reasonable grounds for the belief that the Applicant engaged in violent or disorderly behaviour or contravened a written law.
 - c. Furthermore, during an electronic record of an interview with the Police, the Applicant admitted to kicking the Victim and damaging the Victim's iPhone (although the Applicant said the damage was not intentional).

Whether the Applicant was in the "vicinity" of licensed premises

12. Section 115AA(2) requires the Incident to have occurred "*on licensed premises or in the vicinity of licensed premises*". The Applicant submits that the Incident occurred in the shopping centre car park and that it did not occur on the licensed premises itself (the Venue).
13. However, there is a strong nexus between the Incident and the licensed premises as the initial interaction between the Applicant and the Victim occurred in the Venue. The Statement of Material Facts also confirms that the Incident occurred in the "*tavern's car park*".
14. For the above reasons, the Respondent submits that the evidence before the Commission provides reasonable grounds for the belief that the Applicant was violent or disorderly and that she contravened a provision of a written law (being the Criminal Code) on or in the vicinity of the licensed premises.

The nature and circumstances of the Incident giving rise to the Barring Notice

15. The Applicant is seeking reconsideration of the Barring Notice on the basis that it is too harsh. The Applicant submits that her behaviour was "*extremely out of character*" and that she has never "*been in a verbal or physical altercation before*". However, the Respondent submits that recurring or frequent conduct is not the test for a barring notice.
16. At the time when the Barring Notice was issued, the Charges had not been judicially dealt with. The Applicant's submissions suggest that she has since been convicted in relation to the offences arising from the Incident. However, the Applicant does not specify the offence or offences of which she was convicted and, in any event, a conviction is not a pre-requisite for the Respondent to consider a person's conduct for the purposes of a barring notice.
17. The Applicant has put forward further evidence corroborating her account before the Commission. Even so, the Commission is entitled to prefer the evidence which was before the Respondent, including the Statement of Material Facts, the Victim's Witness Statement and the photos of the Victim's leg injury and the damage to her iPhone.
18. The Victim provided a witness statement in relation to the Incident in which she stated:

- The Applicant was known to the Victim due to previous history which arose when the Victim had dated the Applicant's boyfriend;
 - The Applicant looked "*furious*" prior to throwing the contents of her glass onto the Victim inside the Venue;
 - Once outside the Venue, the Applicant, along with a female associate, came running from the bushes towards the Victim;
 - An altercation ensued during which the Victim was punched in the head and legs multiple times. The Victim felt someone remove her iPhone from her pocket;
 - The Applicant threw the iPhone onto the concrete before stepping on it; and
 - As a result of the altercation, the Victim had a headache for several days as well as pain in her lip. She also had a bruise on her leg.
19. The Applicant submits that she had left the Venue and gone into the car park when the Victim pursued her. The Applicant does not refer to the fact that earlier, she had thrown the contents of her glass of coke onto the Victim prior to leaving the Venue.
20. In relation to whether the Applicant was intoxicated at the time of the Incident, the Applicant's evidence in this regard, is contradictory and inconsistent. In any event, intoxication or consumption of alcohol is not a prerequisite for a barring notice.

The risk of the Applicant behaving in a similar manner

21. The Applicant submits that she immediately regretted what had occurred during the altercation. However, the Applicant's later remorse can be contrasted against the wilful actions of the Applicant during the Incident (which she acknowledged during the police interview) as an intention to "*hurt*" the Victim.
22. There is no reason to believe that the Applicant would not act in the same violent way if faced with similar circumstances in the future. Therefore, there is a real and not insubstantial risk that the Applicant is likely to engage in similar behaviour again in the future.

Conclusion

23. There is no basis for quashing or varying the terms of the Barring Notice. The object of a barring notice is protective and the Commission should pay minimal, if any, heed to any perceived "*harshness*" suggested by the Applicant. The Respondent notes the Barring Notice is due to expire on 29 March 2021. Any effect on the Applicant's personal circumstances will be only confined to that date.
24. In light of the Applicant's behaviour, and the fact that the catalyst for it is something that could arise at any licensed premises, varying the Barring Notice in the manner requested by the Applicant is unacceptable. It would subvert both the protective and rehabilitative purposes behind the barring notice regime.
25. Furthermore, allowing the Applicant to have a hand in designating the venues from which she is excluded would prevent barring notices from giving subjects cause for reflection. It

would also render useless the protective nature of barring notices as the Applicant would still be entitled to enter a significant number of licensed premises.

26. The Applicant kicked the Victim in the leg, causing bruising to the Victim and she damaged the Victim's iPhone to the point that it needed to be replaced. Accordingly, the terms of the Barring Notice do achieve its protective purpose, by protecting the general public from the actions of the Applicant on licensed premises.
27. Counsel for the Respondent makes further comprehensive written submissions regarding the applicable law, which are referred to as necessary during the course of the determination below.

Statutory Framework

28. The Commissioner of Police has the power to prohibit people from entering specified licensed premises, or a specified class of licensed premises, for a period of up to twelve months 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;
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.
29. 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 section 115AB of the Act.
30. Section 115AD(3) of the Act provides that where a person is dissatisfied with the decision of the Commissioner of Police to give the notice, the person may apply to the Commission for a review of the decision.
31. Section 115AD(6) of the Act provides that when conducting a review of the decision, the Commission may have regard to the material that was before the Commissioner of Police when making the decision as well as any information or document provided by the Applicant.
32. Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
33. Section 16 of the Act prescribes that the Commission:
 - a. may make its determination on the balance of probabilities [subsection (1)(b)(ii)];
 - b. is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply [subsection 7(a)]; and
 - c. is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms [subsection (7)(b)].
34. 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).

35. The Minister further stated that the legislation gave the Police the power to issue barring notices to persons engaging in antisocial behaviour at licensed premises.
36. Section 5 of the Act sets out the objects of the Act. In subsection 5(1)(b) one of the primary objects of the Act is to minimise harm or ill health caused to people, or any group of people, due to the use of liquor. Section 5(2) provides for various secondary objects including to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor.
37. In light of the primary and secondary objects of the Act, the effect of a barring notice on a recipient, whilst it may have a detrimental effect on the recipient, is not meant to be seen as a punishment imposed upon them but is to be seen as a protective mechanism (*SVS v Commissioner of Police* (LC19/2011)).

Determination

38. The Commission, in considering an application pursuant to section 115AD, is to review the decision and determine whether to affirm, vary or quash a decision.
39. Therefore, the questions to be determined on a review are whether:
 - a. there are reasonable grounds for believing that the barred person has, on or in the vicinity of licensed premises, been violent or disorderly; engaged in indecent behaviour; or contravened a provision of a written law; and
 - b. the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature.
40. It is for the Commission to determine whether, on the balance of probabilities, the Applicant was involved in the Incident to the degree that warrants the issue of a barring notice.
41. I have considered all the evidence before me, and on the materials supplied I am satisfied that there were reasonable grounds to conclude that the Applicant was both violent or disorderly on or in the vicinity of licensed premises, and that she contravened a provision of a written law:
 - It is undisputed that the Applicant initially threw a drink on the Victim inside the Venue, and then once outside in the car park, kicked the Victim and smashed her iPhone.
 - At the time of the Application, the Applicant advised that she had entered guilty pleas to the Charges.
42. Accordingly, I find that there was a clear and proper basis for the delegate of the Respondent to exercise the power conferred by section 115AA of the Act.
43. Therefore, it is for the Commission to determine, in the relevant circumstances, whether the length and terms of the Barring Notice are sufficient to uphold the objects of the Act and are

not punitive in nature. The public interest must be balanced against the impact of the Barring Notice on the Applicant.

44. In determining whether to quash or vary the Barring Notice, it is relevant to take into account the nature and circumstances of the incident giving rise to the Barring Notice; the risk of the Applicant behaving in a similar manner again; and the need to protect the general public, the licensee and the Applicant: *KRB v Commissioner of Police* (LC 33/2011); *AQ v Commissioner of Police* (LC 46/2011); *MP v Commissioner of Police* (LC 55/2011); and *GML v Commissioner of Police* (LC 58/2011).
45. The Applicant submitted that she was at the Venue on the evening of the Incident to have dinner with her sister. Then, seemingly unprovoked, the Applicant approached the Victim and threw a drink over her. Given the history between the parties, it may have been an emotionally difficult and confronting situation for the Applicant when she initially saw the Victim at the Venue. However, nevertheless, it was a senseless and potentially dangerous act in a public place.
46. I note that there are different accounts as to what happened subsequently (after the parties had exited the Venue). However, it is clear, that the Applicant's aggressive behaviour continued outside in the car park. As stated above, it is not in dispute that the Applicant assaulted the Victim by kicking her (causing injury to her thigh) while someone else pulled the Victim's hair. The Applicant then purposely took the Victim's iPhone and threw it causing irreparable damage to it.
47. The Applicant submitted that she had not had anything alcoholic to drink while at the Venue. However, it is otherwise unclear how much alcohol the Applicant had consumed prior to the Incident. However, that does not prevent the imposition of a barring notice and the Incident was of precisely the type the amendments to the Act in 2010 were introduced to counteract.
48. I also accept that there is no prior criminal record against the Applicant, and she has no history of violent or aggressive behaviour. However, it is clear from the wording of section 115AA that a single incident is sufficient to give rise to a barring notice.
49. The Applicant has provided an explanation regarding the extenuating circumstances that led to the Incident occurring and submitted that it was a one-off incident. However, it remains of concern that the Applicant's aggressive actions towards the Victim continued once the parties had left the Venue. Furthermore, while the Applicant states that she apologised during the criminal proceedings for her behaviour and that she regretted what she had done, in her submissions to the Commission, rather than showing remorse, the Applicant revisited in some detail the circumstances of the Incident and continued to somewhat justify her actions.
50. I also note that while the Applicant stated that she was willing to provide references from her place of work, she has not attached any personal or employment references. Nor is there any statement from the counsellor she has been seeing as to the help she has received.

51. Therefore, it appears to me that there is some risk that the Applicant will behave in a similar manner in the future and that risk can be minimised by the terms of the Barring Notice [*KRB v Commissioner of Police* (LC 33/2011)].
52. Finally, the purpose of barring notices is different to that of criminal proceedings, and they are not intended as a punishment. Rather, they serve as a measure to protect the public from anti-social behaviour, such as the Applicant's, in and around licensed premises. Barring notices are also a mechanism to protect a licensee or indeed, the perpetrator, from his / her own actions.
53. In balancing the above considerations, I do not find it appropriate to quash the Barring Notice. The Barring Notice will serve to assure members of the public who frequent licensed premises that they are in safe environments and can expect that they will not become victims of, or have to witness, violence or antisocial or disorderly behaviour.
54. However, I find that to ban the Applicant from attending all licensed premises for a period of eight (8) months is an unduly punitive measure. I consider that a lesser period of six (6) months will allow the Applicant the opportunity for introspection regarding her behaviour and to continue to seek help.
55. In addition, the Applicant accepted that she had acted wrongfully from as early on as the interview she had with police and has accepted responsibility throughout. She has also sought help from a counsellor on her own initiative. Therefore, I find it unlikely that the Applicant will, while present at a restaurant, engage again in the kind of conduct listed at section 115AA(2).
56. I have concluded that it is appropriate to:
- a. vary the length of the Barring Notice from eight (8) to six (6) months;
 - b. allow the Applicant to enter premises holding a restaurant licence. This will enable the Applicant to socialise with her family and friends during the Christmas period in a restaurant setting, whilst continuing to satisfy the objects of Act to protect the public and the Applicant herself from her own actions.
57. It is not appropriate to otherwise vary the Barring Notice.
58. Accordingly, the terms of the Barring Notice dated 9 August 2020 are varied as follows:
- a. In the third paragraph, delete the words "*until it expires on 29 March 2021*" and insert in their place "*until it expires on 31 January 2021*"; and
 - b. Under the specified classes of licensed premises, delete the words "*All restaurant licences issued under section 50*".



ELANOR ROWE
PRESIDING MEMBER