

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

Complainant: Director of Liquor Licensing
(represented by Mr Leigh Radis of Department of
Racing, Gaming and Liquor)

Respondent: Mr Vladimir Hardi
(represented by Mr Jarrod Ryan of Talbot Olivier
Lawyers)

Commission: Mr Jim Freemantle (Chairperson)
Mr Eddie Watling
Ms Helen Cogan

Matter: Complaint for disciplinary action pursuant to section 95 of
the *Liquor Control Act 1988*

Date of Hearing: 7 February 2011

Date of Determination: 8 February 2011

**Date of Reasons
Published:** 11 February 2011

Determination: The Complaint is dismissed.

Authorities referred to by parties to proceeding:

- *MG Mackay Pty Ltd v Commissioner of Police (1996) 960544B*
- *Broadwater Hospitality Management Pty Ltd v Primewest (Lot 4 Davidson Street Kalgoorlie) Pty Ltd [No. 2] [2010] WASCA 174*

Introduction

- 1 On 10 November 2010 the Director of Liquor Licensing lodged a complaint, pursuant to section 95 of the *Liquor Control Act 1988* ("the Act"), against Vladimir Hardi, the licensee of the premises known as the Beaufort River Tavern and located at Lot 5 Albany Highway Beaufort River.
- 2 The grounds of the complaint were that Mr Hardi had been convicted of a drink driving offence and incurred a monetary penalty and loss of driving licence thereby making him no longer a fit and proper person to hold a licence under the Act. This is a reference to section 95(4)(f)(ii) of the Act.
- 3 A hearing in respect of the complaint was conducted by the Commission on 7 February 2010.
4. On 8 February 2011, the Commission published its determination in respect of the complaint and indicated to the parties that the reasons supporting the determination would be published in due course. These are those reasons.

Submissions on behalf of the Director of Liquor Licensing

- 4 Mr Hardi became the licensee of the Beaufort River Tavern on 7 September 2009. At the time the tavern licence was transferred to him, the following convictions were recorded against his name;
 - 13 January 1977 – Perth Court of Petty Sessions – False Name;
 - 12 March 1981 – Perth Court of Petty Sessions – Found on Premises of a Common Gaming House;
 - 20 September 1988 – Karratha Court of Petty Sessions - Excess 0.08%;
 - 20 September 1988 – Kambalda Court of Petty Sessions – Excess 0.08% (note: This conviction is recorded in the complaint lodged and in the supporting police material but is disputed by Mr Hardi who claims that it is a duplicate of the Karratha conviction);
 - 19 December 1988 – Geraldton Court of Petty Sessions – Excess 0.08%;
 - 19 December 1988 – Geraldton Court of Petty Sessions – No Motor Drivers Licence; Under Suspension; and
 - 9 March 2009 – Tammin Magistrates Court – Excess 0.08%
- 5 A delegate of the Director of Liquor Licensing interviewed Mr Hardi on 20 August 2009 in regard to his application for the transfer of the tavern licence and his prior convictions. The consequences of any further convictions were explained to Mr Hardi and his application for the transfer of the tavern licence for the Beaufort River Tavern was subsequently approved.
- 6 On 7 April 2010 Mr Hardi was convicted in the Katanning Magistrates Court of "Driving Under the Influence" and fined \$1,500 and had his driver's licence suspended for two

years. Mr Hardi then failed to inform the Director of Liquor Licensing within 14 days of the conviction as required under section 37A of the Act. Mr Hardi was consequently issued with an infringement notice for this offence, which has been paid.

- 7 It was submitted that as a licensee, Mr Hardi has an obligation to act responsibly and exercise good judgement, particularly in respect of alcohol.

Submissions on behalf of Mr Hardi

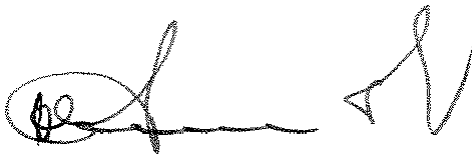
- 8 Save for the April 2010 conviction, the convictions listed in the complaint all occurred prior to Mr Hardi becoming the licensee of the Beaufort River Tavern and all but one of these convictions occurred over 20 years ago. These prior convictions were known to the Director of Liquor Licensing at the time of the transfer of the tavern licence and the Director found Mr Hardi to be a fit and proper person to hold a liquor licence.
- 9 Due to the substantial time which has lapsed since the majority of these indiscretions were committed they should not be taken into account.
- 10 Mr Hardi is the sole proprietor of the Beaufort River Tavern and if he is found to be not a fit and proper person he stands to lose his business and livelihood. Mr Hardi acknowledges his lack of judgment in drinking and driving a motor vehicle, however at the time of the offence Mr Hardi was not working at the tavern and was on leave. This factor contributed to him forgetting to advise the Director of Liquor Licensing of this offence as required under the Act. Mr Hardi accepted and paid the infringement notice issued for this oversight.
- 11 It was submitted that Mr Hardi's prior convictions and the conviction listed in the complaint do not relate to breaches of the liquor licensing laws and do not restrict him from carrying out his duties and responsibilities as a licensee. There is no suggestion that the licensed premises are not well managed and conducted in accordance with the requirements of the Act.
- 12 Mr Hardi acknowledges the seriousness of his drink driving offence and he has sold his car and decided he will not drive again. He is also undergoing counselling. Mr Hardi is a family man in a stable relationship with two children. He spends long hours running the tavern, which employs four people, and is well regarded in the community. A number of character references were submitted.
- 13 Whilst not trivialising the latest conviction and oversight in not advising the Director of Liquor Licensing, it was submitted that the significant consequences on Mr Hardi's financial wellbeing and his capacity to live and work in a small country town if he is found to be not fit and proper to hold a licence is a manifestly disproportionate outcome to what was an error of judgement.

Determination

- 14 Mr Hardi has two recent convictions for drink driving offences, one in March 2009 and the other offence, which is the basis of this complaint, in April 2010. Mr Hardi has also been convicted of other drink driving offences and some minor offences; however these occurred over 20 years ago.
- 15 Except for the 2010 offence, all the other offences were known to the Director of Liquor Licensing when Mr Hardi was approved to be the holder of the tavern licence. The Commission notes that Mr Hardi was warned at that time of the possible consequences should any further convictions be recorded against him.
- 16 Section 96 of the Act provides that the Commission shall hear and determine the matter to which the complaint, or complaints, relate and, if it is satisfied, on the balance of probabilities, that the ground upon which the complaint was, or complaints, were made has been made out so that a proper cause for disciplinary action exists, the Commission may then exercise its discretion as set out in section 96(1)(a) to (n).
- 17 The basis of this complaint is that Mr Hardi is no longer a fit and proper person as a consequence of his 2010 conviction. However, the complaint is predicated only on the single ground under section 95(4)(f)(ii) of the Act and although further grounds could have been enjoined (ie sections 95(4)(e)(i) and 95(4)(fa)) the complaint is to be determined only on this single issue after consideration of all of the facts and circumstances.
- 18 Although section 33(6) of the Act sets out the matters for consideration when determining whether an applicant is a fit and proper person to hold a licence, it can provide some guidance to the determination of a complaint under section 95. Also, there are many authorities concerning the meaning of 'fit and proper' which need not be discussed in detail here. Suffice to say that when deciding whether a person is 'fit and proper' to hold a licence, many factors may be considered including character (***Australian Broadcasting Tribunal v Bond [1990] HCA 33***) reputation (***Bond***) honesty (***Simonsen v Rossi, the Registrar, Real Estate and Business Agents Supervisory Board [2005] WADC 76***) and previous convictions (***Tavelli v Johnson, Unreported, WADC Library No 960693, 25 November 1996***). The purpose of the words 'fit and proper' is to give the decision maker the widest possible scope for judgement (***Hughes and Vale Pty Ltd v New South Wales [No 2] [1955] HCA 28***).
- 19 In respect of the circumstances of this case, and after consideration of the submissions by both parties, the Commission is of the view that the 2010 conviction in itself or taken collectively with Mr Hardi's prior convictions, is not sufficient to arrive at the conclusion that he is not a fit and proper person to be the holder of a licence under the Act. The Commission is nonetheless concerned that Mr Hardi has exercised extremely poor judgement for a person entrusted with the privilege of being able to sell and supply liquor and making judgements about the responsible consumption of liquor and actions of

other people. Mr Hardi has a pattern of driving whilst under the influence of alcohol (albeit that some of these convictions are dated), which he must address.

- 20 In arriving at this conclusion, the Commission has given weight to the type and nature of the convictions involved; to the fact that Mr Hardi has shown remorse for his actions and taken steps to address this issue, particularly by undergoing counselling; has to date managed and operated his licensed premises in accordance with the Act; and is well respected in the community.
- 21 The Commission therefore finds that the complaint has not been made out to a satisfactory standard so that proper cause for disciplinary action exists.

A handwritten signature in black ink, appearing to read 'Jim Freemantle', with a horizontal line underneath it.

JIM FREEMANTLE
CHAIRPERSON