

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant: Commissioner of Police
(represented by Mr Peter Slater of WA Police)

Respondent: Golfing Pub Pty Ltd
(represented by Mr Lindsay Robbins, Counsel,
instructed by Ilberys Lawyers Pty Ltd)

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

Premises: Ryan's Premier Hotel

AND

Applicant: Commissioner of Police
(represented by Mr Peter Slater of WA Police)

Respondent: Mr Wayne Leslie Stewart
(represented by Mr Lindsay Robbins, Counsel,
instructed by Ilberys Lawyers Pty Ltd)

Matter: Application for Prohibition Order pursuant to
section 152B of the *Liquor Control Act 1988*

Observers: Mr Dion Bloomfield
(Director, Golfing Pub Pty Ltd)

Mr Phillip Reid
(on behalf of Ilberys Lawyers Pty Ltd)

Mr Philip Hassett
(On behalf of Mackinlays Solicitors,
representing the transferee)

Commission: Mr Jim Freemantle (Chairperson)
Mr Eddie Watling
Mr Greg Joyce

Date of Hearing: 12 April 2010

Date of Determination: 14 April 2010

Date of Reasons Published: 14 May 2010

- Determination:**
- (1) Pursuant to section 96(1)(m) of the *Liquor Control Act 1988* Golfing Pub Pty Ltd is to pay a monetary penalty of \$15,000.
 - (2) Pursuant to section 96(1)(g) and (n) of the *Liquor Control Act 1988* Wayne Leslie Stewart is disqualified for a period of five years from being –
 - i. The holder of a licence;
 - ii. The holder of a position of authority in a body corporate that holds a licence; and
 - iii. Interested in, or in the profits or proceeds of, a business carried on under a licence.

(In respect of (i) and (ii) above, Mr Stewart has 30 days from the date of the determination in which to comply.)
 - (3) Pursuant to section 152E(2)(a) and 152F of the *Liquor Control Act 1988* Wayne Leslie Stewart is prohibited from being employed by a licensee at any licensed premise for a period of five years.
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Background

1. On 2 March 2010 the Commissioner of Police lodged a complaint under s. 95 of the *Liquor Control Act 1988* against Golfing Pub Pty Ltd, the licensee of Ryan's Premier Hotel Albany.

2. The complainant sought:
 - (i) the suspension of the licence pursuant to s. 96(1)(d)(i) of the Act.
 - (ii) disqualification of the Licensee under s. 96(1)(f) of the Act for such period as the Commission sees fit.
 - (iii) disqualification of Mr Wayne Leslie Stewart as Director and the Secretary of the licensee company under s. 96(1)(g)(i) of the Act and from being the holder of a position of authority in a body corporate holding a licence and/or under s. 96(1)(g)(ii) of the Act being interested in, or in the profits or proceeds of a business carried on under a licence for such period as the Commission sees fit.
 - (iv) disqualification of the Licensee under s. 96(1)(g)(ii) of the Act from being interested in, or in the profits or proceeds of, a business carried on under a licence.
 - (v) Imposition of a monetary penalty upon the Licensee under s. 96(1)(m) of the Act in an amount that the Commission thinks fit.
 - (vi) Imposition of a monetary penalty upon Mr Wayne Leslie Stewart under s. 96(1)(m) of the Act in an amount that the Commission thinks fit.
 - (vii) Imposition of conditions upon the licence under s. 96(1)(b) of the Act as follows:
 1. This condition does not affect the operation of either s. 41(2)(b) or s. 41(3) of the *Liquor Control Act 1988* either generally, or with respect to the volume capacity of sealed vessels containing liquor and sold as packaged liquor that may be sold under either of those subsections. No liquor is to be sold or supplied for consumption on the premises in any of the following ways:-
 - a. In any vessels with a measurement capacity exceeding 425 ml, and no spirits or spirit based mixed beverages are to be supplied in vessels with a measurement capacity exceeding 285 ml.

- b. In either:-
- i. any non standard measures,
 - ii. presented in such a way that would encourage rapid consumption of liquor (for example, but not limited to, unadulterated spirit or liqueur in a shot glass), or
 - iii. by virtue of their emotive title, such as 'laybacks', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blasters' or 'bombs'.
- c. No liquor is to be supplied with energy drinks. The Licensee is not to permit any liquor to be mixed with energy drinks by any person within the premises.

(For the purposes of this condition **energy drinks** has the same meaning as **formulated caffeinated beverage** within *Australia New Zealand Food Standards Code* with a composition of 145mg/l of caffeine or greater.)

2. A video surveillance (CCTV) system must be in place and operational. The system must be a digital system and must comply with the minimum requirements identified in the "*Minimum Standards – Closed Circuit Television (CCTV) Security System*" Policy ("the CCTV Policy") or with the requirements otherwise approved by the licensing authority. Where there is any inconsistency between the minimum requirements of the CCTV Policy and with the requirements otherwise approved by the licensing authority, the requirements that are more onerous upon the Licensee take precedence.
- a. The system is to provide cameras at the locations depicted on the CCTV Plan and is to record continuous images of all coverage areas depicted on the CCTV plan of the premises during all trading times and until 1 hour after trading ceases.
 - b. In addition to the minimum requirements of the CCTV Policy, the CCTV Plan must also include a minimum of:-
 - i. at least one camera with a field of view covering each bar service area and each area where the consumption of liquor takes place.
 - c. At all times each camera shall be positioned to enable *identification* of any person entering the premises from the recording, either by way of camera technology and settings, and/or by maintenance of lighting, camera positioning, camera shades and other environmental factors.
 - d. Images recorded via the video surveillance system must be retained for a minimum of 30 days and the Licensee shall ensure that no person is able to delete or alter any recordings within the 30 day period.

- e. If directed by WA Police, DRGL Inspectors or another *authorised officer* (within the meaning of s. 3A of the *Liquor Control Act 1988*), the licensee is to ensure that recordings are archived (on the CCTV system hard drive) until such time as they are no longer required.
 - f. Prior to any archived recording being deleted, the licensee must obtain express written approval from the officer who in the first instance requested the recording to be archived.
 - g. Access to, and copies of, recordings from the CCTV system are to be immediately made available upon request to WA Police, DRGL Inspectors or other *authorised officer*.
 - h. The licensee shall ensure that any requested recording, if it exists and regardless of whether it falls within the 30 day period, is supplied to WA Police, DRGL Inspectors or other *authorised officer*, immediately upon request, and not deleted until such time as they are no longer required.
3. Crowd controllers (licensed under the *Security and Related Activities (Control) Act 1996*) are to be employed at the licensed premises at a ratio of 2 officers for the first 100 patrons and then 1 additional officer for every 100 patrons thereafter from 8:00 pm until at least 15 minutes after the cessation of trading on all days.
 4. No liquor is to be supplied on credit unless it is on a short-term basis whereby the liquor is paid for on the same day that it is supplied and that payment in full is made before the person responsible for payment departs the premises for the day with no intention of returning.

The grounds on which these remedies are sought arose from events that took place on Saturday 18 July 2009 in and about the licensed premises, particularly that the Licensee permitted intoxication on the premise and supplied liquor to a person who was *drunk* (in terms of, and for the purposes of the *Liquor Control Act 1988*). The person concerned developed lethal *acute alcohol toxicity* which was a contributing factor to his death within a few hours after he had left the premises.

4. At about 3.30pm on the afternoon of 18 July 2009, Christopher Maxwell Wolfe (“the Deceased”) and an associate arrived at the premises and began consuming liquor. The exact amount of liquor consumed at the premises is difficult to ascertain with certainty, although the evidence collected by Police

to date indicates that the amount of liquor consumed at the premises between about 3.30pm and 10.30pm contained at least 228.5 grams, and up to 400.5 grams of ethanol. In addition the Deceased is believed to have consumed one 375 ml stubby of Carlton Crown lager before he arrived at the premises equating to an additional 14.5 grams of ethanol.

5. There was no evidence before the Commission that the Deceased consumed any more liquor after leaving the premises and so, on the balance of probability, it can reasonably be concluded that the vast majority of liquor in his system at the time of death was consumed on the Premises.
6. Post mortem examination revealed a non-preserved blood alcohol level of 0.550% (550mg/100ml) and a preserved blood alcohol level of 0.880% (880mg/100ml), both being in the range of acute alcohol poisoning causing death. (The difference being that a preservative is added to part of the sample so as to prevent post-mortem breakdown of alcohol, meaning that the preserved sample is a more accurate estimate of the actual concentration at the time of death.)
7. On the 18 July 2010 Mr Stewart, an approved Manager as well as a Director and Secretary of the licensee company was on duty at the premises.
8. It is apparent from Mr Stewart's statement to Police together with statements made by others viz Mark James Nelson, Ivan Dario Agudelo, Thomas Herbert Crossen, Tienne Stephen Claybrook and Adam John Mayes that a large amount of alcohol was consumed by Wolfe on that day and the evening of that day. Whilst there are discrepancies in the detail of the statements they all support the proposition that Wolfe consumed a very large quantity of alcohol.
9. It is alleged that at around 9.30pm that evening, Wolfe entered into a bet with Mr Stewart that he could consume an entire bottle of Tequila without vomiting, and then kick five goals in a football match the next day. Wolfe had until closing (12:00 midnight) to consume the liquor.

10. Mr Stewart, apparently, went to the hotel's bottle shop and obtained a 700ml bottle of Tequila (which he later claimed that he had adulterated whilst in the bottle shop by pouring half of the contents of the bottle down a sink and replacing it with an amount of "Red Bull" Energy Drink and an amount of water).
11. When Mr Stewart returned to the bar from the bottle shop, he supplied the Tequila bottle (containing either 700mls of unadulterated Tequila, or otherwise approximately 350ml of Tequila adulterated with other non-alcoholic liquid) and a pint sized glass for its consumption.
12. Mr Stewart served Wolfe two glasses of Tequila.
13. The Deceased consumed the entire contents of the Tequila bottle, which at the very least (taking the possibility of it being half-adulterated) would have equated to an approximate equivalence of 120mls or 4 x standard nips in each fill of the pint glass.
14. Wolfe left the Premises at approximately 10.30pm. A companion of Wolfe who left the hotel with him found him dead at approximately 3:45am. This person informed Police that Wolfe did not consume any more liquor after they left the Premises.

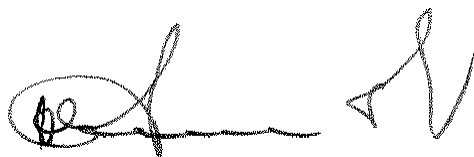
Reasons

15. Statements from various people present and Mr Stewart (para 8 above) confirm that a large quantity of alcohol was served to Mr Wolfe, well in excess of anything that could be considered reasonable and that any responsible person employed in, let alone managing licensed premises, should permit.
16. There is nothing before the Commission to indicate that Mr Stewart was not aware of the amount of alcohol being served to Mr Wolfe. Furthermore, the

Commission has no doubt from the material before it, that Mr Stewart was actively aiding and abetting unsafe drinking practises.

17. Ultimately, the Licensee bears the responsibility for compliance with the Liquor Control Act 1988 and its ancillary Regulations. The Commission finds that the Licensee failed badly in its responsibility as did Mr Stewart. The commission imposes a monetary penalty of \$15,000 on the Licensee reflecting the seriousness of the breach of its responsibilities.
18. Through his Counsel, Mr Stewart expressed his remorse. Counsel for Stewart advised that Mr Stewart had consented to a 5 year ban as set out in this determination. Counsel further pleaded for no further penalty (monetary) as Stewart had suffered emotionally and financially. He was currently in NSW, unemployed and unable to be employed in the calling for which he was trained. The Commission accepted that Mr Stewart had been heavily punished by virtue of his lengthy disqualification and the consequences of that.
19. In setting these penalties the Commission weighed up the seriousness of the breach of the respective responsibilities of the Licensee against the personal responsibility for his own behaviour incumbent on Mr Wolfe (refer *C.A.L. No 14 Pty Ltd v Motor Insurance Board*; *C.A.L. No 14 Pty Ltd v Scott [2009] HCA 47*). Mr Wolfe's death was a tragedy, however evidence before the Commission suggests that on the balance of probabilities Mr Wolfe's death was a culmination of a pattern of heavy drinking of which 18 July was an unhappy and possibly extreme example.
20. It was agreed between the parties that suspension of the licence would prejudice the imminent transfer of the licence and by consent this penalty was not imposed.
21. Consent orders were sought which largely covered the conditions requested by the Commissioner of Police to be imposed on the Licensee as set out in para 2 (vii) above.

22. The condition in respect of the installation of CCTV has been satisfied.
23. In respect of the conditions that the Commissioner of Police sought to have imposed on the licence by way of consent orders, the Commission declined to make the orders sought as the Commission felt that the imposition of the proposed conditions was both unnecessary and not appropriate in the circumstances of this case. Furthermore, during the hearing the Commission was advised that an application for the transfer of the licence had been lodged with the Director of Liquor Licensing. Notwithstanding that the proposed transferee was a party to the consent orders, it is not a party to these proceedings and the Commission was concerned that the transferee may have felt unduly and unfairly pressured to be a party to the orders in order to facilitate the transfer of the licence and speed up the process which had already taken some time due to these proceedings.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a smaller, more complex flourish.

**JIM FREEMANTLE
CHAIRPERSON**