



## SERVING IT RIGHT??

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**D**o you serve or allow alcohol in any of your facilities? If so this article should be of interest to you. Although this situation took place in Ontario many of the laws pertaining to the selling and serving of alcohol are the same from province to province. At the end of the day everyone involved has a legal responsibility.

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In July 2008, a car with 4 occupants crashed through a guard rail, and flipped into Lake Joseph in the Muskoka region of Ontario. One person was able to escape while the other three died. As information was made available to the public, it was alleged that the group had had lunch and were drinking at the Lake Joseph Club bar. Further, it was alleged that 31 drinks were served to the group.

Charges were laid in January 2009 against the bar staff – two servers and one manager - and the licensee, the Board of Directors of the corporate owner, Club Link (operator of a network of golf courses in Ontario and Quebec). The charges included permitting drunken behaviour on the premises and serving liquor to people who were obviously intoxicated.

The media storm that followed suggested that much of the public felt that the bar should not be charged, it was not fair to expect staff to recognize when someone had had too much to drink, and in particular, not fair to expect staff to cut off a patron when he or she has had too much. Many letters expressed outrage that the members of the Board of Directors could be charged when none of them was in attendance at the relevant time. What this revealed is that there is much that is unknown about the Liquor License Act and the duties and responsibilities owed by the facility that is granted a liquor license.

*First, a liquor license is a privilege, not a right.* The establishment making application for a license must show that the prospective licensee is of good character, has no prior criminal history that could be relevant to running an establishment, and that there is a reasonable financial base. Keep in mind, alcohol is a drug, and the only professions legally licensed to sell/or distribute drugs are pharmacists, doctors and bartenders. It is not unreasonable to expect a high level of obligation on these professions, but compare the training of the first two as against the last one.

Yet as a society, we don't impose the same level of obligation on those licensed to sell alcohol but rather treat the substance in ways similar to other groceries - until a tragedy of magnitude occurs. As it is, no provincial jurisdiction imposes an obligation to obtain liability insurance as a condition of license.

*Next, all Provincial Liquor Acts set out a number of duties and obligations owed.* Each section states a variation of: "a licensee, its agent, representatives, employees, etc." This means that a board of directors is responsible for the actions of its employees. So while an owner may not be on premises when an incident contrary to the Act occurs, the owner is still responsible. Further, the owner (in this case, the Board of Directors), is responsible for the culture that is set for the establishment. Does the owner insist on training and how extensive is the training? Is there an alcohol policy for the facility and do the employees know it and enforce it? What are some of the basics, such as how a patron is cut off, what is done to ensure that a patron arrives home safely, etc?

A common view expressed in many letters to the editor following the charges, was that a young server cannot be expected to cut off a patron who is a member of a private club. That is clearly wrong and not supported by law. The licensee is expected to train and support its staff in the service of alcohol, including cutting off patrons who are approaching intoxication or are already so. All licensees are equal under that law and are required to follow the provincial liquor act; they need to expect that they will be treated in the same way, regardless of expense, membership, type of establishment and so on.

*Further, the licensee needs to establish its “culture”* – that it will follow the “rules” such as slowing service and cutting it off, prohibiting patrons from entering the premises if it appears that they are underage and/or intoxicated, confiscating illegal substances including “other alcohol” and escorting the patron out, calling cabs or insuring that patrons have the means to return home, and being clear that they will call the police if there is a chance of an intoxicated patron driving. This begins with good training (which is ongoing, not just a one-time workshop) and reinforced with regular staff meetings. It is also supported by a good written alcohol policy which the staff knows well.

Another argument made in letters to the editor was that staff makes their tips by continuing to serve, regardless of the level of intoxication. Just as stated above, this needs to be counteracted by the establishment’s culture, and the safety and enjoyment of patrons. At the end of the day, the tips made won’t be enough to pay for legal counsel to deal with charges of permitting drunken behaviour.

Finally, let’s address the issue of personal responsibility. This comes up time and time again, and the reality is that there is still personal responsibility. In this case, 3 of the alleged intoxicated people died. However, when the substance is alcohol, as consumption increases, personal judgement and responsibility decreases. Public reaction to this case and to the bar may have been very different if the car had hit innocent parties and killed them rather than going into the lake. The staff of the licensee is there and can observe the signs of intoxication, track the number of drinks and go on their instinct that may tell them someone has had too much. That is why liquor licensees and their staff are required to have some basic training (Smart Serve is now mandatory in Ontario as is Serving It Right in BC). Smart licensees have ongoing training, policies and self audits to maintain a good environment. The courts have stated that if a bar is making money from the sale of alcohol then obligations to monitor consumption are a cost of doing business.

Due to increasing liability, many licencees have changed their business practices and become more diligent regarding tracking and monitoring of alcohol service. Initially, they may have seen a drop in business, but after a short period their business likely increased as new patrons have viewed the establishment as a location where they can have a good time - and be safe.

*This article written by Shelley Timms, B.A., LL.B., LL.M.  
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