Sample Court Cases

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The law governing liability for the intoxicated has changed dramatically since the early 1970s. However, as dramatic as this rise in liability has been, the claims brought to date represent only a fraction of the potential suits. Statistics on alcohol-related accidents indicate that thousands of alcohol liability suits could be brought each year in Canada. The steps adopted to minimize exposure to civil liability and prosecution will, of necessity, reduce the risks of alcohol-related deaths and injuries.

LEGAL ATTITUDES towards those who serve alcohol are changing; this has become a major problem for the Canadian hospitality industry and its insurers. The nature of this problem is dramatically illustrated by the following case.

Schmidt v. Sharpe and the Arlington House Hotel (1983). Shortly after finishing his third beer and leaving the Arlington House Hotel, Sharpe drove off the road. He suffered only minor injuries in the ensuing accident, but his 16-year-old passenger, Schmidt, was rendered a quadriplegic. Schmidt successfully sued both Sharpe and the Arlington House Hotel. Following a lengthy trial, the defendants were held "jointly and severally" liable for 70% of Schmidt's losses. Including interest, legal fees and court costs, this mishap probably cost the defendants and their insurers over $1.75 million.

Sharpe was held liable because his impaired driving caused Schmidt's injuries. The Hotel was liable as a provider of alcohol even though its staff served Sharpe only three beers and he had not appeared obviously intoxicated. Nevertheless, by serving an already intoxicated patron, the Hotel breached its legal obligation and became liable for Sharpe's conduct both on and off the premises.

Since the defendants were "jointly and severally" liable, Schmidt could enforce the entire judgement against either party, which in turn could seek the appropriate share from the other defendant. However, if Sharpe had few assets, then the Hotel -- albeit only 15% at fault -- could end up paying most or all of the judgement.

Picka v. Porter and the Royal Canadian Legion (1980). Approximately two hours after leaving the Legion hall, Porter drove through a stop sign and hit the plaintiff's car, killing three people and injuring two others. Based on his BAL, it was established that Porter had consumed approximately 10 bottles of beer over a five-hour period at the Legion. The beer was served from behind a partition in circumstances in which the bartender could not observe the patrons' condition or determine how much any patron had consumed. The plaintiffs sued both Porter and the Legion.

The Legion contended that, since its employee was unaware of Porter's intoxication, it should not be held liable. The Court of Appeal rejected the Legion's argument. In effect, the Court held that providers must establish serving and staffing practices that ensure that patrons are not served past the point of intoxication.

Hague v. Billings (1989). Billings and two friends entered the Oasis Tavern and were each served a beer before the staff realized that they were intoxicated. They were refused further service. The proprietor failed in his efforts to persuade Billings to give his car keys to his less intoxicated friend. Billings and his friends then drove to the Ship & Shore Hotel, where they were each served four beers. Billings, whose BAL was over three times the legal limit, drove so erratically after leaving the Hotel that his friends got out and walked. Minutes later, Billings crossed the centre line and hit the Hague vehicle, killing Mrs. Hague and paralyzing her 14-year-old daughter.

Billings admitted his obvious liability, and the Ship and Shore Hotel was held liable for serving him when he was already intoxicated. The court held that since the Oasis Tavern did not have a sufficient opportunity to assess Billings' intoxication before taking his order, it could not be held liable for serving him a single beer. However, the court stated that once the staff realized that the intoxicated Billings intended to drive, they had an obligation to protect the public. The Oasis Tavern should have called the police if it could not otherwise stop Billings from driving.

While the tavern breached this obligation, the court held that alerting the police would not, in the circumstances of this case, have prevented the subsequent collision. Consequently, the Oasis Tavern was absolved of liability.

Stewart v. Pettie (1992). A dinner theatre had served five to seven double rum-and-cokes to a patron who subsequently caused a car accident. The patron's sister, who was rendered a quadriplegic in the accident, sued the theatre for damages that were assessed at $4.3 million. Although the patron's BAL was about two times the legal limit, the plaintiff testified that her brother exhibited no visible signs of intoxication. The trial judge concluded that the staff neither knew, nor could have known, that the patron was intoxicated. The judge absolved the theatre because he was unwilling to impose liability based solely on the amount of alcohol served to the patron. However, the Alberta Court of Appeal overturned this decision and held the theatre 10% liable for the plaintiff's damages. The Appeal Court held that the theatre had two duties, both of which had been breached: (i) to exercise reasonable care to ensure patrons were not served alcohol to a point where they were a danger, and (ii) to take reasonable steps to ensure that patrons who were intoxicated did not harm themselves or others.

Buehl v. Polar Star Enterprises Inc. The owner of an Ontario resort was liable when Buehl, who had a blood alcohol level close to five times the legal limit, fell to his death from a second-storey door that had no balcony. The defendant had specifically warned the Buehl party to keep the balcony door locked and a table in front of it. Nevertheless, the court held that it was foreseeable that the guests would become intoxicated and open the door for ventilation. Consequently, the court ruled that by failing to barricade the door, the defendant breached his obligation to make the premises reasonably safe. Although the defendant was only liable for 35% of Buehl's losses, this still amounted to over $250,000.

Baumeister v. Drake. The defendant homeowners were absolved of responsibility, because they had not, in fact, provided any alcohol to the intoxicated driver who injured the plaintiff. However, the judge applied to the homeowners the same principles or provider liability that govern commercial establishments. Thus, from a liability perspective, responsible serving practices are as important for executives doing business entertaining in their homes or staff organizing the office Christmas party, as for members of the hospitality industry.

Crocker v. Sundance Northwest Resorts Ltd. The Supreme Court of Canada held the defendant resort liable for allowing the intoxicated plaintiff to participate in its tube-racing contest. During the race, he was thrown from his tube, broke his neck and was rendered a quadriplegic. Crocker had belligerently insisted on racing despite the staff's attempts to dissuade him, but the court viewed these efforts as insufficient. As the sponsor, the resort should have prevented Crocker from competing, even if this meant disqualifying him, postponing the event, or calling the police. The court indicated that sponsors of potentially dangerous activities have a duty to prevent the intoxicated from participating, even if they did not contribute to that person's intoxication. Liability was attributed 75% to the commercial host and 25% to the plaintiff on the basis of contributory negligence.

Gouge v. Three Top Investment Holdings Inc. (1994). In this case, guests purchased tickets that were then used to obtain alcohol. Staff duties included the clearing of tables and serving of coffee, etc., but not the service of alcohol. Mr. Gouge consumed considerable alcohol, was "cut off" by the property and after considerable persuasion by the event organizer, agreed to accept a ride home. Once in the parking lot, Mr. Gouge suddenly changed his mind and drove off on his motorcycle. Minutes later he was involved in an accident.

The court found that "In providing a cash bar arrangement the hotel had effectively deprived itself of the opportunity to observe the guest and monitor if it was serving alcohol to an apparently intoxicated person, in breach of their duty under the Liquor License Act. Had there been table service by individual servers, the staff would have realized the pace of Mr. Gouge's consumption and stopped serving him earlier."

Alternately a limited number of tickets could have been sold to each guest, thereby controlling and restricting alcohol consumption. The court concluded, on the facts of the case that, "Service of alcoholic beverages via a cash bar eliminated the opportunity to monitor consumption and constituted Contributory Negligence on the part of the hotel."

The court found the Hotel 5 % liable for Gouge's injuries.

Francescucci v. Gilker (1986). Affirming (1991) the plaintiff brought an action against the driver who collided with her and against the restaurant that served him alcohol. The defendant driver also counterclaimed against the restaurant. The driver had become extremely intoxicated at the restaurant and had eventually passed out at a table. Employees of the restaurant found the keys to the defendant driver's rented car, which showed the car's license number. The employees found the car, physically put the defendant driver in the driver's seat and tossed the keys in after him. They then watched him drive away without his headlights on. Sometime later, the defendant driver crossed the centre line of a four lane undivided road and struck the plaintiff's car head-on. The Ontario Court of Appeal upheld the trial jury's apportionment of liability of 78% against the restaurant and 22% against the defendant driver. At trial, the driver also received a judgment against the restaurant.