

Sample Court Cases

Excerpts from: *Canadian Alcohol Liability*. Study commissioned by Insurance Bureau of Canada and Insurance Institute of Canada, July 1994

Website: www.ibc.ca/pdf/files/business_commercial/canadian_alcohol_liability.pdf

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.