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Recent Commercial Liquor Liability Decisions The Times They are a Changing

Three recent cases have addressed commercial liquor liability in B.C. with the latter two significantly altering the legal landscape. Below we address the three cases and the resulting impact on liability insurers.

SALM v. COYLE

In *Salm*, the defendant attended a pub with a number of friends and drank to excess before leaving the premises. One of the group of friends was a designated driver and agreed to drive Ms. Coyle home. Ms. Coyle was indeed safely driven back to her home. The staff of the pub had no recollection of Ms. Coyle having been on the premises on the night in question.

Unfortunately, after arriving home, Ms. Coyle took her parent's vehicle to attend another party. On the way home from the party Ms. Coyle struck the plaintiff's vehicle. The plaintiff sued Ms. Coyle who in turn commenced proceedings against the pub. In deciding the matter the Court concluded that any risk of injury from Ms. Coyle's intoxication after her safe arrival at home was not reasonably foreseeable to the pub. Put simply, any duty of care owed by the pub to the intoxicated patron ended when the patron arrived safely at his or her home. The claim against the pub was dismissed.

HOLTON v. McKINNON

In *Holton* the Court considered circumstances similar to those in *Salm* and arrived at a very different conclusion. *Holton* involved a night of drinking by the plaintiff and the defendant who were friends. The drinking started at the plaintiff's home and moved on to two pubs. Upon leaving the first pub the plaintiff and defendant were intoxicated. The defendant eventually drove to the plaintiff's home where the two consumed more alcohol before they left in order to go to a party. On the way to the party the defendant lost control of his vehicle and the plaintiff was rendered a quadriplegic in the ensuing accident.

The Court found the defendant driver 40% liable, the Plaintiff 30% liable and two pubs each liable for 15%. The Court distinguished *Salm* on the basis that in *Salm*, the driver who injured the Plaintiff made it to her own home safely. The Court concluded that the reasoning in *Salm* had no application because the defendant did not make it to his own home safely before the accident occurred.

LAFACE v. McWILLIAMS

The final, and perhaps most problematic case for insurers involves a ruling on the extent of fault attributable to a pub. In *Laface* a patron became intoxicated at a pub. Another patron noted the intoxication and told pub staff to make sure the intoxicated person did not drive his vehicle. This did not occur and the drunk patron, shortly after leaving the pub, drove his vehicle into a crowd of pedestrians congregated on and near the roadway. Liability was apportioned equally between the pub and the intoxicated patron for the injuries suffered by the various plaintiffs.

IMPACT ON THE INSURANCE INDUSTRY

Holton is of concern because it raises the spectre that a commercial liquor provider has a continuous duty of care for an intoxicated patron, after the patron leaves the premises until such time as the patron safely makes his way to his own home. That is, the duty of care is not discharged once an intoxicated patron makes his way to another "haven" where he or she could safely remain.

What may be of greater concern to insurers is the expansion of comparative fault on commercial hosts pursuant to *Laface*. In previous decisions where fault was allocated between an over-serving pub and an intoxicated driver, the pub was typically found between 15 – 33 1/3% at fault. The theory being that a person who elects to drink and then drive should bear the majority of fault for his or her actions. The decision in *Laface* exposes pub insurers to liability beyond the previous upper end of fault and forces insurers to consider the real prospect that their pub could be found 50% at fault and possibly more.

APPEALS

Both *Holton* and *Laface* are being appealed. We will be closely following both appeals and will provide an update for this Newsletter when Reasons from the Court of Appeal are pronounced.

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