



Criminal Law and Enforcement Newsletter

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The Limits of Criminal Law: Angry Beaver Bar Owners Discharged on Manslaughter and Criminal Negligence Charges

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In our July 2012 [article](#), we wrote on the wrongful act manslaughter charges laid against the two owner-operators of the Angry Beaver bar located close to Belleville. Earlier this month, both defendants were discharged by Ontario Court Judge Stephen Hunter at the conclusion of their preliminary inquiry.

In February 2012, a patron of the bar was involved in a head-on collision with another vehicle on Highway 401. The patron had entered an exit ramp of the highway and was driving westbound in the eastbound lanes. The drivers of both vehicles were killed. The collision occurred on the Monday morning following Superbowl Sunday. The patron had attended a party at the bar celebrating the game. With other patrons, she stayed in the bar after its closing, continuing the party throughout the night. The collision occurred shortly after she had left the bar between 8:30 and 9:30 a.m. the next morning. It was subsequently determined that at the time of the accident the patron's blood alcohol content was in excess of .200 *per cent*, two and one half times greater than the *Criminal Code* limit.

The Crown alleged that during the party and after closing, the owners had breached several provisions of the provincial *Liquor Licence Act*, including permitting drunkenness and supplying alcohol free of charge. The Crown argued that the breach of these provisions were unlawful acts causing the deaths of both drivers and that the bar owners were therefore guilty of the *Criminal Code* offence of unlawful act manslaughter. In the alternative, the Crown argued the alleged liquor offences committed by the defendants constituted criminal negligence causing death.

The offence of wrongful act manslaughter is intended to apply to circumstances wherein death results from the commission of a predicate or underlying offence from which the objective foreseeability of bodily harm (not death) is neither trivial nor transitory, within the context of a dangerous act. The underlying offence need not be a *Criminal Code* offence. Regulatory offences suffice, so long as they are not absolute liability offences in which there is no fault element (such as speeding). In this case, Justice Hunter found that, although the alleged breaches of the liquor legislation were fault-based offences which could be considered the unlawful acts necessary to trigger liability, they were not objectively dangerous; that is, they were not likely to cause injury to a person. Most liquor violations are not subject to enforcement through prosecution and instead are dealt with administratively by the provincial Licensing Appeal Tribunal. He referred to Supreme Court of Canada case law which found that over-service of a guest was an innocuous act. He also observed that nothing prevented social hosts from serving alcohol free of charge at any time of the day.

As to the criminal negligence allegations, Justice Hunter found that there was no evidence that would permit a properly instructed jury to find that the defendants had acted with the high degree of negligence required to sustain a conviction (a "marked" departure of the standard of care which would be reasonably expected of them in the circumstances). There was no evidence that either defendant had any contact with the patron while she was in the bar, or that they were present when she left. On the other hand, there was evidence that the patron knew cabs were available for hire from the bar and that the bar frequently utilized a free and readily-available designated driver for its patrons.

This case really speaks to the limits of the criminal law. It follows the opinion of the Supreme Court of Canada that the courts should not lightly brand a person a criminal. It is demonstrative of the fundamental

principle of criminal justice that criminal punishment, distinguished from regulatory and civil liability, should only be imposed on those deserving the *stigma* of a criminal conviction. However, it should also serve as a reminder to those in the hospitality and other strictly regulated industries as to the importance of exercising reasonable care in their regulatory compliance efforts. Consequences alone do not attract criminal liability, but consequences in combination with unsatisfactory or worse regulatory compliance efforts can. As a preliminary inquiry, the issue in this proceeding was whether there was sufficient evidence warranting a trial. Had there been evidence of interaction between the owners and the patron, instead of discharged, the owners may have been committed to stand trial.

A copy of the decision is available [here](#). The Crown has until early August to decide whether it will seek an order quashing the discharge. Provincial liquor licensing offences remain outstanding against the owners.

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