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Manslaughter Charges Arise From Alleged Liquor Licence Act Violations

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Fast on the heels of the successful prosecution of Metron Construction for criminal negligence arising from the deaths of four of its workers in December 2009, wrongful act manslaughter charges have been laid against the two owners of the Angry Beaver bar located in Belleville, Ontario.

The charges result from a tragic traffic collision that occurred in February 2012. A 23 year-old employee left the bar at 9:30 in the morning after it had hosted a Super Bowl party for its patrons. She entered the eastbound lanes of Highway 401 driving the wrong way. Her car collided with another vehicle, killing the employee and the young driver of the other car. It is alleged that the party continued well after the bar was required to close under the provisions of its liquor licence, with a number of staff sleeping in the bar after the party wound down. Allegedly, the employee was one of those who had slept in the bar before attempting to drive home.

Wrongful act manslaughter, along with murder, is a form of culpable homicide. Murder can be reduced to manslaughter if the accused killed in the heat of passion after being provoked. Wrongful act manslaughter and murder reduced to manslaughter share common nomenclature and provide for the same punishment (life imprisonment), but, in law, are two distinct offences. Unlike the latter, 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 forseeability of bodily harm (not death) is neither trivial nor transitory, within the context of a dangerous act. The predicate 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). However, the breach of the predicate offence must be egregious; in the case of strict liability offences (which describes most regulatory offences in Canada) wherein the fault element is a rebuttable presumption of negligence, the breach must constitute at least a “marked” if not a “marked and substantial” departure from the standard of care expected of a reasonable person in the prevailing circumstances. The adverbs “marked” and “substantial” are intended to measure the degree of departure from the conduct one would reasonably expect of a person in the circumstances. The objective forseeability of bodily harm is intended to measure the awareness of the accused of the risk created by its conduct. So what does the Crown need to prove in order to obtain a conviction? Two things: (1) there was at least a marked and, perhaps, a substantial contravention of the predicate offence by the accused; and, (2) a reasonable person would have an appreciation of the risk of bodily harm created by (1).

In this case, the theory of the police and the Crown appears to be that the deaths resulted from the commission of a number of offences under the provincial liquor licensing legislation, specifically:

- selling and serving liquor outside prescribed hours,
- serving liquor to an apparently intoxicated person; and,
- permitting the supply of alcohol free of charge

The entity (if any) owning or operating the bar has not been charged with the individual owners, but in law it could very well have been. It would be exposed to conviction if the bar tender or another employee committed one or more of the alleged liquor offences and one or both of the owners departed markedly (at least) from the standard of care that, in the circumstances, could reasonably be expected to prevent their

commission; in other words, markedly failing to act with the requisite due diligence to ensure the liquor licensing legislation was not contravened. If the entity was convicted, it would face unlimited fines.

Not to diminish the potential difficulty the Crown may have in proving that these alleged predicate contraventions were egregious, what makes this case interesting is the conclusion of the police and the Crown that the risk of bodily harm to both women was objectively foreseeable. Inherent in wrongful act manslaughter is the requirement that the wrongful act has caused the death of the victim. If the deceased employee had collapsed and died in the bar after consuming enough alcohol to poison her, one might conclude that there was a greater causal connection between the predicate offence (serving alcohol to an intoxicated person) and the bodily harm. In the case as reported publicly thus far, the deceased employee appears to have made the decision to drive home, regardless of her physical ability to do so safely. In law, that decision may be construed as an intervening event, breaking the chain of causation and raising a reasonable doubt as to the fault of the bar owners (that bodily harm was objectively foreseeable). On the other hand, there is substantial judicial authority suggesting that the predicate offence need only be *a* contributing factor to the bodily harm, outside of the *de minimis* or trivial range.

This case will be of obvious interest to those in the hospitality industry, but the interest should not stop there. The prosecution is yet another example of the application of the criminal law to situations of negligence arising in a heavily regulated service or industry causing catastrophic results. Walkerton and the prosecution of the Koebel brothers (for common nuisance) is another, as is the ongoing prosecution of the ship's navigator arising from the 2006 loss of the B.C. ferry the "Queen of the North" (criminal negligence causing death), and the Metron prosecution within the context of workplace safety. Yet another may arise from the recent roof collapse of the Algo Centre Mall in Elliot Lake, which is now the subject of an OPP criminal investigation.

We will follow up with another article as the prosecution proceeds.

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