

DOLDEN

WALLACE

FOLICK LLP

LIQUOR LIABILITY - WHAT YOU NEED TO KNOW TO PROTECT YOUR ESTABLISHMENT

Lorne P.S. Folick

January 2011

18th Floor - 609 Granville St.
Vancouver, BC
Canada, V7Y 1G5
Tel: 604.689.3222
Fax: 604.689.3777

308 - 3330 Richter Street
Kelowna, BC
Canada, V1W 4V5
Tel: 1.855.980.5580
Fax: 604.689.3777

850 - 355 4th Avenue SW
Calgary, AB
Canada, T2P 0J1
Tel: 1.587.480.4000
Fax: 1.587.475.2083

500 - 18 King Street East
Toronto, ON
Canada, M5C 1C4
Tel: 1.416.360.8331
Fax: 1.416.360.0146

CONTACT LAWYER

Lorne Folick

604.891.0352

lfolick@dolden.com

WHY ARE LIQUOR PROVIDERS EXPOSED TO LIABILITY?

If tavern owners are allowed to sell intoxicating beverages, they must accept, as a price of doing business, a duty to attempt to keep the highways free of drunk drivers....The duty to take affirmative action is for the protection of the general public.

Hague v. Billings (1989), 48 C.C.L.T. 192.

As a commercial liquor provider who profits from the sale of liquor to the public, in the eyes of the law, you have a “special relationship” with your patrons and the general public that requires you to take reasonable steps to prevent injury to patrons or others as a result of your patrons’ intoxication. In other words, the courts believe that the risks that arise from the sale of intoxicating beverages should be controlled by the organization that has a financial interest in creating the risk.

As impaired driving laws become stricter, it is increasingly important to ensure your organization is taking as many steps as is reasonably possible to reduce your exposure to liability for injuries that occur both on and off premises.

HOW TO PROTECT YOUR ORGANIZATION FROM EXPOSURE TO LIABILITY

Commercial liquor providers are required by law to take reasonable steps to ensure the safety of guests. What is reasonable depends on the circumstances; however there are certain steps that your organization can take to help minimize your exposure to liability.

Four key ways to protect your organization from exposure to liability are to create and implement effective **policies and procedures**, have effective **management supervision**, consistent staff **training** and to have protocols which ensure the **preservation of evidence**.

1. Policies and Procedures

Effective policies and procedures provide proof that your organization has strict performance requirements for employees.

It is important to have written policies in place that address all liquor consumption related issues for your organization.

Policies and Procedures Checklist

When drafting your organizations policies and procedures, ensure the following topics are covered:

Required certification

Specify that all employees must have Serving It Right certification and security staff are required to take the mandatory Basic Security Training course offered by the Justice Institute of British Columbia.

Identifying intoxicated persons

List the major identifiable signs of intoxication such as change in speech speed (slow to fast), decrease in alertness, inappropriate speech volume or slurred speech, stumbling gait, inappropriate sweating, red or bloodshot eyes, deterioration of motor control and fatigue.

Preventing entry of intoxicated persons

Specify the procedures for your doorstaff regarding screening the patrons who seek entry, dealing with patrons who have been drinking prior to their arrival and how many patrons enter at a time. Clearly state that it is your organization's policy that intoxicated patrons are not to be permitted entry into the premises.

Monitoring consumption by patrons

Specify in your policies and procedures that serving staff and bartenders should be monitoring the level of consumption of the patrons and identifying when a patron starts to show signs of intoxication.

Dealing with potentially intoxicated patrons

Specify in your policies and procedures what the protocol is when a bartender or server identifies a patron as showing signs of intoxication. Ensure that the procedure includes protocols for ensuring that the patron does not drive a vehicle himself/herself and communicating safe options for getting the patron home (such as a designated driver, calling a taxi, driver service or a friend/family member).

Sale of Liquor

Specify limits on the amount of alcohol permitted to be sold to a patron per order and limit the number of points of sale. Consider stating in your policies that servers/bartenders are permitted to provide free non-alcoholic beverages to patrons who state they are a designated driver.

All employees should be required to read the policies before being hired and managers should provide ongoing training to employees to ensure proper understanding, implementation and compliance with the policies. Employees should be required to sign off on the policies and procedures. The policies and procedures themselves should be regularly reviewed and updated.

Your managers should also hold regular meetings with their employees to discuss the policies and procedures and provide employees with an opportunity to raise any questions and/or concerns. It is a good practice to hold such meetings weekly or bi-weekly on a day that follows the busy time of the week so managers can also discuss any recent incidents or concerns.

2. Management Supervision

The managers in your organization are crucial to reducing your exposure to liability. The managers must ensure that the number of employees on shift at any given time is appropriate for the number of patrons present, which may require for example having on-call servers and doorstaff to address unexpected customer volume.

Your managers should also ensure that there are advertisements posted in your organization for taxis, that you are promoting car and driving services such as “Keys Please” and your managers should arrange for taxis to be lined up outside your organization, particularly at closing time.

3. Training

Ongoing and up-to-date training on the topics listed in your policies and procedures is critical to reducing exposure to liability. If an incident occurs because a particular policy or procedure was not followed, it is important to re-train the employees on that policy or procedure following the incident.

4. Preservation of Evidence

When an incident occurs at your organization it is crucial that the evidence relating to that incident be preserved. A lawsuit may be commenced several years after the

incident occurs. The memories of those who witnessed the incident will fade over time so their evidence should be gathered as quickly as possible.

Three key ways to preserve evidence of an incident are having an **incident reporting system, statements and video surveillance**.

i. Incident Reports

Ensure that the managers in your organization train their employees on how to properly complete an Incident Report and have copies of blank Incident Reports available.

When creating the Incident Report form, ensure that it includes the following:

- The names of employees on shift;
- Details on the patron that the incident relates to;
- Details about the incident itself, including:
 - Whether there was a denial of entry for the patron;
 - Whether the patron was refused service; and
 - Whether the patron was ejected from your establishment;
- Names and contact information for witnesses (2 or more if possible);
- Details on Transportation options, including:
 - Were transportation alternatives offered, if so what?
 - How did the patron leave the premises?
 - Is there BarWatch/Trescope information available for this patron? If so, the records should be obtained and retained; and
- Whether your insurance broker has been contacted.

ii. Statements

When an incident occurs, it is important to have a record of both your employees' recollections of the events as well as statements from any witnesses to the incident. It is also important to train the employees to not provide statements regarding an incident to anyone without first speaking to management. If a statement is requested by the police, you should contact your insurer right away.

Your policies and procedures should state that employees who are working at the time of an incident are required to complete statements about the circumstances of the incident. The manager on duty should also seek contact information from any other witnesses to the incident and if possible obtain statements from them about the incident. These statements should be as detailed as possible.

iii. Video Surveillance

In liquor liability cases, video surveillance is often a key piece of evidence. If video surveillance exists at your organization make sure that the managers and employees who deal with the surveillance footage know the importance of immediate preservation of footage relating to any incident of note. Footage of any incident of note should be kept for a minimum of three years and the footage must not be altered in any way.

SUMMARY

Commercial liquor providers increasingly face the prospect of civil liability. Commercial liquor providers can protect themselves by:

- creating and implementing clear and effective policies and procedures;
- having effective management supervision;
- constantly training employees and managers on policies and procedures and industry standards; and
- preserving evidence of any incidents.

Lorne Folick, a senior partner at Dolden Wallace Folick LLP, has a practice dedicated exclusively to insurance defence litigation. Lorne has a wide range of experience; he is particularly well-regarded in the field of liquor liability. Lorne is a co-author of Liquor and Host Liability Law in Canada published by Canada Law Book.

www.dolden.com