

ClubPac News

March 2009

Liquor Service Fines and Liabilities

Most club owners and managers are aware of the unfortunate automobile accident and deaths of three young people after leaving the restaurant at Lake Joseph Golf Club last July, and of course the more recent charges laid by the Ontario Provincial Police against both ClubLink corporately and against the Directors & Officer of the corporation personally.

Are you at risk too ?

There is a lot of confusion and misinformation about the charges, their origin, the application of insurance and who has been charged and why. There is also no end of "opinion" being expressed in various "Internet Blogs" by everyone but the people actually involved, and much of it is just plain wrong.

The point of this articles is not to argue the merits of the ClubLink situation, but to try to point out how and where many golf clubs could find themselves in a similar situation.

There are two separate and distinct issues in this situation which, while interconnected, must be looked at and considered separately. There is an issue of **CIVIL LIABILITY** and an issue of **STATUTORY CODE VIOLATIONS**.

CIVIL LIABILITY stems from bodily injury or property damage suffered by a third party as a result of the negligence of a first party. Obviously three young people died, and it is very likely that Civil lawsuits will be launched by their families against both the driver & owner of the vehicle, and against ClubLink for serving the driver alcoholic beverages to the point of intoxication or impairment.

These issues will be wholly or partially covered by insurance. The owner's automobile insurer will be called upon to defend and indemnify the owner and the club's general liability insurer will respond to defend and indemnify ClubLink.

The Civil Liability question needs to be broken down further. The law recognizes various "levels" of responsibility with regards to the service of alcohol. There are **COMMERCIAL** Hosts and there are **SOCIAL** hosts.

Commercial Hosts are generally those individuals or corporations which apply for and hold a license to serve alcoholic beverages. The courts have imposed a very high "Duty of Care" upon Commercial Hosts requiring them to ensure that impaired patrons get home safely and the Ontario Liquor License Act, section 39 (other provinces are similar) specifically states that if a licensee serves a patron to the point of intoxication and that patron is subsequently injured or injures someone else, the host is liable to the injured party(ies).

Social Hosts are those individuals and organizations who are involved in activities including the consumption of alcoholic beverages, but are not obliged to be licensed. The most "social" example is of course the typical "house party".

The Supreme Court of Canada has considered this situation and has determined that generally, Social Hosts are NOT LIABLE for injuries or damages caused to or by their impaired guests. However the Supreme Court did not totally "close the door". The Court indicated that liability "could" apply if the host actively promoted the intoxication and/or the behaviour that lead to the injury or damage.

STATUTORY CODE VIOLATIONS - so lets move on to the other and more “sensational” issue presented by the ClubLink situation.

When a Commercial Host applies for a license to serve alcoholic beverages, he/she is bound by the terms and conditions of the Provincial Liquor Act. One of these terms (Section 29 in Ontario) is that the licensee may not sell or supply liquor or allow it to be sold or supplied to a intoxicated person.

Over-serving a patron is a breach of the Act whether that patron is subsequently injured or not.

The Penalties for breaching the Ontario Act are specified in Section 61.(3) & (3.0.1). These are fines “up to \$250,000. per offense against a corporation” and “up to \$100,000. and/or 12 months in jail against individuals”.

The Alcohol & Gaming Commission may also suspend or revoke the Liquor License.

Section 61.(2) of the Ontario Act goes on to state that the Directors and Officers of a corporate licensee which breaches the Act are also personally guilty of an offence.

As a result of these licensing conditions ClubLink (the corporation) has been charged with two violations of the statute and each of the Directors and Officers (whether directly involved in the service of liquor or not) have also been charged.

These are “Penal” fines. They will not be covered by any insurance ! All insurance policies contain exclusions for “Fines & Penalties” and even if they didn’t, the courts refuse to allow insurers to pay fines on the grounds that it is contrary to the public good to allow third parties to serve punishment on behalf of the guilty.

[Think of it in the context of an automobile accident where you “rear-end” the car in front of you and in addition to the damage to the car (which is covered by insurance) the police also fine you \$120. for “following too close”. Obviously your insurance company is not going to pay your ticket.]

The Ontario Liquor License Act is silent on the issue of reimbursements, but other Acts (specifically those involving employment health & safety) specifically prohibit corporations from paying or reimbursing personal fines so it is quite likely that if the Directors & Officers of ClubLink are found guilty of the charges and fined, the courts will not allow ClubLink to reimburse the individuals.

It is also important to keep in mind that even in the absence of a title or formal appointment, an individual may still be deemed an officer of the organization. If as part of your duties at your club, you have the authority to sign a binding contract or issue a cheque on behalf of the club, you are almost certainly an officer.

This is a very general outline of the situation facing ClubLink corporation and the directors, officers and certain employees of that corporation. You need to carefully consider your own situation keeping these general terms in mind.

- Does your club have a detailed and comprehensive liquor service policy ?
- Is that policy and the serving staff 100% supported by the club Directors and management ?
- Is that policy strictly and universally enforced ?

If not, you could easily find yourself in the same unfortunate position as the Directors & Officers of ClubLink.