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CASE SUMMARY: THE OBLIGATIONS OF A LIQUOR ESTABLISHMENT TO ITS PATRONS—AN APPEAL FROM THE DECISION OF THE ONTARIO LICENCE APPEAL TRIBUNAL

The Registrar appealed a decision of the Ontario Licence Appeal Tribunal, which directed it not to suspend the liquor licence of an establishment. In making its decision, the court concluded that a liquor establishment, under section 45 of the applicable regulation, did not have an obligation to ensure that patrons arrive home safely or to ensure that they safely depart their premises.

Administrative law – Decisions reviewed – License Appeal Tribunal – Compliance with legislation – Judicial review – Appeals – Standard of review – Reasonableness

Ontario (Registrar, Alcohol, Gaming and Racing) v. 1146587 Ontario Ltd. (c.o.b. The Royal Oak), [2019] O.J. No. 1336, 2019 ONSC 1469, Ontario Superior Court of Justice, March 18, 2019, K.E. Swinton, G.M. Mulligan and R.M. Raikes JJ.

The Registrar, Alcohol, Gaming and Racing (the “Registrar”) appealed a decision of the Ontario Licence Appeal Tribunal (the “Tribunal”), which directed the Registrar not to suspend the liquor licence of the respondent, The Royal Oak. The basis for the proposed suspension was the allegation that The Royal Oak had violated section 45(1) of the O. Reg 719/90 made under the *Liquor Licence Act*, R.S.O. 1990, c. L.19. That section states that a licence holder shall not:

... permit drunkenness, unlawful gambling or riotous, quarrelsome, violent or disorderly conduct to occur on the premises or in the adjacent washrooms, liquor and food preparation areas and storage areas under the exclusive control of the licence holder.

The incident occurred on December 11, 2016. A regular patron of the bar was served four 24-ounce beers. By the fourth beer, the server noticed the individual was showing signs of intoxication so took away the beer. The patron resisted. He left the bar approximately 15 to 20 minutes later. Staff helped him put on his coat and watched him leave. When he left, he was still showing signs of intoxication (stumbling). The patron was reported missing a few days later. Tragically, his body was found a few days later covered in snow on a well-used path near the bar.

The central issue before the court was whether section 45(1) of the Regulation imposed an obligation on The Royal Oak to ensure that the patron arrived home safely or at least reached a safe place. The Registrar argued that there was an ongoing responsibility on liquor establishments to ensure the safety of patrons after they depart the premises. The Royal Oak argued that such an interpretation was too broad, imposed an impossible burden on liquor establishments and was otherwise not supported in the case law that has interpreted section 45(1) of the Regulation. The court agreed.

The court held that there were two obligations imposed on a licence holder under section 45(1): the licence holder must not permit drunkenness in the premises and it must safely remove a drunken patron within a reasonable period time. The court, however, disagreed that this latter obligation required the licence holder to ensure that the patron arrives home safely or at least reaches a safe place, as the Registrar argued. The court said such an interpretation was not supported by the language of the Regulation, in the case law and would impose an unreasonable burden on the licence holder that it could unlikely ever satisfy. The court stated that section 45(1) is regulatory in nature and that if the legislature had wanted the provision to be remedial – which it suggested the Registrar was promoting through its broad interpretation – it would have used clear and express language, which it did not.

The court dismissed the appeal and awarded costs to the respondent.

This case was digested by [Adam R. Way](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Adam R. Way at away@harpergrey.com.