



Pub Not Liable for Spontaneous Assault by Assailant Due to 'Hidden Intoxication'



By Sam Clark, Lawyer

Licensed establishments face many unique challenges. One challenge is the danger caused by intoxicated patrons to other guests. An establishment has a duty under the *Occupiers' Liability Act* to reasonably protect visitors against foreseeable harm caused by the conduct of third parties such as intoxicated guests. While the assailant is primarily responsible for the injuries resulting from the assault, they often do not have the resources to pay out an award. As such, licensed establishments are often sued because they have deeper pockets. This was the situation in the recent case of *Allnutt v. Carter*, 2021 ABQB 51.

On February 18, 2012, the Plaintiff went to the Defendant's bar, Hudsons Canadian Taphouse. While using the washroom, he was assaulted by the heavily intoxicated Defendant, Dale Carter. Earlier that day, Mr. Carter was asked to leave another establishment for causing a disturbance. He had also consumed a large amount of alcohol prior to attending Hudsons. After being sued, he did not file a statement in defence and was noted in default. As such, the Plaintiff pursued a case against Hudsons as an occupier.

The Plaintiff argued while Hudsons had an impressive policy to inspect for intoxicated guests, the policy was not being followed. Hudsons argued the assault was not foreseeable because Carter was not visibly intoxicated, had only ordered two drinks, was only there for 15 to 30 minutes, and the assault was sudden and unprovoked.

Justice Rothwell cited cases from Alberta and other provinces which involved patrons at licensed establishments being assaulted by other guests. These cases indicated a sudden unprovoked assault by a patron was usually not foreseeable. The only case where an assault was found to be foreseeable was a situation where the plaintiff was struck in the eye with a bottle during a fight which lasted several minutes. As such, Justice Rothwell noted courts generally dismiss actions against licensed establishments when the plaintiff is the victim of an unprovoked assault or when the assailant does not show any prior aggressive or inappropriate behaviour.

In this case, while Mr. Carter was intoxicated when he entered Hudsons, he was not visibly intoxicated. Hudsons only served him two drinks and did not know about his alcohol consumption earlier that evening. The court held a patron who was not visibly intoxicated, only consumed two drinks at the establishment, and did not display aggressive behaviour, would not be a foreseeable threat to the safety of others.

Justice Rothwell also differentiated the threat of impaired patrons to the hazards posed by spills at grocery stores. A grocery store can quickly conduct a visual scan to detect potential hazards. By comparison, a bar has to monitor people entering and exiting the premises and their level of intoxication can change over the course of the evening. As such, a bar only has a duty to watch for threatening or aggressive behaviour since it would not be reasonable to test guests for intoxication during their visits. Furthermore, Justice Rothwell noted if a bar was understaffed, overcrowded, or had a history of violent incidents then an assault may be foreseeable.

Since the assault was not foreseeable, Justice Rothwell found it would be impossible for the Plaintiff's claim to succeed. As such, the court granted Hudsons' application to summarily dismiss the Plaintiff's claim.



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Allnutt v. Carter shows us that:

1. A visitor's level of impairment is not enough for a licensed establishment to be responsible for their actions. They must be visibly intoxicated or the establishment must have failed to monitor interactions between customers;
2. A licensed establishment is not automatically responsible for injuries from a fight. Instead, the establishment must have failed to take reasonable steps to monitor guests and/or attempt to break up the fight. Courts are reluctant to find a sudden unprovoked assault was foreseeable.
3. A licensed establishment will be held to a different standard for protecting against intoxicated guests compared to a grocery store inspecting for spills.

Questions?

Should you have any questions with respect to this bulletin, or if you would like more detailed information related to the *Occupiers' Liability Act*, please contact the following member of the Brownlee LLP Insurance Litigation Team:



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