

Information No 9212

Treetop Catering Inc stands charged that on or about the 16th day of May 2022, at the City of Toronto, in the Province of Ontario, it did permit the removal of alcohol from the premises situated at 1292 Olde Street in the City of Toronto, Province of Ontario, as stated in section 39 of the *Liquor Licence and Control Act, 2019*, SO 2019, c 15, Schedule 22, O Reg 746/21 (*Licensing*) contrary to section 67(2) of the *Liquor Licence and Control Act, 2019*, SO 2019, c 15, Schedule 22.

Summonses were issued requiring both defendants to appear in court to answer the charges.

After completing the interviews, the prosecution's advocate will prepare a summary of the facts, as follows:

- On May 16, 2022, in response to a noise complaint made to the Toronto police, Constable Matthew Lee was dispatched to Simpson Academy, arriving at the student lounge at approximately 11:30 p.m. where a party was in progress.
- A liquor sales licence and catering notification form were posted over the bar in the name of Treetop Catering Inc. The hours of the event were stated to be from 7:00 p.m. to midnight, and the boundaries of the event premises were stated to be the student lounge and outdoor fenced area.
- Victoria Levens identified herself as the owner of Treetop Catering Inc and the organizer of the event.
- Constable Lee advised Ms Levens of the noise complaint, and she agreed to advise the guests that the party was over.
- Constable Lee and Ms Levens went out to the patio. The patio was fenced, with a gate opening to a grassy area beyond. There was a sign posted at the door leading out to the patio stating, "No alcoholic beverages permitted outside the patio." There was an identical sign on the gate leading out of the patio to the grassy area.
- There was a security guard on the patio. On Ms Levens's instructions, the security guard directed the guests to leave.
- Constable Lee observed empty beer bottles and plastic wine glasses on the grassy area just beyond the fence. There were no guests on the grass.

Step 2: Identify the Legal Issues Raised by the Facts

The legal issue in this case is whether the defendants, Treetop Catering Inc and Victoria Levens, committed an offence under the *Liquor Licence and Control Act, 2019* by permitting the removal of alcohol from the premises.

The area of law involved is provincial offences, in particular, offences under the *Liquor Licence and Control Act, 2019*.

Step 3: Research and Find the Relevant Law

This situation is governed by the *Liquor Licence and Control Act, 2019*, SO 2019, c 15, Sch 22. Sections 67(1)(c) and 67(2) provide as follows:

67(1) A person is guilty of an offence if the person, ...

(c) contravenes any provision of this Act or the regulations.

67(2) A director or officer of a corporation who caused, authorized, permitted or participated in an offence under this Act by the corporation is guilty of an offence.

The applicable regulation is O Reg 746/21: *Licensing*. The relevant sections are as follows:

15. The following classes are established for a licence to operate a liquor consumption premises::

1. Liquor sales licence.

16. The following are prescribed as endorsements on liquor sales licences: ...

3. Caterer's endorsement.

17. (1) A liquor sales licence authorizes the licensee to perform the following actions in accordance with this Regulation:

1. Keep for sale, offer for sale or sell liquor for consumption at the licensed premises.
2. Permit individuals to possess or consume open liquor at the licensed premises.
3. Serve or offer to serve liquor in the licensed premises.
4. Deliver liquor for a fee from the licensed premises....

(4) A caterer's endorsement authorizes the licensee to perform the actions set out in paragraphs 1 to 3 of subsection (1), in accordance with this Regulation, at premises other than the licensed premises...

39. (1) The licensee shall not permit a patron to remove liquor from the licensed premises except in accordance with this section or section 40 (Liquor takeout).

(2) A licensee may permit a patron to remove liquor from the licensed premises if,

- (a) the licensee has securely closed an opened and unfinished container of commercially-made wine that was either purchased from the licensee or that the patron brought into the restaurant or banquet room; or
- (b) the liquor is in a sealed, unopened container and,
 - (i) is commercially-made wine that the patron brought into a restaurant or banquet room and which the patron wishes to remove from that place, or
 - (ii) was brought onto the licensed premises by a patron that purchased the liquor from a retail store in accordance with subsection 35 (8) (Prohibitions on sale, storage, etc.).

(3) Despite clause (2) (a) and subclause (2) (b) (i), the licensee shall not permit a patron who is or appears to be intoxicated to remove wine from the licensed premises.

The Alcohol and Gaming Commission of Ontario's Liquor Sales Licence (Including Tied House) and Mini Bar Licence Guide requires the following:

Section 3: Liquor Sales Licence Endorsements:

At least ten (10) days before a catered event begins, the licence holder with a Caterer's Endorsement must provide the AGCO, the local police, fire, health and building departments with details concerning:

- The nature of the event and the name of the sponsor
- The address where the event will be held

- The dates and hours during which the event will be held-The estimated attendance for the event
- The boundaries of the area where liquor will be sold and served.¹

According to the case of *R v Sault Ste Marie*, [1978] 2 SCR 1299, 1978 CanLII 11, in order to secure a conviction, the prosecution must prove beyond a reasonable doubt that the defendants committed the *actus reus* of the offence, namely, permitting the removal of alcohol from the licensed area of the premises. If the prosecution succeeds in doing so, it will be up to the defendants to prove, on a balance of probabilities, that they had taken all reasonable steps in the circumstances to comply with the law.

Step 4: Determine How You Will Put the Relevant Facts into Evidence

The prosecution's evidence will consist of witness testimony and documents.

Patrick Elder can testify that he saw and heard people on the patio of the student lounge and the grassy area beyond the patio.

Constable Lee can testify that a party was taking place at the Simpson Academy student lounge and that Victoria Levens identified herself as the owner of Tree-top Catering Inc, stating that she was the organizer of the event. He can also testify about the contents of the catering notification form posted over the bar and introduce it into evidence. In particular, he can point out that the boundaries of the event were stated to be the student lounge and the outdoor fenced patio. In addition, he can testify that while he did not observe any guests on the grass, he did observe empty beer bottles and plastic wine glasses on the grass just beyond the fence.

BOX 6.6

SAMPLE THEORY OF THE PROSECUTION'S CASE IN THE LIQUOR LICENCE CASE

The prosecution's theory of the case is that the defendants permitted the removal of alcohol from the licensed premises and that the defendants did not take all reasonable steps in the circumstances to ensure alcohol was not removed from the licensed premises.

Step 5: Assess Your Own Case

Neither prosecution witness observed guests holding alcoholic beverages while standing on the grass beyond the patio. However, Mr Elder observed guests on the grass, and Constable Lee observed beer bottles and wine glasses on the grass. The justice of

¹ AGCO, "Section 3: Liquor Sales Licence Endorsements," online: <<https://www.agco.ca/alcohol/guides/section-3-liquor-sales-licence-endorsements>>.