

**DISCOVERY 2002 CONFERENCE
APRIL 21 – 24, 2002**

TRACK: RESPONSIBLE GAMBLING

ALCOHOL AND THE LAW

GAMBLING AND THE LAW

WHAT LIES AHEAD?

A NEOPHYTE'S PERSPECTIVE

***I THINK IT ONLY FAIR TO DISCLOSE MY
PERSPECTIVE ON THESE ISSUES.***

***I'M THE SON OF A UNITED CHURCH MINISTER
WHO GREW UP BEING TAUGHT ABOUT THE EVILS OF DRINK
AND GAMBLING.***

***SOME OF THE ADVICE TOOK AND SOME DIDN'T
AND SO YOU ARE ABOUT TO HEAR THE THOUGHTS OF A
HARDWORKING WASP WHO HATES TO PART WITH HIS HARD
EARNED DOLLARS BUT DOESN'T MIND HOISTING A FEW TO
CELEBRATE A HARD WON VICTORY IN THE COURT ROOM!***

***MY PERCEPTION OF WHAT HAS HAPPENED TO
OUR SOCIETY IN THE LAST 20 OR SO YEARS IS TO A LARGE
EXTENT JUST THAT A PERCEPTION—I HAVE HAD ONLY A***

FLEETING LOOK AT THE PROLIFERATION OF GAMBLING IN THIS COUNTRY AND QUITE FRANKLY I DON'T LIKE IT.

I SEE THE PEOPLE WHO CAN LEAST AFFORD TO BE GAMBLING LOSING THEIR PRECIOUS RESOURCES WHILE AT THE SAME TIME HAVING A SIGNIFICANT NEGATIVE IMPACT ON THEIR LOVED ONES.

THE LAW HAS SLOWLY BUT STEADILY DEVELOPED OVER THE YEARS A BODY OF PRINCIPLES WHICH ARE THERE TO PROTECT THOSE MEMBERS OF OUR SOCIETY WHO ARE VICTIMIZED BY THE NEGLIGENCE OF OTHERS.

IN RECENT YEARS THE LAW HAS SURFACED TO PROTECT OUR CITIZENS FROM THE NEGLIGENCE OF THOSE WHO HAVE PROFITED FROM THE SALE AND DISTRIBUTION OF ALCOHOL.

IT IS THE THEME OF THESE FEW COMMENTS THAT WHAT HAS HAPPENED WITH THE LAW AND ALCOHOL COULD WELL BE REPEATED WITH GAMBLING.

THE LAW AND ALCOHOL

THIS AREA OF THE LAW BEGAN TO DEVELOP IN EARNEST IN THE UNITED KINGDOM IN THE 1930'S WITH A FAMOUS CASE AT LEAST TO LAWYERS OF "DONOGHUE AND STEVENSON" ¹

IT WAS A SIMPLE CASE OF A SNAIL IN A BOTTLE THAT CHANGED THE FACE OF TORT LAW THROUGHOUT THE FREE WORLD.

IN THAT DECISION FROM THE HOUSE OF LORDS MR JUSTICE ATKIN SPOKE ABOUT THE DUTY OF CARE THAT WE ALL OWE OTHERS IN SOCIETY.

HE STATED:

“THE RULE THAT YOU LOVE YOUR NEIGHBOUR BECOMES IN LAW---YOU MUST NOT INJURE YOUR NEIGHBOUR”

HE WENT ON TO STATE:

“WHO IS MY NEIGHBOUR?----THE ANSWER SEEMS TO BE --PERSONS WHO ARE SO CLOSELY AND DIRECTLY AFFECTED BY MY ACT THAT I OUGHT REASONABLY TO HAVE THEM IN CONTEMPLATION AS BEING SO AFFECTED WHEN I AM DIRECTING MY MIND TO THE ACTS OR OMISSIONS WHICH ARE CALLED INTO QUESTION”

THESE POWERFUL WORDS HAVE ECHOED THROUGH THE COURTS OVER AND OVER AGAIN, PROVIDING REMEDIES AND RELIEF TO THOSE AMONG US WHO HAVE FALLEN VICTIM TO THE NEGLIGENCE OF OTHERS

ONE OF THE IMPORTANT DEVELOPMENTS IN THE LAW THAT FOLLOWED WAS A CASE CALLED JORDAN HOUSE LTD VS MENOW IN 1974.²

IN THAT CASE THE CANADIAN SUPREME COURT IN ANALYSING THE DUTY OF CARE THAT A PUB OWED TO THE PUBLIC INCLUDING ITS OWN CUSTOMERS STATED THE DUTY THIS WAY:

“THE COURT MUST CONSIDER THE STANDARD OF CARE IN LIGHT OF THE GRAVITY OF THE POTENTIAL AND FORSEEABLE INJURY AND DETERMINE THE STANDARD OF CARE THAT IS INFORMED BY THE ACTIONS REQUIRED TO PREVENT THE INJURY FROM OCCURRING”

A FEW YEARS LATER THE SUPREME COURT WAS CALLED UPON TO DEAL WITH THE PROBLEM OF THE VULNERABLE WHO SOME MIGHT TERM WAS THE AUTHOR OF HIS OR HER OWN MISFORTUNE.³

THAT CASE DEALT WITH A RESORT WHICH WAS CONDUCTING DANGEROUS ACTIVITY FOR A PROFIT WHICH RESULTED IN A SERIOUS INJURY TO A DRUNK PATRON TUBING DOWN A MOUNTAIN IN SOME KIND OF ORGANIZED ACTIVITY OR CONTEST.

THE COURT STATED:

“THE COMMON THREAD RUNNING THROUGH THESE CASES IS THAT ONE IS UNDER A DUTY NOT TO PLACE ANOTHER PERSON IN A POSITION WHERE IT IS

FORESEEABLE THAT THE PERSON COULD SUFFER INJURY. THE PLAINTIFF'S INABILITY TO HANDLE THE SITUATION IN WHICH HE/SHE HAS BEEN PLACED EITHER THROUGH INTOXICATION OR OTHER INCAPACITY , IS AN ELEMENT IN DETERMINING HOW FORESEEABLE THE INJURY IS"

THE NEXT DEVELOPMENT IN THIS AREA OF THE LAW CAME TO US IN ANOTHER TAVERN CASE WHERE THE COURT WAS CALLED UPON TO DEAL WITH INJURIES TO INNOCENT THIRD PARTIES. IN THAT CASE THE TAVERN WAS BEING SUED BY AN INNOCENT DRIVER WHO WAS HURT BY A DRUNK CUSTOMER COMING FROM THE TAVERN.⁴

THE COURT EXPANDED THE LAW BY STATING:

"GIVEN THAT CATASTROPHIC INJURIES CAN RESULT FROM AN AUTOMOBILE WHILE BEING OPERATED BY AN INTOXICATED PERSON, THERE OUGHT TO BE A HIGH STANDARD OF CARE IMPOSED ON PERSONS WHO SUPPLY ALCOHOL TO ENSURE THAT THE SUPPLIERS DO NOT CREATE A DANGER TO OTHERS USING THE HIGHWAY"

IN 1995 THE SUPREME COURT WENT EVEN FURTHER IN DESCRIBING THE DUTY OWED BY TAVERNS. THE WORDS USED BY THE COURT HOWEVER HAVE MUCH BROADER APPLICATION THAN JUST TAVERNS—LISTEN TO WHAT THE COURT SAID⁵

"ONE OF THE PRIMARY PURPOSES OF NEGLIGENCE LAW IS TO ENFORCE REASONABLE STANDARDS OF

CONDUCT AND PROVIDE A DISINCENTIVE TO RISK TAKING BEHAVIOUR”

“IN SOME CIRCUMSTANCES THE PROXIMITY OF RELATIONS BETWEEN PARTIES GIVES RISE TO A DUTY OF CARE THAT REQUIRES POSITIVE ACTION TO DISCHARGE THAT DUTY”

“IF THE EXISTING DUTY OF CARE IN THE PARTICULAR FACT PATTERN REQUIRES MORE THAN PASSIVITY—THE COURT WILL LOOK TO SEE IF THE DEFENDANT DISCHARGED THE BURDEN UPON IT”

“THE LIABILITY CAN’T BE AVOIDED WHERE THE ESTABLISHMENT HAS INTENTIONALLY STRUCTURED THE ENVIRONMENT IN SUCH A WAY TO MAKE IT IMPOSSIBLE TO KNOW WHETHER INTERVENTION IS EVEN NECESSARY”

AND SO TO SUM UP, THE LAW AND ALCOHOL HAVE NOW REQUIRED NOT ONLY TAVERNS BUT ALSO HOMEOWNERS TO TAKE STEPS TO PROTECT NOT ONLY THEIR DRUNKEN PATRONS FROM THEMSEVES BUT ALSO INNOCENT MEMBERS OF THE PUBLIC FROM THE DANGER OF DRINKING AND DRIVING.

WHAT ABOUT GAMBLING?

WHO WILL BE THE VULNERABLE VICTIMS LOOKING TO THE COURTS FOR HELP?

WILL THEY BE THE ADDICTS?—THEIR FAMILIES? - I SUSPECT BOTH!

I NEED TO KNOW A LOT MORE ON THE SUBJECT BUT WHAT LITTLE READING I'VE DONE ON THE SUBJECT SURPRISES ME.

I READ ABOUT ESTIMATES OF UP TO 340,000 ADULTS IN ONTARIO ALONE BEING PROBLEM GAMBLERS AND THAT A GOOD PORTION OF THOSE ARE YOUNG ADULTS BETWEEN THE AGE OF 18—24

I READ ABOUT CANADA NOW HAVING OVER 100,000 PLACES TO BET⁶

- ***59 PERMANENT CASINOS***
- ***107 OFF TRACK BETTING FACILITIES***
- ***1,880 BINGO HALLS***
- ***32,932 LOTTERY TICKET CENTRES***
- ***31,537 SLOT MACHINES***
- ***38,252 VIDEO LOTTERY TERMINALS***

GIVEN THE LARGE AMOUNT OF RESOURCES AT WORK IN THE BETTING BUSINESS AND THE VULNERABLE NATURE OF MANY OF THEIR CUSTOMERS IT DOESN'T TAKE A ROCKET SCIENTIST TO FORECAST TONS OF MISERY BEING CREATED BY THIS VIBRANT INDUSTRY.

GAMBLING ADDICTION IS NOW WELL RECOGNIZED AND UNDERSTOOD BY THE INDUSTRY AS EVIDENCED BY THE ADVERTISING SEEN EVERYWHERE EVEN ON THE VERY MACHINES THAT CONTINUE TO VICTIMIZE THESE POOR SICK FOLK DAY IN DAY OUT.

THE TIME IS UPON US FOR THE LAW TO COME TO THE RESCUE AND SET STRICT STANDARDS OF CONDUCT ON THOSE WHO WOULD PROFIT FROM THIS VERY LUCRATIVE ACTIVITY.

THE TOOLS ARE ALREADY THERE—THE CASE LAW HAS PAVED THE WAY FOR SOME VICTIMS UNDER CERTAIN CIRCUMSTANCES TO SUCCESSFULLY SEEK RELIEF FROM THE COURTS AND I SUSPECT THAT PROCESS IS ALREADY WELL ON ITS WAY.

ANECDOTALLY I HEAR ABOUT LAW SUITS BEING FILED AND THEN QUICKLY SETTLED WITH SECRECY TERMS PRECLUDING THE PUBLIC FROM LEARNING ABOUT WHAT HAPPENED .

IT WON'T BE LONG HOWEVER BEFORE SOME BRAVE SOULS WITH TOUGH COUNSEL WHO WILL LET THE COURTS PONTIFICATE ON THIS INCREASING SOCIAL PROBLEM.

REMEMBER WHAT THE COURTS HAVE SAID ABOUT

- **NOT INJURING YOUR NEIGHBOUR**
- **LOOKING TO THE GRAVITY OF THE FORESEEABLE INJURY**

- ***DETERMINING THE STANDARD OF CARE***
- ***PROTECTING THE VICTIM FROM HIS OWN VULNERABILITY***
- ***PROTECTING THE INNOCENT VICTIMS OF THE RISKY ACTIVITY(FAMILIES)***
- ***PROVIDING A DISINCENTIVE TO RISK-TAKING BEHAVIOUR***
- ***INSISTING THAT THE DEFENDANT TAKE POSITIVE STEPS TO PROTECT THE VICTIMS OF THE RISKY ACTIVITY***
- ***NOT LETTING DEFENDANTS HIDE BEHIND THE BUSINESS ENVIRONMENT THEY CREATED***

HOW WILL ALL THIS PLAY OUT IN PRACTICAL TERMS?

- A. WILL VIP ROOMS BE FOUND RESPONSIBLE FOR RE-ADMITTING FORMER PROBLEM GAMBLERS WHO HAVE TRIED TO ABSTAIN FROM THEIR ADDICTION?—I SUSPECT SO—SURELY THEY WILL BE REQUIRED TO PROTECT THESE VULNERABLE FOLKS AND THEIR FAMILIES FROM THE RAVAGES OF THEIR ADDICTION BY BARRING THEM RE-ENTRY JUST AS THE CASINOS PROTECT THEMSELVES FROM THE CARD SHARKS WHO ROAM FROM CASINO TO CASINO**
- B. WILL THE COURTS FIND RESPONSIBLE THOSE FACILITIES WHOSE STAFF TURN A BLIND EYE TO THE OBVIOUSLY ADDICTED**

**GAMBLERS WHO ARE OBVIOUSLY
DAMAGING THEMSELVES AND THEIR
FAMILIES – I SUSPECT SO**

IN SUMMARY

**THERE ARE NO DOUBT A MULTITUDE OF
WAYS IN WHICH THE COURTS WILL BE CALLED UPON
TO EXAMINE THE CONDUCT OF THE GAMBLING
INDUSTRY IN LIGHT OF HOW THEY HAVE EXAMINED
THE CONDUCT OF THE ALCOHOL HOSPITALITY
INDUSTRY.**

**THERE ARE AT LEAST 340,000 VULNERABLE
PEOPLE OUT THERE WHO ALONG WITH THEIR LOVED
ONES NEED PROTECTION FROM A POWERFUL
INDUSTRY THAT HAS HAD A BIT OF A FREE RIDE UP
TO NOW**

**I SUSPECT THAT FREE RIDE WILL COME UNDER
CLOSE SCRUTINY IN THE FUTURE BY THE COURTS
WHO WILL NO DOUBT DO MORE TO PROTECT THE
PUBLIC THAN THE GOVERNMENTS WHO AFTER ALL
HAVE THE BIGGEST VESTED INTEREST IN THIS NEW
FOUND SOURCE OF ENDLESS REVENUE.**

**I WISH THOSE OF YOU WHO ARE “ON THE WATCH”
GOD’S SPEED IN DOING WHAT YOU CAN TO KEEP
THESE PROBLEMS ON THE POLITICAL HORIZON**

**WITHOUT YOU THE VULNERABLE HAVE NO ONE – BUT
REMEMBER THE LAW IS OUT THERE WITH A READY
SET OF ESTABLISHED PRINCIPLES TO APPLY TO THE
RIGHT CASES.**

**THANK YOU FOR THE OPPORTUNITY TO SPEAK TO
YOU.**

REFERENCES

- 1. DONOGHUE V. STEVENSON [1932] A.C. 562,584**
- 2. JORDAN HOUSE V. MENOW [1974] S.C.R. 239**
- 3. CROCKER V. SUNDANCE NORTHWEST RESORTS LTD [1998] 1S.C.R.**
- 4. HAGUE V. BILLINGS [1993] O.C.A.**
- 5. STEWART V. BILLINGS [1995] S.C.R. 131**
- 6. "CANADA'S GROWING GAMING INDUSTRY IS SHINING BRIGHT" ALBERT WATSON REPORT
WWW.WORLDGAMINGLIVE.COM**