

**LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
6TH COUNCIL, 40TH SESSION**

TABLED DOCUMENT NO. 9-40

TABLED ON OCTOBER 8, 1969

BRIEF to the Commissioner of the Northwest Territories and the Members of the Council of the Northwest Territories prepared on behalf of the Northwest Territories Hotels Association in connection with the report of the Board of Liquor Inquiry submitted to the 39th Session of the Territorial Council held in June, 1969.

The Northwest Territories Hotels Association is a body duly registered under the Societies Ordinance of the Northwest Territories, and represents most of the hotels in the Territories. A list of the members of the Association is attached hereto.

The members have considered the report of the Northwest Territories Board of Liquor Inquiry presented to the 39th Session of the Council of the Northwest Territories held in June, 1969, and have also noted with interest the Council debate on the said report. The purpose of this Brief is to draw to the attention of the Commissioner, and the Council members, the concern of the Association with regard to a number of the recommendations contained in the report. We have specified the recommendations below, and have also added our comments as to why we feel these recommendations should not be included in any proposed legislation based on the Liquor Report. The Association cannot stress too strongly the anxiety of its members regarding these matters and we trust that you will give our representations very careful consideration, if and when the recommendations of the report are implemented.

Recommendation 17:-

"That the sale of liquor by licensees for off-premise consumption be prohibited."

On reading the form of Recommendation 17 and on hearing the discussion in the Council Session, it would appear to the members of the Association that the recommendation if implemented, would prohibit the sale of all liquor for off-premise consumption including beer which is presently sold by the hotels. In the Council discussion, the members of the Board of Liquor Inquiry supported the recommendation on the grounds that the sale of beer over the counter at closing time could be conducive to car accidents and also to late

night disturbances, Mr. Choquette, the Chairman of the Board of Liquor Inquiry also suggested the recommendation supported the principle that combining on-premise sales with off-premise sales is undesirable.

The members of the Association cannot accept the above arguments. Firstly, the type of person who will drink to excess and become involved in an accident or cause a disturbance late at night, will do so whether or not hotels are allowed to sell liquor for off-premise consumption. It is felt that the immediate effect of this recommendation if implemented, would be to boost the unlicensed and illegal sales of liquor and beer taking place after the Territorial Liquor Stores' hours of business. This practice, commonly called "bootlegging", has been prevalent in the Northwest Territories for many years and has thrived on any form of prohibitionism. The Association feels that it is facile to believe that there will be any reduction in accidents or disturbances caused through drink, if this recommendation is implemented. On the other hand, this recommendation would deprive everybody of liquor for his own use at times when it is inconvenient or impossible to obtain the same from the Liquor Store. Furthermore, our members advise us that their beer stocks are kept high at all times and especially during the summer, thereby providing the consumer with a 'chilled beer' of his choice. Perhaps this would account for the unusual number of sales that take place even when the Liquor Stores are open.

A vital factor from the hoteliers' point of view is the revenues received from off-premise sales. The member hotels can show that throughout the best room occupancy months, their revenue for sale of liquor and beer has always exceeded revenue from the rental of rooms to guests. The financial statements of hotels, because of the highly seasonal room occupancy, show a heavy dependence upon their licensed premises. Three of our members representing three of the major hotels in the Northwest Territories have indicated that between 20% and 25% of all liquor sales from their bars were for off-premise consumption. There is annexed to this brief

a percentage analysis of four hotels operated by Territorial Hotels Limited showing that two of the hotels rely on substantial off-premise sales. It follows that, the implementation of Recommendation 17 depriving the off-premise sale of beer, would seriously undermine the economic viability of a hotel operation in the Northwest Territories. In this context, the members of the Association would further point out that the revenues received from licensed premises very often subsidizes the general hotel operation. In consequence, any reduction in the profitability of operating licensed premises would directly affect the hoteliers' ability to provide other facilities.

As regards the principle that it may be a good thing to divorce off-premise sales from places where there are on-premise sales, the Association cannot envisage how this can operate unless there is an alternative source of liquor supply at the time when it is required. This would mean increasing the store hours of liquor outlets so that they are comparable to the hours of the hotels, and this in itself may not be sufficient in say a Town such as Hay River where the Liquor Store is a considerable distance from the "Old Town". As it stands, the Hotels Association feels that the effect of the recommendation would be to encourage bootlegging.

Finally, it should be mentioned that if this restriction is imposed, guests staying in a hotel would be prohibited from purchasing any liquor from the hotel for consumption in their hotel room. For the convenience of the tourist and out-of-town customer, the Association maintains that their members should be allowed to supply liquor, as well as beer, to hotel guests.

Recommendation 38:-

"That a male supervisor be in charge of licensed premises at all times."

The members of the Association have indicated that from their own experience, male supervisors would invite more trouble from obstreperous patrons than if female staff are allowed to deal with the situation. The Board of Liquor Inquiry report gives credit for the fact that female staff are better qualified to cater to patrons in nearly all types of establishments including those in the

more rugged areas. The report also confirms that female staff can have a soothing effect on boisterous patrons and are sometimes better able to control any potential disorders. Our members have endorsed this finding without qualification and have pointed out that if a patron does become violent then other patrons are much more prepared to assist a female waiter than male staff.

Recommendation 39:-

"That consideration be given to licensing waiters in licensed premises."

Members of the Association have pointed out that they are continually faced with staff shortages and experience great difficulty in finding suitable persons to employ as waiters in licensed premises. In consequence, the members feel that a licensing procedure as suggested in the above recommendation is not appropriate in northern communities as any regulation limiting the capacity of a person to act as a waiter will only aggravate the existing labor shortage.

The Association would mention that they have devised a system whereby their members make monthly reports to the Secretary of the Association advising of any staff who have proved unsatisfactory or undesirable and who have been dismissed for this reason. The report is circulated amongst the members so as to forwarn them of unsuitable and undesirable persons who may apply for employment. Thus the Association feels that their members are taking practical steps to ensure that suitable hotel staff is selected for employment, always bearing in mind the limited availability of trained and experienced staff in the Territories.

Recommendation 40:-

"That the licensee be civilly liable for death by accident or suicide of a patron as a result of intoxication on the premises, or for damage or injury caused by a person who becomes intoxicated on the premises of a licensee."

The members of the Association are concerned with the above provision, in so far as it appears to impose an absolute duty upon a licensee for damage or injury caused by an intoxicated person or for the death or injury of that person. As the provision stands,

such a liability would seem to be imposed whether or not the licensee had any knowledge of the patron's condition or was in a position to reasonably foresee the condition arising. Furthermore, it would appear on the present wording of the recommendation that it is not even necessary to prove that the licensee sold the liquor by which the person causing the damage became intoxicated, for the said licensee to be liable at law. We cannot believe that the recommendation intends that effect.

The members of the Association wish to point out that the common law already imposes a liability on hoteliers to ensure the proper operation of their licensed premises. The extent of that liability was discussed in the judgment in the case of *Hesse vs. Laurie and Morinville Hotel Ltd.* (1962) 38 W.W.R. (N.S.) 321, in which a careful review is made of the cases dealing with the standard of care imposed upon the operator of a beer parlour. The Judge in that case explained the standard of care as follows:-

"No doubt the operators of beer parlours must exercise "anxious care" for the safety of their patrons from the very nature of the business carried on, but that "anxious care" surely must be judged with due regard to all the circumstances, such as the locality of the hotel, the type and character of its usual patrons, the size of its operations and what occurrences ought reasonably to be anticipated and guarded against."

It is therefore submitted that the duty of the licensee at common law extends to using reasonable care, having regard to all the circumstances, to ensure the safety of its patrons. There is no absolute warranty of safety nor imposition of liability without fault or negligence on the part of the licensee. The members of the Association consider that the present liability imposed by the common law, while being onerous, is also fair in that they are able to discharge the liability by ensuring the proper operation of their establishment. The members cannot see any justification for imposing upon them an absolute liability as proposed in the

recommendation and submit that the present common law imposes a realistic standard of care on the licensee which our members are prepared to accept and discharge.

Recommendation 70:-

"That the Ordinance continue to provide for local option in the Northwest Territories."

It has already been mentioned in this Brief that the economic viability of a hotel operated in the Northwest Territories is substantially dependent upon the sale of liquor through licensed premises. In considering the economics of investing the vast sums of money that are necessary for the construction of a hotel, the prospective hotelier must be satisfied that the hotel will be profitable. The members of the Association feel that it would not be fair to expect a person to invest a considerable sum in an area which could subsequently become "dry" by exercise of local option. It is felt that such provisions would result in prospective investors being very wary in constructing hotels and cocktail lounges in an area which could subsequently become "dry" with a crippling effect on revenues received. Bearing in mind that the Board of Liquor Inquiry report expressed the general view that one of the most important things was to have a decent premise for social contact during the consumption of liquor, it is felt that the above provision would operate against the establishment of decent premises for the reasons mentioned.

List of members of the Northwest
Territories Hotels Association

Yellowknife Inn
Gold Range Hotel
Ptarmigan Inn
Hay River Hotel
Pine Point Hotel
Pinecrest Hotel
Mackenzie Hotel

Percentage Analysis of Revenue and Expenses

from Audited Financial Statements for

the Year 1968.

	Hotel A	Hotel B	Hotel C	Hotel D	Total
Revenue					
<u>Cocktail Lounge</u>					
On Premises	47.8	30.8	32.6	69.0	38.7
Off Premises	11.6	3.6	1.7	23.0	5.9
<u>Rooms</u>	13.5	21.8	16.9	5.5	16.2
<u>Food</u>	18.6	36.5	33.6		28.1
<u>Tobacco & Lobby</u>	6.4	5.5	13.5		9.3
<u>Other Income</u>	2.1	1.8	1.7	2.5	1.8
<u>Total Revenue</u>	100.0	100.0	100.0	100.0	100.0
Expenses					
<u>Cocktail Lounge</u>					
On Premises	30.1	19.8	20.1	57.7	25.2
Off Premises	8.4	2.6	1.3	16.9	4.3
<u>Rooms</u>	7.1	9.7	5.0	2.1	6.2
<u>Food</u>	20.8	37.8	28.8		26.6
<u>Tobacco & Lobby</u>	4.8	4.1	10.7		7.3
<u>General Expenses</u>	25.8	29.5	15.5	7.9	20.1
<u>Depreciation</u>	7.8	21.2	17.1	3.2	14.5
<u>Profit or Loss before</u>					
<u>Finance Charges, etc.</u>	4.4	20.7	1.5	12.2	4.2
<u>Total Revenue</u>	100.0	100.0	100.0	100.0	100.0

Red figures indicate a loss.