

Boats, Booze and the Law

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It's a beautiful day. You and your guests are out on the boat; you've found the perfect spot to soak up the sun and enjoy each other's company. The anchor is dropped and you're looking forward to simply relaxing. Someone suggests wine, and you say, why not? After all, you're anchored up for the night. And what's the harm in having just one drink.



But, is this within your rights? Can drinking aboard your yacht with the motor off—and no plans to leave anytime soon—get you a ticket or even jail time? It seems the answer is not so clear-cut.

HEALTH & SAFETY CONCERNS The issue of booze on board resonates with many in the boating world—and not only because owners want to throw parties on their yachts. The consequences of drinking and boating, even when the operator is sober, can be very serious from both a health and a safety perspective. Combine the affects of alcohol with sun, fatigue, wind and water, and the results could mean disaster should an emergency situation arise. Reduced reaction time, decreased fine motor skills, poor balance and impaired judgment—these are not conditions under which one wants to recover a crew overboard. And in our waters, hypothermia could be a very real threat.

One might think that with the stakes so high the rules for drinking alcohol and boating would be very clear and very strict. Think again.

THE GREY AREA Boaters seeking to clarify the laws regarding drinking and boating continue to be stymied as the government stumbles to find clarity on its own policy—or lack thereof. The problem rests primarily with the conflict between the jurisdictional powers of the federal and provincial governments. While the federal government has exclusive power over navigation and shipping, the province controls matters of property and civil rights, which includes alcohol consumption. Add to this the problem that provincial law can only apply within the boundaries of the province while federal law can apply anywhere within Canada, and you have the public and bureaucrats scratching their heads wondering whose and which laws apply.

"It's a grey area," says Tyson Schenk, boating safety officer for Transport Canada Marine. "I get as many questions from the police as to their authority in cases of liquor on board [as from the public]. The topic is open for interpretation." This, he says, could result in greater leniency, as officers lack strict codes to follow.

Of course, operating a vessel under the influence of alcohol or drugs is a crime, punishable under the federal Criminal Code.

Further, anyone with “care or control of a...vessel...whether it is in motion or not”

commits an offence when the person’s blood-alcohol exceeds 0.08. Punishments are steep for such crimes, but the law stops there, leaving a host of possible situations in which alcohol might be consumed on board unaccounted for under the law (e.g., passengers drinking while under way, on board drinking while at anchor or the dock, etc.).

“IT’S THE BATHTUB MENTALITY—BOATS ARE LOOKED AT AS TOYS,” SCHENK SAYS.

“If you were to call every RCMP detachment in B.C.,” and ask if drinking on a boat is allowable, “half would give you different answers,” says Schenk.

Even more unsettling, government spokespersons are themselves unclear as to who has jurisdiction over alcohol and boating. Transport Canada’s marine division falls short of having authority over issues related to alcohol, deferring to B.C.’s Ministry of Public Safety and Solicitor General for policy and RCMP for enforcement. However, as Section 91 of the Constitution Act, 1867, states, it is the responsibility of the federal government to legislate all things boating. And in talking to officers from Transport Canada, the Ministry of Public Safety and Solicitor General and RCMP, the reality of the province’s lack of authority over the issue of boating and drinking is never mentioned. In fact, a three-month goose hunt led *PY* from one public officer to another, all of whom accounted differently for how the Criminal Code is applied and enforced. And again and again, the phrase “it’s a grey area” was given.

THE PUBLIC/PRIVATE DEBATE Though the penalty for impaired drinking and driving a boat is the same as that for a car, there are no specific open container provisions for boats. As such, the RCMP—perhaps realizing the serious consequences that can result when even those not operating a boat drink alcohol on board or at the dock—look to defining a boat as a public place as grounds for acting in cases of boating and open liquor.

Under the authority of the province, the Liquor Control and Licensing Act states, “Except for liquor purchased and consumed in accordance with a licence that permits consumption in a public place, a person must not consume liquor in a public place.” There is no case law to define the difference between pleasure craft and a public place, and it

IMPAIRED BOATING

BOATING WHILE IMPAIRED is an offence under the Criminal Code of Canada. The laws are

seems differing opinions as to how to make the distinction abound.

“Technically, a public place is any place that the public has access to or can view,” says Sergeant Andy Brinton of the RCMP, West Coast Marine Division. “If you are on a lake and I can see the boat, you are in public.” The authority upon which law enforcement bases this is given with respect to Section 175 of the Criminal Code, which prohibits any action that causes a disturbance near a public place by being drunk. Further, Section 180 defines a public nuisance as that which “endangers the lives, safety, health, property or comfort of the public; or obstructs the public in the exercise or enjoyment of any right that is common to [everyone].”

Brinton says, “We tell [our officers] that if its having an impact on the public or if they feel that the operator of the vessel is going to have access to liquor and there could be future problems, they can act.” Peace officers assess situations using two criteria to determine an appropriate response:

- What are the circumstances of the situation? Are the boaters in question involved in an activity that could negatively impact the public? Is the area subject to high-traffic? Is there a festival or beach nearby that the public has access to and would be disturbed? Are there children with plain view of the boat?
- What is the behaviour? Are boaters (and passengers) being unreasonably loud or disorderly? Do they appear to have awareness of their surroundings? Could the disturbance escalate?

“The bottom line for law enforcement,” says Brinton, “is the public interest.”

But marine lawyer Darren Williams of the law firm Williams & Company disagrees with Brinton’s assessment of what is public, referring to the Supreme Court’s 2005 decision in Regina v. Clark, which considered the meaning of “public place” in the federal Criminal Code and its similar usage in the provincial Liquor Control and Licensing Act. In Regina v. Clark, the court said that a “public place” is a place where the public has express or implied permission to physically enter. The court emphasized that a public place is

enforced by local, provincial and federal police who carry alcohol-screening devices on the water.

Upon conviction for the offence of impaired operation of a vessel, or of operating a vessel with more than 80 milligrams of alcohol per 100 millilitres of blood, a person is liable of the following:

1st offence: A minimum fine of \$600;

2nd offence: Imprisonment for not less than 14 days;

3rd and each subsequent offence: The maximum sentence for these offences may vary depending on [what offences were committed under] provincial statutes [as well].

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determined by physical access, not visual access.

Therefore, says Williams, "Just because an enforcement officer can see you drinking on a boat does not mean you are drinking in public." A boat is private property and you can drink openly on the back deck while at the dock or underway (in the same way you can drink a beer while you are sitting on your front lawn), provided you are not responsible for operating the vessel. Williams cautions, however, that you may be "operating" the vessel so long as you have direct or indirect control over the vessel—"You need not have the helm to be operating it. The captain of the Exxon Valdez will tell you that."

The issue only becomes a public one if the behavior flows into the public domain. Simply because someone standing on the public dock can see you drinking on your boat doesn't make it a public offence. "It has to go beyond that," he continues. "It has to go to being a nuisance to that person standing on the dock."

The main disconnect, it would seem, is the contention by RCMP officers that a boat is a public place, period, and anyone drinking on a boat is subject to being fined, or worse. This means that if a boat is stopped by police for something unrelated to alcohol and a passenger is in possession of an open container of alcohol, that passenger could be ticketed for drinking in public and—depending on the results of a breathalyzer test—public intoxication (unless a commercial liquor licence has been obtained, as in the case of a party with a cash bar, in which case provincial law, vis-à-vis the Liquor Control and Licensing Act, does not apply).

While the provincial Liquor Control Act defines a public place as including a boat, "in light of the Regina v. Clark decision, a private vessel is only a public place if the owner makes no restriction on who can come aboard," says Williams. "Provincial police officers and federal RCMP cannot enforce provincial law except to the extent that it relates directly to conduct under a provincially granted commercial liquor licence."

To account for the disconnect, Corporal Pierre Lematre of the RCMP Media Communications Section says officers would be using their own discretion and would in fact be weighing public interest against the behaviour. "Having open liquor on a vessel, whether in operation or tied up, is not considered drinking in public," says Lematre, contradicting other RCMP, "as B.C. has no provision under the Liquor Control and Licensing Act for boats." Meanwhile, field officers continue to work under the directive that, for all practical purposes, a boat is a public place.

GOVERNMENT SPOKESPERSONS ARE THEMSELVES UNCLEAR AS TO WHO HAS JURISDICTION OVER ALCOHOL AND BOATING.

DRINK WITH DISCRETION “If it were up to me, I’d ban it altogether,” Schenk says, citing the regular occurrence of alcohol-related accidents on the water. “However,” he goes on, “that said, there are no rules that one’s passengers can’t drink alcohol on board as long as they drink with discretion...If consumption of alcohol is done in a tactful, discreet manner, then there’s no problem.”

Schenk says, while it’s obviously not okay to drink while operating a boat, if you’re at the dock with the motor off, all passengers are inside and no disturbance has been caused, “in all likelihood there’d be no reason for a law enforcement officer to take action.” But, he reminds, anyone drinking on an open boat in a public place could subject themselves to seizure.

The moral of the story, for now at least, is discretion—and awareness. Regardless of what the law does or does not stipulate, operating a boat is a huge responsibility, requiring the operator and its passengers be alert and ready for unexpected dangers. Boaters who are intoxicated lack situational awareness, and so response time in an emergency is greatly impaired. And yet, considering the high percentage of alcohol-related boating fatalities—which varies between 23 and 89 percent depending on who you talk to—it’s apparent that many folks just don’t get it.

“It’s the bathtub mentality—boats are looked at as toys,” Schenk says. And such attitudes seem unlikely to change as long as jurisdictional authority remains murky and the RCMP’s confusion over the public/private debate goes unresolved.

After conferring with RCMP Legal Services, Corporal Lematre did say he would look into re-educating officers on the matter. *PY* will continue to follow this issue as it evolves.