

OntarioWineReview

A bi-weekly newsletter dedicated to helping you discover Ontario's best Wines and Wineries.
Enjoyment comes from understanding - Passion comes from understanding more.



OntarioWineReview Newsletter – 156
April 21, 2011

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OntarioWineReview: *Burning Down the House*

Back in late 2009 I was commissioned by Ottawa Life magazine to write three articles (you may recall the [LCBO Monopoly](#) piece became quite popular), but for some reason they elected not to publish the other two, one on Cellared in Canada wines and the other on the Importation of Intoxicating Liquors Act (IILA). At the time of its writing the piece about the IILA was on the cutting edge of an issue that has just recently been getting more play through websites ([FreeMyGrapes.ca](#)), political will (MP Ron Canaan) and now a [publicity stunt from my friend Terry David Mulligan](#), will bring even more light to this ridiculous law. Ottawa Life would not publish this hot button issue article, but I wanted my readers to see it, understand what is at stake and why the law should be tossed - in an election year issues like this one matter ... Here is the article in its entirety.

Please Note: I updated this article for Ottawa Life in December of 2010, but there is still no publishing date scheduled.

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Have you ever been out to British Columbia and brought back a couple of bottles of wine? Better yet, have you ever driven across the border to Quebec and brought back a case of beer? If you have done either of these things then you my friend are a felon, capital F-E-L-O-N. That's all according to the Importation of Intoxicating Liquors Act (IILA) of 1928, which is still on the books and very much in use by our liquor board (the LCBO). What it boils down to is, you can travel to Cuba and bring back 2 bottles of rum, go stateside and return with two bottles of wine, go to Mexico and carry back 4 cervesas; but you can't cross Canadian provincial borders carrying any booze back with you. So, who's ready to turn themselves in?

Not so fast says lawyer Ian Blue, who has been looking into the matter for us. Ian is an energy lawyer who found himself in a conversation with fellow lawyer, Arnold Schwisberg, about the IILA and like an ear-worm (a song that won't leave your head) Ian couldn't stop thinking about the absurdity of the Act. "The constitutional issues around interprovincial and international sales of energy have equipped me admirably to look at the IILA ... it stuck with me until I wrote my paper on the subject 'On the Rocks'." Ian subsequently wrote a second article on the same topic (On the Rocks; The Gold Seal Case: A Surprising Second Look); both appear in Advocate Quarterly.

I first encountered Ian through an email, he wrote to me about another article I published in Ottawa Life (LCBO Monopoly). He made mention that the LCBO is just part of the bigger picture, but he went on to say: "There is nothing natural or logical about the existing system. It bullies, fleeces and frustrates wine producers and the public ... If the IILA were to fall ... wine producers could probably make quantum leaps of progress towards a fairer and more rational system of liquor and wine distribution in Canada ... I know that challenging the IILA is an idea that is uncomfortable for

everyone who has worked on wine policy with government officials to bring about incremental change. Sometimes, however, you have to do something different to push government officials out of their stalactitically slow complacency, especially when they have entrenched benefits.”

It was these words that caught my interest and made me look further into the notion that changes could happen within my own province. If this federal law fell then the country would benefit, from sea-to-shining-sea, I just had to learn more, and the man I needed to talk directly with was Ian Blue. First I had a brief talk with Arnold, he came right to the point about what I was about to learn from Ian: “The very underpinning of Canada’s liquor regulatory system is unconstitutional. Isn’t that a mind blower?” But this topic is not his baby, Arnold’s all about the Cellared in Canada issue and the Liquor Board itself, though he would not shy away from the IILA fight. He recommended I go right to the source, Ian Blue, for all the details. I caught up with Ian by phone to find out more about the IILA: what could be done, and what would be the outcome of a judicial challenge.

“The law that gives provincial liquor commissions a monopoly and the power they have, is federal law, the Importation of Intoxicating Liquors Act; it’s highly arguable that the law is unconstitutional. It’s also pretty apparent to government constitutional lawyers, who are knowledgeable in these matters.” He is shocked by the response he’s been getting about this revelation from those within the system (the industry). “I spoke to 3 separate organizations here in Ontario about a possible challenge to the IILA, each said that its organization was not interested in doing that, I had a similar experience out in Vancouver. Yet at the Vancouver conference on wine law and wine distribution there was nothing but a litany of complaints that each of the wine producers or organizations made against the BC Liquor Distribution Branch”, he surmises that the same feelings permeate here in Ontario about the LCBO.

I asked him about the griping and why the industry seemed apathetic about doing something about it: “[My thoughts are]: One, Canadians are generally accepting of the system and don’t want to challenge it. Two, no individual winery has the resources. Three, the organizations that purport to represent the wine industry are bureaucracies and bureaucrats are comfortable existing by continuously meeting with liquor boards and with each other and not trying to change things within the system; they get paid just as much if the system doesn’t change as if it does change.”

But what is the IILA exactly? What is this law that stops us from bringing booze across provincial borders? Or more specifically, stops Mission Hill (or any other BC winery for that matter) from sending me a case of their award winning wine. “The IILA is a federal law and it says that nobody who brings intoxicating liquor into a province can sell it to anybody except the provincial liquor board.” That law is contrary to section 121 of the constitution which reads: “All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.”

“It’s just that simple,” continues Ian, “there’s a section in the constitution that is being ignored by the federal government; the argument is there for the wine industry to make and it would change things.”

But litigation like this would cost, approximately \$1.5 million according to Blue, but the chance of winning the case is very high: “[my] law school estimate would be an 80% chance of success,” he claims, but a claim like that must also come with a bit of lawyerly caution: “I would have to say that in our courts today everything is a crap shoot. Especially when it involves big political interests. The Supreme Court of Canada today is not a court of law, it’s a court of law and policy.” But a win would mean so much for those who feel oppressed by the current system.

“Liquor boards would continue to exist, their power would just be diminished,” but they would definitely put up a fight, “You’re fighting entrenched interests, so if you’re diminishing their power they’re going to fight to try and keep it.”

How big a fight? “I would be fighting 10 sets of lawyers one each from every attorney general’s department; probably 10 sets of lawyers from the provincial liquor commission; and probably lawyers

from the police associations,” estimates Ian, but that’s just the tip of the iceberg. “What [a win] would mean is that if I wanted to have a private liquor store I could set one up and I could buy directly from the wineries in Niagara or British Columbia or foreign countries. Nova Scotia restaurants could order wines from Ontario. It would just loosen up the system. [It] doesn’t mean licentiousness; the province could still legislate standards for people who work in liquor stores, store hours, security, all safe drinking training, all that stuff; it’s just that you would not need to have liquor and wine sold through publicly funded liquor stores; being sold to you by unionized staff on defined benefit pension plans.”

But what about those who claim a loss of provincial revenue as their argument for keeping the liquor boards as is? According to winelaw.ca, “The Provincial Governments make their money regardless of whether the sale is made in a government store or a private store. In fact, the revenue that government makes from liquor on a per capita basis for 2007/2008 was as follows: \$192 for BC [a mix of private and government stores], \$190 for Alberta [all private stores], and \$139 for Ontario.”

Prices would also come down, or at least we’d get a chance to see the markups we are being charged. The provincial government, instead of charging the mark ups that they charge, which are basically hidden taxes included in the price of the bottle at the retail level, “would have to go to the legislature and ask [them] to enact seriously high taxes on liquor and then people would see how much the government is taking; then if the government enacts the taxes and gets elected that’s fine. But then the markups would no longer be buried in the price of the liquor as they are now. That’s effectively a form of taxation that isn’t authorized by the legislature.” Ian concludes, “Just because the government is getting revenue from the present system, doesn’t mean they should be able to violate the constitution of the country.”

Originally, Ian saw this as a winery issue, but so far none seem interested in changing the system, or are afraid to do so – who wants to take their biggest (and in some cases only) customer to court. “That’s why you would need about \$10,000 [paid out over two years] from each winery in Ontario, British Columbia, and Nova Scotia [read: nation wide] ... Two things would then happen: one, the challenge could be started and two, no individual winery could be singled out [by a liquor commission] because everybody would be in the game. And the argument for doing it would be that we are only trying to make governments comply with the constitutional rights that all Canadians have.” That’s the scenario if it’s taken all the way to the Supreme court. “Realistically, to fight [the kind of opposition he would face] all the way to the Supreme Court of Canada the cost is about 1.5 million – that’s by the time the last dog is shot and the lights are turned off in the courthouse.” But that 1.5 is only if it goes that far, “you could get a very respectable court application prepared, argued and determined in the superior court of any province for much less,” he says to the budget conscious, “say around \$50,000.”

The question still remains, who can get involved in the fight, if the wineries, breweries and distilleries don’t seem interested in using their standing in a case like this, and as of right now there seems to be disinterest on their part in getting into it with the boards and the government. “I tried the breweries, the distilleries and the wine industry,” says Ian, “I thought with everyone coming in ...” he pauses and changed course. “But a lot of distilleries and the breweries benefit from the current system, and they just can’t get their minds around what would happen if the system changed, and I think a lot of the wineries are that way too.”

That leaves one other segment of the population. Ian believes private interests could get involved, because they too could show standing in this case. They could stand up like Peter Finch in the film Network and say, “I’m mad as hell, and I’m not going to take this anymore”.

With the IILA struck down, “wine connoisseurs would have a much easier time to get imported wines, they would not need to go through the liquor commissions anymore,” says Ian, and it also means better pricing. And more importantly, you could drive that case of beer over from Quebec without fear of the OPP cruiser behind you.

"[If the Supreme Court of Canada] takes a hard look at the IILA, and if they do an intellectually honest interpretation, the IILA probably can not stand up to constitutional scrutiny," Ian concludes, it's just that simple. Ian's prepared to take it to court, he just needs complainants, and 1.5 million, to change the entire liquor landscape of not only Ontario, but the whole of Canada. Who's ready to jump in?

Since I initially wrote about the topic a year ago, there has been some movement towards changing this silly and arcane system we have in Canada. A website has been launched called FreeMyGrapes.ca and Member of Parliament Ron Cannan has tabled a motion in the House of Commons to end Canada's inter-provincial wine shipping prohibition by creating a personal use exemption. This is a start, but its not the end of the battle. Visit FreeMyGrapes.ca to add your voice/name to the petition and help free up Canada's provincial borders for the free flow of alcohol.



Grape Guy's Picks of the Bunch: *The Best of Somewhereness 2011*

Cave Spring Cellars 2009 Dolomite Riesling - \$16.95 (W)

www.cavespringcellars.com

Cave Spring started the Dolomite program with the inaugural launch of the 2006 Dolomite Riesling. It was steely and stony and had all the goods terroir lends to a grape like Riesling ... subsequent vintages have been pretty good (except maybe the '07) but nothing seems to have beaten the purity of the 2006, so far. With the '09 Dolomite, Cave Spring is back on the money and back on top of the Riesling pile; I believe this one even surpasses the original. The wine is a pure pleasure for Riesling lovers: great flinty minerally notes on both the nose and palate; lemon-lime, a touch of peach and granny smith apple with great acidity backing it all up and some lovely lime-mineral on the finish. This wine shows great tension between the fruit and the acidity and should age gracefully for a decade or more. If you've never bought the Dolomite Riesling (or even tried it) but love Riesling in its purest form, this is the one you've been waiting for. Price: \$16.95 - Rating: **** 1/2+

Norman Hardie Wines 2009 Cabernet Franc - \$25.00 (W)

www.normanhardie.com

For years Norman has been showing us great examples of Chardonnay and Pinot Noir from Prince Edward County ... he has even shown us spots of brilliance with Rieslings along the way. But who knew that Norman had also caught the Cabernet Franc bug and that he's been looking for the right vineyard to make it from. And now he's finally found it. The Foster Vineyard (in PEC) has 13 year old vines that are kept cropped to 2 tons per acre. That gives Norman the concentration of flavours he's looking for to make his delicate Loire-style (read: Chinon) Franc. This really is a beauty for Franc lovers; nice cherry and tobacco notes course through the wine making it both pleasing on the nose and palate, a good seam of acidity cleanses the mouth leaving behind those cherry-tobacco flavours on the finish, plus the added bonus of a touch of spice, probably derived from the 14 months of ageing in 500L and 225L barrels. Cellaring is possible for about 5 years, but the 2 year mark should be the sweet spot for this one. Now that he's found his vineyard Norman plans to wow us with his Franc every year - just like he has done with his Pinots and Chardonnays. Price: \$25.00 - Rating: **** 1/2

Hidden Bench 2009 Bistro Rosé - ~\$16.00 (W)

www.hiddenbench.com

When the vintage years screams "don't make a top tier red" the folks at Hidden Bench listened, and instead they made a top notch rosé. A blend of 55% Merlot, 35% Cabernet Sauvignon and 10% Cabernet Franc, this pink has everything that a summertime patio sipper should - plus it's incredibly food friendly. A fruit driven nose loaded with strawberries, cherries and raspberries lead to a palate that starts off with those fruit flavours but somewhere in the middle everything changes gears and it

dries right out leaving good acidity and a citrus aftertaste behind ... unexpected, delicious and well balanced. This is a restaurant only wine so if you want some you have to ask your local eatery to carry some Hidden Bench wines, or you can try begging for some at the winery door. Price: \$16.00 - Rating: ****+

Charles Baker Wines 2009 Picone Vineyard Riesling - \$35.00 (O)

www.charlesbaker.ca

Charles makes one wine and one wine only, and that from one single vineyard. So Charles knows about vintage variation and terroir ... here you get a great example of what 2009 offered. This is a mineral driven Riesling with racy acidity and fresh lively fruit reminiscent of peach pit and green apple. Price: \$35.00 - Rating: ****+

Availability legend: W (Winery) – L (LCBO/Vintages) – O (Virtual Winery Available Online).



Weekly Wine Notes and More: Rief, Calamus and other wines of note

A new Ontario wine is reviewed every Tuesday ... take two minutes to listen to the [Podcast](#) or read the tasting notes on the [Blog](#).

[Weekly Wine Notes](#) (added to the Blog and Pod in the past few weeks):

The Weekly Wine Note is currently on hiatus

[On the Road with the Grape Guy:](#)

Trips, tours and tastings – join me as I review the highs, and sometimes, the lows

[Hobbs and Merchant Vintner Tasting](#)

[Somewhereness Media Preview](#)

[Lost and Found \(blog\)](#)

Wines that got "lost" in my cellar - some are Treasures others Trash ... Find out what happened

[Reif Estate 2006 Cabernet Franc](#)

[Taste it Again Grape Guy \(blog\)](#)

Find out what has happened to some of my favourites over the years

[Calamus 2005 Cabernet Sauvignon](#)

[What I'm drinking Tonight \(blog\)](#)

When it's not an Ontario wine, here's what I'm pulling out of the cellar

[6 New Posts this week](#)

Including: Mas La Plana 1997 and Barolo from 2000

[Vintages Release \(blog\)](#)

[April 30, 2011 release](#)

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Wine Event Spotlight: *Get Fresh Terroir Herbs*

Terroir 2011 in Prince Edward County ... May 28, 2011.

Details: <http://thecountywines.com/pecwaannualeventsc16.php>

Wineries of Niagara-on-the-Lake **Wine and Herb Festival** ... May Weekends

Details: <http://www.wineriesofniagaraonthelake.com/wineandherb.html>

Get Fresh, a new Twenty Valley winery event ... April 30 / May 1 and May 7-8

Details: <http://www.twentyvalley.ca/page/getfresh>

OntarioWineReview's bi-weekly newsletter is devoted to the love, enjoyment and promotion of the wines of Ontario and the wineries that make them.



What can the Grape Guy do for you ... Michael Pinkus (Grape Guy) provides a variety of wine related services that you might be interested in taking advantage of: he gives lectures, leads seminars, conducts tastings, sets up tours; consults, selects and judges. He also gives interviews, broadcasts, podcasts and writes. [Contact the Grape Guy if you require any of these services or have any questions.](#)



Psst, Pass It On ... keep the good wine flowing. Forward this newsletter to your mom in Mimico your uncle in Uxbridge, your great aunt in Grand Bend or any other family member or loved one that you know needs good wine advice.



Socially Speaking ...

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"Linked In" folks can find Michael at <http://ca.linkedin.com/pub/michael-pinkus/14/704/4b8>

To contact us with feedback, article ideas, comments, concerns or questions – email michael@ontariowinereview.com. We look forward to hearing from you!

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