

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 – 201
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OntarioWineReview: *Burning Down the House – 2 years later*

Almost two years ago I published in these very pages an interview I did with Ian Blue, a lawyer who had turned his focus to liquor laws, constitutional issues and even more importantly, the Importation of Intoxicating Liquors Act (IILA). Now, many think the law was struck down but in fact there was just an amendment made to the federal law that now allows you to carry a certain amount of booze for personal use across provincial borders without fear of being charged by your provincial liquor board. So why am I bringing up this “ancient history” – well it seems the constitutional challenge that Ian was hoping for has finally got a name and a voice in the form of Vin de Garde wine club, and [the challenge is going forward](#) - before you blindly blow this off as another soon-to-be failed attempt to challenge the power and might of the LCBO I suggest we revisit the interview, the article and the issues that surround it; there seems to be more relevance here than ever before. This is going to get very interesting.

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 inter-provincial 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?



Grape Guy’s Picks of the Bunch: *Four Reds For All Occasions*

Fielding 2010 Cabernet-Syrah - \$24.95 (W)

www.fieldingwines.com

Thankfully, most folks are not as willy-nilly with the word ‘Shiraz’ these days – in fact, Ontario winemakers are realizing that we make Syrah, if we make anything at all. This blend of Cabernet Sauvignon and Syrah from the hot 2010 vintage shows plenty of the ‘s’-grape on the nose with smoky, mocha and spice leading the charge with hint of cassis thrown in. Palate-wise Syrah makes its presence felt also with meaty notes namely blackberry, currants and coffee on the back palate – all ending with touches of smoky-vanilla. Price: \$24.95 – Rating: ****+

Pondview 2010 Cabernet Sauvignon, Bella Terra - \$34.95 (W)

www.pondviewwinery.com

This is not wine for the faint of heart ... it’s big from start to finish. Aromas address the heft of the wine while the palate speaks to the hope for the future, and that’s where we’ll start. The nose is all about deep dark and brooding, but the palate has juicy red fruit, spiced-raspberry and big tannins that seem to give way enough to allow for a cocoa finish. Price: \$34.95 – Rating: ****

Ravine Vineyard 2011 Cabernet Franc - \$32.00 (W)

www.ravinevineyard.com

During my Taste the Season tour in 2012 I was so enthralled by the ribs at Ravine that I failed to take note of the wine being served with it. Well I didn’t actually fail – I just think it took a back seat ... now, sometime later, looking over my notes I see that the wine was a pretty good match and a fine wine all on its own. Smoky-raspberry dictates the aromas, while those same notes make their way to the palate and adds cranberry and tobacco to the mix – a delicious Franc, not as delicious as those ribs, but that would be a tall order for any wine. Price: \$32.00 – Rating: ****

Sprucewood Shores 2008 Merlot - Hawk’s Flight - \$24.95 (W)

www.sprucewoodshores.com

Here we have a wine that’s homage to the late patriarch of the Sprucewood Winery clan: “Hawk’s Flight” was the proposed – and alternate name for the winery that dad Gord Mitchell always used. I do believe that dad would have a smile on his face and glass in his hand if he got to taste this one daughter Tanya has put together. This one is made from a one-acre parcel of Merlot grown on the property, picked at higher brix and then barrel selected: mocha, coffee, dark fruit, cassis with a lovely raspberry finish. The wine is well rounded and well-balanced as flavours and aromas mesh together beautifully. Look for the Hawk’s Flight name on Sprucewood’s upcoming reserve line of wines as the homage continues. Price: \$24.95 – Rating: ****+

Availability legend: W (Winery) – L (LCBO/Vintages) - OL (On-Line).



Bi-Weekly OWR Updates: *On the Road, International Wine Notes and more*

Coming in April ... the return of Weekly Wine Videos

Just as the name suggest ... every week I'll introduce you to another fabulous Ontario wine that you've just gotta try

Ottawa Life – International Wine Selection(s) of the Week:

Check out the [Ottawa Life – Thirst Impressions](#) blog for my weekly selections

This week's posts:

[California Cabernets – Delights for the Palate!](#)

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

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

New Posts Coming Soon

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

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

Nothing New This Week

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

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

[Vineland Estates 2005 Elevation Cabernet-Merlot](#)

[Thirty Bench 2007 Red](#)

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

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

[Read the New Posts Added](#)

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

March 30, 2013 – coming soon

Where I'll Be



The Good Food & Drinks Festival – April 5-7, 2013

The festival has paired up with the now defunct Wine and Cheese Show to bring you something bigger and better ... and now in a new location – The Direct Energy Centre

Michael Pinkus – The Grape Guy will be giving a number of seminars from glassware demonstrations to Ontario themed seminars, click below to see how to get your tickets.

<http://www.goodfoodanddrinkfestival.com/events/121-schott-zwiesel-tasting-room-schedule-april-05-2013>

Where I'll Be



Wine Event Spotlight: *Events I Will Be Making an Appearance at + 1 more*

Discover the Flavours of the Kawarthas and Northumberland County ... Come celebrate the somewhereness of the Kawarthas and Northumberland County at the 2013 Flavour Festival. Nibble on gourmet cuisine prepared with local, fresh and seasonal ingredients, crafted by the hands of award winning and talented chefs, caterers and gourmands. Chefs will be using local ingredients to prepare and celebrate Canada's ethnic diversity, celebrating the flavours of Italy, France, China, Japan, India, Thailand and more! Also sip your way around the world, enjoying wines from Ontario, Italy, Spain, Germany, Chile, South Africa and Australia, to name but a few. And what would a Canadian celebration be without beer - quench your thirst by sampling Ontario artisan beers or discover some local spirits for the first time! It all happens Sunday, April 28, 2013 – visit <http://flavourfestival.net/> for details. Catch Michael Pinkus, here for a Schott Zwiesel glassware seminar.

The Wine & Herb Touring Pass Event (Wine & Herb) ... returns this May 2013 and brings with it 27 unique VQA wine and food pairings created by the Wineries of Niagara-on-the-Lake. Wine & Herb takes place Fridays, Saturdays and Sundays in May 2013 (May 3/4/5, 10/11/12, 17/18/19, 24/25/26) from 11 am to 5 pm. Touring passes are \$43 per person (plus HST), entitling the holder to a VQA wine and food pairing at each winery, passports are valid for every weekend. Visit <http://wineriesofniagaraonthelake.com/wine-and-herb> for details.

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 ... Follow Michael Pinkus, the Grape Guy's (almost) daily **Tweets** at <http://twitter.com/TheGrapeGuy>. You can become a friend on **facebook**: <http://www.facebook.com/?ref=home#/mepinkus>. "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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