

**R. & R. CUNNINGHAM v. VOLLMERS:<sup>1</sup>**  
**The Innkeepers', or Motelkeepers', or**  
**Hotelkeepers' Lien in Manitoba**  
**CAMERON HARVEY\***

*Can a Manitoba innkeeper, or hotelkeeper, or motel proprietor seize the property of X brought onto the premises by Y, in exercise of his or her or its right of lien for an unpaid bill of Y? According to the authorities,<sup>2</sup> at common law, the innkeeper's lien extends, in terms of the question posed in this note, to the goods of X, whether or not the innkeeper knows of the goods when they are brought onto the premises and whether or not the innkeeper knows that they are the goods of someone other than Y. But, it would appear that innkeepers legislation in Canada has narrowed the lien right of innkeepers to being exercisable only with respect to the property of a guest. However, Kirby J. of the Trial Division of the Alberta Supreme Court in the Vollmers case held that the common law lien right had been left basically intact by the Alberta Innkeepers Act, and that the legislation is essentially supplementary. The court referred with approval to a similar conclusion to which the Ontario Court of Appeal had come when it had had to interpret legislation worded very similarly to that of Alberta. The key words for the court in the Alberta legislative provisions dealing with the innkeeper's lien rights were that the innkeeper has the rights stipulated in the legislation "in addition to all other remedies provided by law"; thus although the legislation appears to give expressly a right of lien over only the property of the guest, in addition the innkeeper has implicitly whatever other lien rights the common law affords. Incidentally, the Alberta legislation is worded so as expressly to include motels and motel proprietors within its scope.*

Is the situation the same in Manitoba? In sorting out the rights of the keepers or proprietors of such establishments, it is first necessary to determine by what law they are governed. Is it the common law (and if so what common law), or is it The Hotelkeepers Act<sup>3</sup> of Manitoba, or is it a combination of the Act and common law? As I have observed elsewhere<sup>4</sup>, although our legislation, s. 2(a) the definition section, is very vague, it is probably the common law definition of an inn that governs who is covered by The Hotelkeepers Act of Manitoba; if so, this

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1. (1973) 35 D.L.R. (3d) 761 (Alta. S.C.).  
2. See the Vollmers case, *ibid.* at p. 765.  
3. R.S.M. 1970, c. H-150.  
4. (1969) 17 Chitty's L.J. 119, at p. 121.

means that while keepers of stereotype inns and hotels are governed by or have the advantage of The Hotelkeepers Act, motel proprietors of establishments which offer only sleeping accommodation are outside the purview of The Hotelkeepers Act and have only whatever rights the common law affords them.

Dealing first with stereotype hotel and innkeepers, the relevant provisions of The Hotelkeepers Act of Manitoba, ss. 3 and 5, do not include the wording indicative of the additional nature of the legislative provisions, which the Alberta and Ontario legislation does and which enabled the courts of those provinces to conclude that the legislation was not a codification of the whole law as to the lien rights of innkeepers. Thus, in my opinion the short answer to the question posed, for Manitoba hotelkeepers and innkeepers, is "no".

Insofar as motel proprietors who offer only sleeping accommodation are concerned, although it might appear initially, because they are not governed by the Hotelkeepers Act, that they can take advantage of the common law and so be better off, they are no better off than are hotel and innkeepers in terms of the question posed. This is because they simply have no lien rights at common law, since they do not come within the category of being an innkeeper at common law. Thus, for them, the short answer to the question posed is "no", and, since the common law definition of innkeeper is probably the operative definition of a "hotelkeeper" for the purposes of The Hotelkeepers Act, they cannot take advantage of that Act to gain at least the lien rights afforded to hotel and innkeepers by that Act.

In my opinion the Hotelkeepers Act is in need of a thorough review, particularly in connection, with the definitions of what constitutes a hotel for the purposes of the Act and of who is a guest, with the lien rights of hotels, and with the liability of hotels for the loss of or damage to goods of guests; at the same time, ambiguous wording such as that which appears in ss. 8(4) and 9 could be clarified and the singular absence of any requirement to give notice of the hotel's responsibility for the goods of guests and its lien rights could be remedied.