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With the holidays only a few weeks away, many employers have already turned their thoughts toward their annual holiday party. However, without sufficient safe guards in place, the holiday party can be transformed from the social event of the year to a litigation nightmare. If, as an employer, you are planning a holiday gathering at which alcohol is served, you should be aware that you may be exposing your company to significant financial liability for the actions of an impaired guest. The issue of Host Liability is categorized in three ways: Commercial, Social and Employer.

### COMMERCIAL HOST LIABILITY

The concept of commercial host liability was set out by the Supreme Court of Canada in *Jordan House Ltd. v. Menow*, [1974] SCR 239. In that case, a customer sued a bar for damages he suffered as a result of being hit by a motor vehicle after leaving a bar. The customer had been kicked out of the bar because of his level of intoxication. The customer attempted to walk home and was walking down the centre of the highway when he was struck by the vehicle. The customer alleged that the bar was negligent in serving him alcohol to the point of intoxication and then ejecting him from the bar when the staff knew, or ought to have known, that he was unable to take care of himself. The Court held that the bar was negligent in failing to see that the customer got home safely or was under the care of a responsible person.

The *Menow* decision established that bars, restaurants and other commercial establishments that serve alcohol have a duty to protect their customers and the public. They cannot serve customers alcohol to the point of intoxication and then turn them loose onto the streets.

### SOCIAL HOST LIABILITY

Thirty years later, in the case of *Childs v. Desormeaux*, 2006 SCC 18, the Supreme Court of Canada tackled the issue of whether individuals who host a party can also be held liable for the actions of their intoxicated guests. In that case, the defendants had hosted a New Year's Eve party at their home. The guests of the party provided their own alcohol. One of their guests drove home from the party in an intoxicated state. While on his way home, he collided head-on with another vehicle, killing one of the passengers and seriously injuring three others. The party hosts were not held liable for the car accident. The Court explained that a social host may be held liable if their conduct contributed to the risk:

*A social host at a party where alcohol is served is not under a duty of care to members of the public who may be injured by a guest's actions, unless the host's conduct implicates him or her in the creation or exacerbation of the risk. [Emphasis added]*

The *Childs* decision opened the door for the imposition of liability on a social host where the host serves alcohol to a guest to the point of intoxication and fails to prevent the guest from driving home while intoxicated. Even on these facts, the Court cautioned that policy considerations may still mitigate against a finding of liability.

### EMPLOYER HOST LIABILITY

Employer host liability first arose in *Jacobsen v. Nike Canada Ltd.*, 1996 Can LII 3429 (BC SC). The employer had provided employees with a substantial amount of beer during working hours. After one employee finished work, he and his co-workers went to two bars and consumed more alcohol. While driving home from the final bar, the employee drove off the highway and suffered serious injuries that rendered him a quadriplegic. The employee sued his employer, alleging that the employer was negligent by providing alcohol to him during working hours and failing to take any steps to prevent him from driving while intoxicated. The Court held that the employer was 75% liable for the accident as the employer failed to provide a safe workplace by introducing alcohol at work.

Similarly, in *Hunt v. Sutton Group Incentive Realty Inc.*, 2001 CanLII 28027 (ON SC), the employee had attended the employer's holiday party where the employer provided alcohol to its guests. The employee became intoxicated at the party and, after leaving, went out for a few additional drinks. While driving home from the bar, the employee was involved in a motor vehicle accident and sustained serious injuries. The employee sued her employer. The Court held that the employer was 25% responsible for the accident as the employer failed to take sufficient steps to see that the employee got home safely.

However, in *John v. Flynn*, 2001 CanLII 2985 (ON CA), the employer was not held liable for an accident involving one of its employees. The employee in question had a drinking problem. For eight hours prior to his shift, and during his shift, the employee drank steadily. Despite his intoxication, the employee managed to leave work and arrive home safely, where he continued to drink. He later drove to a friend's home and, on his way, was involved in a motor vehicle accident. The Court of Appeal held that the employer was not liable because:

- the employer did not provide any alcohol to the employee;
- the employer was not aware that the employee was drinking on the job;
- the employee did not demonstrate any signs of intoxication; and
- the employer did not condone drinking and driving.

### LESSONS FOR EMPLOYERS

The office Christmas party is a great way to boost morale by rewarding staff and giving them a chance to get familiar with their colleagues on a social level. However, employers must remain mindful of their potential liability.

Employer host liability will generally be imposed where the following conditions are met:

- The employer provides alcohol to the employee;
- The employer has knowledge of the employee's intoxication; and
- The employer fails to take sufficient steps to prevent the employee from driving.

## Contact

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*This Cox & Palmer publication is intended to provide information of a general nature only and not legal advice.*

## RECOMMENDED STEPS

Employers can minimize any risks of employer host liability by implementing the following best practices when hosting a company party where alcohol is served:

- hire professional bartenders to serve alcohol – they are trained to identify intoxicated patrons and how to handle them;
- provide non-alcoholic beverage options;
- avoid an open bar and, instead, provide guests with a limited number of drink tickets;
- ensure food is served at all times when alcohol is available;
- provide taxi vouchers to guests who require them;
- implement a specific cut-off point where the work function officially ends; and
- promote responsible drinking.

If you think an employee may attempt to drive a vehicle in an intoxicated state, considering taking the following steps:

- provide alternative means of transportation;
- take away the employee's car keys;
- provide accommodations for the employee; and/or
- if the employee refuses your assistance and attempts to drive home, call the police.

Have a safe and happy Holiday!