

The image features three wine glasses filled with red wine, held up in a toast. The background is a vibrant blue, decorated with colorful confetti and streamers. The text is overlaid on the lower portion of the image.

**KEEPING GOOD COMPANY:**

**An Employer's Guide  
to Understanding and  
Avoiding Alcohol Liability**

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# **KEEPING GOOD COMPANY:**

## **An Employer's Guide to Understanding and Avoiding Alcohol Liability (Second Edition)**

**OCTOBER 2006**



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## INTRODUCTION

### “Two pilots charged with being drunk in cockpit”

This headline concerning two American West pilots illustrates the publicity that workplace alcohol incidents can generate. Whatever embarrassment and losses the airline suffered as a result of this incident, they are trivial relative to what they would have been had the pilots’ intoxication been discovered following a crash. Coping with drinking problems on the job is not a new challenge. These problems have provided much of the impetus for developing employee assistance programs, and have figured prominently in workplace disciplinary actions and wrongful dismissal suits.

This brochure focuses primarily on a different alcohol concern – namely, an employer’s potential civil liability for hosting, organizing or sponsoring events involving alcohol. Contrary to the conventional wisdom, the legal principles governing alcohol liability in Canada are far broader than those in the United States. The number and kinds of alcohol claims have increased sharply in Canada during the last 30 years, and several of the most controversial cases in recent years have involved employers.

The purpose of this brochure is to help you understand your potential liability and the steps you can take to protect your employees and guests. In turn, these measures will minimize your risks of being sued and held liable.



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## PRELIMINARY ISSUES

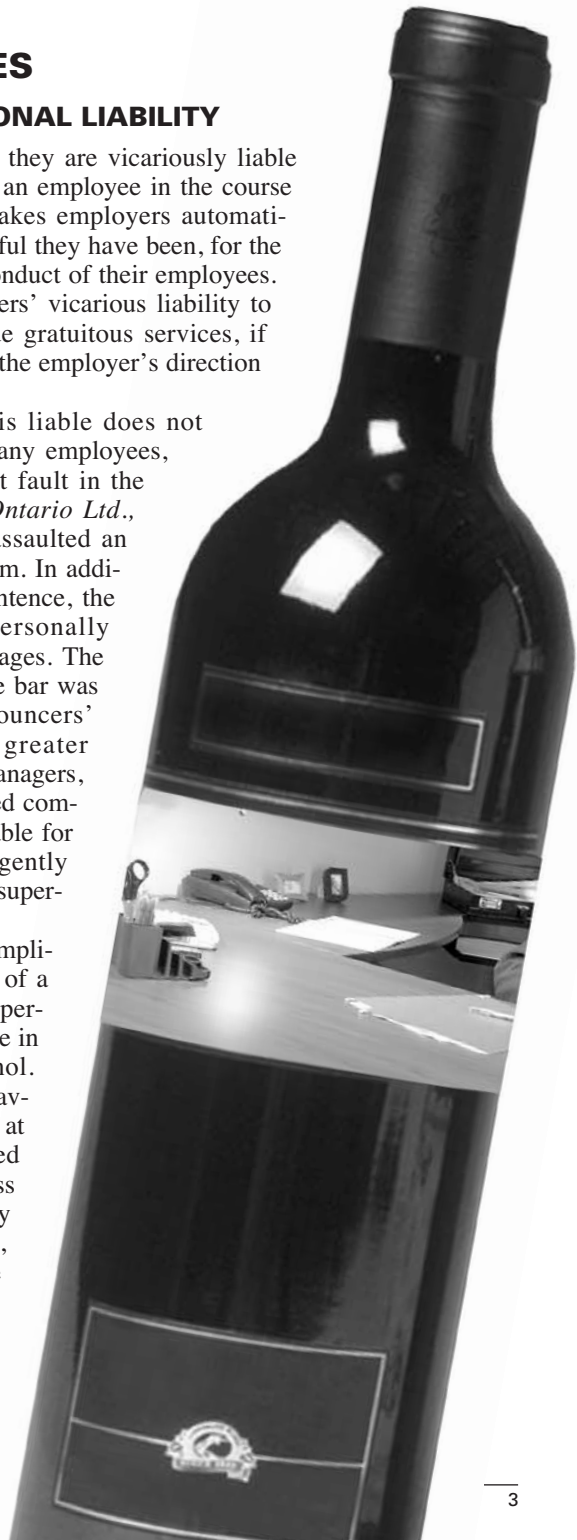
### (a) VICARIOUS AND PERSONAL LIABILITY

Most employers are aware that they are vicariously liable for any civil wrong committed by an employee in the course of employment. This principle makes employers automatically liable, regardless of how careful they have been, for the negligent or otherwise wrongful conduct of their employees. The courts have extended employers' vicarious liability to volunteers and others who provide gratuitous services, if such services are performed under the employer's direction or control.

A finding that the employer is liable does not diminish the personal liability of any employees, managers or officers who were at fault in the incident. In *Downey v. 502377 Ontario Ltd.*, the bouncers of a bar viciously assaulted an intoxicated patron after ejecting him. In addition to receiving a lengthy jail sentence, the bouncers were sued and held personally liable for over \$2,000,000 in damages. The numbered company that owned the bar was held vicariously liable for the bouncers' conduct as their employer. Of greater immediate interest was that the managers, who happened to own the numbered company, were also held personally liable for this loss, because they had negligently failed to properly screen, train and supervise the bouncers.

The *Downey* case has serious implications for any owners or officers of a company who play a planning, supervisory, staffing, or other similar role in a company event involving alcohol. If they are negligent, their home, savings and other personal assets are at risk in any ensuing alcohol-related claim. Thus, the fact that a business is owned by a limited company does not immunize the owner, senior management or anyone else who negligently contributed to an alcohol-related mishap. It simply results in the responsible individuals being held personally liable along with the company.

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## (b) APPRECIATING THE RISKS

Given the social acceptability of alcohol in most segments of Canadian society, it is easy to overlook the fact that alcohol is a drug and that its use is associated with significant risks. For example, alcohol-related traffic crashes in 2003 were conservatively estimated to have resulted in more than 1,140 deaths, 67,400 injuries and 146,600 property-damage-only crashes (involving 222,900 damaged vehicles). The total financial and social costs of these losses were estimated to be as high as \$9.96 billion in that year alone.

The risks are not limited to driving. In Canada, 28% of fatally-injured cyclists, 38% of fatally-injured pedestrians, 56% of fatally-injured ATV operators, and 65% of fatally-injured snowmobile operators had been drinking, and most were legally impaired. Moreover, about 25% of suicides, 40% of boating and drowning deaths, 50% of violent crime, and a significant percentage of residential fire deaths involve alcohol. While alcohol-related falls kill fewer Canadians than impaired driving crashes, such falls result in more people being hospitalized for longer periods of time.

Alcohol use is also a major cause of unemployment, absenteeism and workplace injuries in Canada, which results in estimated productivity losses of \$4.1 billion annually. While Canadian data is limited, American research indicates that

40% of industrial deaths and 47% of industrial injuries could be linked to alcohol.

Finally, it should be noted that the incidence of alcohol-related harms vary considerably within the population. Unfortunately, young people are over-represented in virtually all categories of alcohol-related trauma. In addition to being risk takers, young adults have the highest rates of weekly, monthly and total binge drinking (*i.e.* consuming five or more drinks on a single occasion). These hazardous patterns of alcohol consumption dramatically increase the likelihood of trauma deaths and injuries. For example, while 20-25 year-olds constituted only 8.3% of the Canadian population in 2003, they accounted for 20.1% of the total alcohol-related traffic fatalities.

In order to minimize their potential liability, employers planning alcohol-related events need to consider the full range of risks posed by alcohol. This includes looking at the nature of the event and those who are likely to attend.



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## ALCOHOL-RELATED LIABILITY

Two major types of civil suits arise from hosting, organizing or sponsoring events involving alcohol. First, an employer may be held liable for providing or making alcohol available to intoxicated individuals who subsequently injure themselves or others. Second, even if employers do not provide any alcohol, they may be held liable as occupiers for any alcohol-related injuries that occur on their property or property they rent. After discussing these two bases of liability, we will turn to several less frequent types of claims that may be of particular concern to employers.

### (a) BEING SUED AS A PROVIDER

Although the term “provider liability” is widely used, it is somewhat misleading. No one has ever been held liable for serving or providing alcohol in a reasonable manner, even if the person who was served later suffered or caused injury. In other words, the law does not prevent individuals from hosting events, serving alcohol and being gracious hosts. Rather, liability has been limited to those who provide, serve or make alcohol available to a person who they know or ought to know is already intoxicated.

While some courts have equated the term “intoxicated” with a blood-alcohol concentration (BAC) of 0.08% (the level at which it becomes a federal criminal offence to drive), the successful claims typically involve drinkers whose BACs were double or more this level. In virtually all of these cases, the individual was served even though he or she was visibly intoxicated or had already been served large amounts of alcohol.

Providers have been successfully sued even when they did not serve the individual all or most of the alcohol causing his or her intoxication. For example, in *Schmidt v. Sharpe*, a bar was held liable for approximately \$1,500,000 because its staff served three beers to Sharpe, an already intoxicated 18 year-old patron. Shortly after leaving the bar, Sharpe caused a crash that rendered Schmidt, his 16 year-old passenger, a quadriplegic. Sharpe’s BAC at the time of the crash was about double the legal limit for driving. The jury was also critical of the bar for repeatedly serving Sharpe and Schmidt, who were underage, without once asking for any proof of age.

Some older decisions indicated that over-service alone could give rise to liability, even if the provider was unaware of the patron’s intoxication or intention to drive. More recently, the Supreme Court of Canada in *Stewart v. Pettie* has narrowed this principle. The Court held that provider liability requires over-service of alcohol plus some other risk factor, such as obvious signs of intoxication or knowledge that the intoxicated drinker plans to drive. An employer would be considered the provider of any alcohol supplied under its liquor licence or under a special occasion permit that was obtained in its name. Moreover, even in the absence of a liquor licence or permit, the employer would be the provider of any alcohol it directly gave, supplied or made available to employees or guests. However, if a company event were held at a licensed restaurant, then the restaurant would be considered the provider. The fact that the employer paid the bill would not make it legally responsible as a provider, unless it ordered or otherwise directed the staff to serve a visibly intoxicated employee or guest.

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## (i) Employers and Provider Liability

The preceding principles were established in cases involving bars and other licensed establishments. However, as illustrated below, the few reported cases involving employers are consistent with these principles of provider liability.

### *Jacobsen v. Nike Canada Ltd.*

The 19 year-old plaintiff and several fellow Nike employees were sent from Port Moody to Vancouver to set up a display. Toward the end of the 16-hour workday, the supervisors brought in dinner, soft drinks and 36 beers. The supervisors drank along with the crew, putting no limits on their consumption. The Court found that the plaintiff consumed at least eight beers while working that night, that he would have been displaying visible signs of intoxication when he left, and that his BAC at that time was more than double the legal limit for driving. The plaintiff then went to a bar where he drank almost three beers before attempting to drive home. The plaintiff fell asleep while driving and was rendered a quadriplegic in the ensuing crash. While acknowledging his own contributory negligence, the plaintiff sued his employer.

The Court held that Nike was under two separate, but overlapping, duties of care. First, as an alcohol provider, Nike owed its employees a duty of care that was at least as rigorous as that owed by a licensed commercial bar to its patrons. Thus, Nike had a duty to monitor its employees' consumption and take steps to prevent them from driving when it knew or ought to have known they were likely impaired. Second, Nike owed the plaintiff a general duty of care as an employer to maintain a safe workplace. In the Court's words:

Nike required the employees to bring their cars to work and knew they would be driving home. In effect, Nike made drinking and driving part of the working conditions that day. It effectively encouraged the crew to drink without limit by making freely available large amounts of beer in an atmosphere which induced thirst and drinking games. The supervisors ... drank along with the crew, and made no attempts to restrict or monitor the amount the plaintiff or any of the other crew members drank.

...

Nike's responsibility to the plaintiff went beyond watching for the signs of impairment and taking steps to prevent him from driving if it observed any such signs. Its responsibility for his safety required that it not introduce into the workplace conditions that [would foreseeably] put him at risk. It is hard to imagine a more obvious risk than introducing drinking and driving into the workplace.

The Court concluded that Nike breached both of these legal duties, holding it 75% at fault and the plaintiff only 25% contributorily negligent. In the end result, Nike's total costs for this incident were probably in the \$4 million range.



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*Hunt (Litigation guardian of) v. Sutton Group Incentive Realty Inc.*

Mr. Gerry of Sutton Realty held the company Christmas party at the office during working hours. In addition to carrying out her normal duties as a receptionist and attending the party, the plaintiff was expected to clean up following the event. The plaintiff became visibly intoxicated and was described by various witnesses as slurring her words, telling off-colour jokes, “feeling no pain”, and being the most intoxicated person at the event. Mr. Gerry realized that she was drunk at 4:00 p.m. and apparently told her that her common-law husband would be called if she continued to carry on. However, Mr. Gerry took no steps to stop her from continuing to drink for the next 2½ hours or to prevent her from driving when she left at 6:30 p.m. Her BAC was estimated to be almost 2¼ times the legal limit for driving at that point. The plaintiff drove to a bar where she had no more than two additional drinks. She crashed while driving home and suffered permanent physical and cognitive injuries. She sued both the bar and Sutton Realty.

The bar was held liable as an alcohol provider. It served her despite her obvious intoxication and then took no steps to prevent her from driving. The claim against Sutton Realty was framed solely in terms of its duty as an employer. The Court held that Sutton Realty had a general duty to safeguard the plaintiff that extended beyond the confines of its office. It had an obligation to ensure that the plaintiff did not get so drunk while working on the premises as to interfere with her ability to drive home safely. Once Mr. Gerry realized that the plaintiff was intoxicated, he should have demanded her car keys, insisted that she go home by cab at his expense, called her husband, called the police, or taken other steps to protect her. He also knew that she had a considerable distance to drive home at night and that the weather was deteriorating. The Court was also critical of Mr. Gerry for setting up an unsupervised, self-serve bar that made it impossible to monitor the employees’ and guests’ alcohol consumption.

The plaintiff was held 70% contributorily negligent. Consequently, the bar and Sutton Realty were held liable for only 30% of the plaintiff’s \$1.1 million in damages. The trial decision was successfully appealed on largely procedural grounds, and the case was subsequently settled out of court.

While the *Jacobsen* and *Hunt* cases dealt with employers providing alcohol to employees in the workplace, similar principles are likely to apply to employers who provide alcohol at work-related events they host in their homes. First, while the locations of such alcohol-related events are different, the employment relationship between the parties is the same. Both types of events arise out of the employment relationship, and at both the employer is providing alcohol to his or her employees. Second, the provincial and territorial liquor legislation typically makes it an offence for anyone to provide alcohol to an intoxicated or apparently intoxicated person, regardless of the setting. Finally, the risks of serving intoxicated individuals are essentially the same, whether the event is held in the workplace or at the employer’s home.



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In the 2006 case of *Childs v. Desormeaux*, the Supreme Court of Canada held that a private social host of an adult BYOB event had no legal responsibility for an intoxicated guest who drove away and caused a crash. The Court indicated that social hosts should be subject to narrower principles of liability than commercial licensed establishments.

The Court went on to state that even when social hosts provide alcohol, they have no general obligation to discourage an intoxicated guest from driving, unless they actively created or increased the risk of drunk driving. For example, the Court stated that social hosts might be held liable for continuing “to serve alcohol to a visibly inebriated person knowing that he or she will be driving”. The facts of the *Childs* case dealt with neither provider liability nor employment-related events. Consequently, future courts are unlikely to adopt such narrow principles for employers who provide alcohol at work-related events in their home. Although the precise scope of liability is uncertain, prudent employers will exercise the same amount of care in providing alcohol at a social event, whether it’s in their home or the workplace.

## **(b) BEING SUED AS AN OCCUPIER**

In addition to potential liability as an alcohol provider, employers may be held liable as occupiers for alcohol-related injuries that occur on, or in relation to, their property or property they rent. An occupier is defined to include anyone in possession of property with the power to control who enters and remains. If several parties share control, they will be considered co-occupiers and each will have all the responsibilities of an occupier. For example, an employer would be viewed as an occupier when hosting a party on company property or at his or her home. Similarly, depending on the specific terms of the rental agreement, an employer would be considered an occupier or co-occupier when renting a hotel banquet hall. In contrast, reserving two tables for the office Christmas dinner at a restaurant would not make an employer an occupier or co-occupier of the premises.

Since occupier’s liability is limited to injuries occurring on the property, employers have no liability as occupiers once a guest leaves the premises. However, as we have seen, there are other legal bases upon which employers may be held liable for alcohol-related injuries occurring off their property. Most alcohol-related occupier’s liability claims involve fights or falls, which do not usually result in multimillion dollar claims. Nevertheless, it should be noted that more alcohol claims have been based on occupier’s liability than provider liability.

Occupiers are not held liable for every injury that occurs on their property. Rather, they can only be held liable for negligently failing to safeguard those who may foreseeably enter. As the following cases illustrate, occupiers must ensure that their property is reasonably safe in terms of not only the physical conditions, but also the people they allow to enter and remain, and the activities that they permit to occur. While these cases do not involve workplace situations, they reflect the legal principles that govern employers and other types of occupiers.



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## **(i) Liability for the Condition of the Premises**

### *Niblock v. Pacific National Exhibition*

The plaintiff, who was intoxicated, fell over a low railing on a steep staircase at the Exhibition grounds and was seriously injured. The railing was about 9 to 13 centimetres below the local by-law requirement. The defendants argued that there had never been any problems with the railings before and attributed the mishap solely to the plaintiff's drunkenness. The Court rejected these arguments, emphasizing that occupiers had to ensure that their premises were reasonably safe for all foreseeable entrants. Given the "carnival atmosphere" and the three licensed outlets on the grounds, the Court held that it was foreseeable that intoxicated persons would be present. Consequently, the defendants had a duty to ensure that the premises were reasonably safe for both sober and intoxicated entrants.

The defendants were held liable as occupiers for 75% of Niblock's injuries. Despite having a BAC almost three times the legal limit for driving, Niblock was held only 25% contributorily negligent.

## **(ii) Liability for the Conduct of the Entrants**

### *Lehnert v. Nelson*

The plaintiff was injured by Barbara Blackburn, an intoxicated patron who was previously unknown to the staff of the defendant tavern. Fifteen minutes after she arrived with her party, Blackburn began to wreak havoc. She pulled the drapes from the window and wrapped herself in them. When she tired of this activity, she upset the glasses on her table. This behaviour merely prompted the staff to move the Blackburn party to a more secluded part of the tavern. Some minutes later, Blackburn slapped her dance partner in the face, jumped on a nearby table and attacked an innocent patron with her handbag. Finally, she picked up a glass and threw it at the plaintiff, injuring him. The plaintiff sued the tavern for not taking adequate steps to protect him from the drunken patron.

The Court held that Blackburn's conduct provided a clear warning that she posed a foreseeable risk of injury to herself and other patrons. By failing to take reasonable steps to restrain or eject her, the tavern breached its duty as an occupier and was liable for the plaintiff's injuries.

### *Jacobson v. Kinsmen Club of Nanaimo*

The Club sponsored a "Bavarian beer garden" in a large curling arena. During the festivities, a patron climbed one of the I-beams supporting the roof, dropped his pants while hanging from the beam, and "flashed a moon". Several minutes after his descent, he and a friend repeated the act. Shortly thereafter, a patron known only as "Sunshine" tried to mimic his more agile predecessors. Unfortunately, while hanging from the beam, he lost his grip and fell about 30 feet onto Jacobson, knocking him unconscious. Sunshine was not injured in the fall, except for the indignity of losing his pants. He got up, pulled up his pants and left. Jacobson sued the Club for allowing this conduct to take place.

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The Court stated that the Club would not have been held liable if the injury had occurred during one of the first two climbs. However, by the time Sunshine acted, the staff should have realized that such behaviour was dangerous. The Court concluded that, by not taking more effective steps to stop Sunshine, the Club breached its duty as an occupier and was liable for Jacobson’s injuries.

### **(iii) Liability for Activities on the Premises**

#### *Stringer v. Ashley*

Stringer broke his neck diving from the Ashleys’ second-storey bedroom window into their shallow swimming pool. Stringer and several other guests had dived



or jumped into the pool between 10 and 22 times without incident. Mrs. Ashley had warned Stringer, who had at least six drinks at the party, not to dive. However, the jury held that simply providing a verbal warning to Stringer, who was obviously very intoxicated, was insufficient. Mrs. Ashley should have told Stringer to leave, stopped the party or called for help to dissuade him. Mr. Ashley was held liable for failing to assist his wife. He should have asked Stringer to leave, locked the bedroom door or otherwise prevented further diving.

Although Stringer was largely responsible for his own misfortune, the Ashleys were held 40% at fault for Stringer’s \$5,000,000 in damages, and thus were held liable for \$2,000,000.

#### *Munier v. Fulton*

The plaintiff was left a quadriplegic following a fight that he had initiated while intoxicated at a “bush party” hosted by the defendant’s son. The previous bush parties on the defendant’s farm had apparently involved problems, including fights, intoxication, illicit drug use, underage drinking, and impaired driving. No formal invitations were issued; rather, knowledge of the event spread by word of mouth. Neither the defendant nor his son provided any alcohol or drugs to the 300 young people who attended.

The plaintiff sued the defendant as an occupier simply for allowing an event to be held on his property that he knew or ought to have known posed foreseeable risks of injury to those who might attend. Before the case could be resolved by the courts, the defendant’s insurance company settled the suit for \$700,000.

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## **(c) ADDITIONAL BASES OF ALCOHOL-RELATED LIABILITY**

### **(i) Transporting the Intoxicated**

Increasingly, organizers of alcohol-related events are providing transportation. This policy is to be encouraged because it can greatly reduce the number of people who feel compelled to drive after drinking. However, employers must understand that if they provide a chartered bus or are otherwise directly involved in the transportation, they have certain additional legal obligations. First, they must ensure that reasonable steps are taken to prevent intoxicated passengers from injuring themselves or others while in the vehicle. Second, they must ensure that intoxicated passengers, who are in an obviously helpless condition, are not ejected from the vehicle and left in a potentially dangerous situation.



### **(ii) Allowing the Intoxicated to Participate in Potentially Dangerous Activities**

In *Crocker v. Sundance Northwest Resort Ltd.*, the Supreme Court of Canada held the Resort liable for allowing Crocker, who was very intoxicated, to participate in its tube-racing contest. The event required two-member teams to race large inflated inner-tubes down a steep mogulled ski hill. Earlier in the day, another competitor was hospitalized with a neck injury. During the second heat, Crocker was thrown from the tube and rendered a quadriplegic. The Court stated that organizers of potentially dangerous events have a duty to prevent intoxicated individuals from participating, even if they did not provide any alcohol to those individuals. The Resort should have disqualified Crocker, postponed the event or called the police to physically remove him. Despite ignoring two warnings not to participate, Crocker was held only 25% contributorily negligent, leaving the Resort liable for the remaining 75% of his losses.

The *Crocker* case has important implications for employers who sponsor hockey, baseball, boating, skiing, snowmobiling, and other similar activities. Indeed, it may also be relevant to a company president who hosts a staff barbecue and pool party at his home.

### **(iii) “Drinking Buddy” Liability**

The law does not require members of the public to intervene to protect intoxicated individuals or prevent them from driving. For example, the courts have held that simply meeting people for drinks to discuss a business matter does not make a casual acquaintance responsible for the subsequent impaired driving of the other parties. Similarly, it is doubtful if an employer, who happened to be having dinner at the same restaurant as some of his employees, would have any legal obligation to intervene if they were drinking to excess. The incident is not occurring at work or at a work-related event. The employer is not providing the alcohol, nor

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participating in or encouraging the irresponsible conduct. Moreover, the employer would have no legal authority or power to control the employees' conduct in this situation.

Drinking buddy liability will likely be limited to circumstances in which the defendant encourages, facilitates or directly contributes to the other person's irresponsible and dangerous drinking. For example, in *Hague v. Billings*, three friends spent the entire day together becoming intoxicated and high on marijuana, while driving between various locales. The judge viewed their conduct as a "joint venture", as each knew in advance that the plan for the day involved getting drunk, smoking marijuana and driving. Consequently, the judge stated that the two friends were just as responsible as Billings, who later drove into the Hague vehicle, killing Mrs. Hague and rendering her daughter a paraplegic. However, since the two friends had not been sued, the judge did not elaborate further on their potential liability.

#### **(iv) An Employer's Duty to Safeguard Employees**

The courts have long recognized that employers owe a duty of care to their employees and anyone whom they may foreseeably endanger. This duty is limited to employment-related conduct and situations. However, as the *Jacobsen* and *Hunt* cases illustrate, an employer's negligent failure to control an employee's conduct at work can result in claims for injuries occurring after work and outside the workplace.



In a British case, the Ministry of Defence was held liable as an employer for failing to take adequate steps to protect a naval airman who lapsed into an alcohol-induced coma in the bar of a naval base. He had consumed at least 13 drinks, 9 of which were doubles, in approximately 2½ hours. Rather than seeking medical assistance or informing a medical officer, his fellow officers carried him to his cabin, where he was visited three times. Several hours after being brought to his cabin, the airman was found to have asphyxiated on his own vomit and died.

In a 1991 criminal case that made front-page news, a judge stated that it was "shocking and outrageous" that both GM and the CAW had ignored the longstanding problem of workers drinking in the company's parking lots before, during and after their shifts. The judge made these comments in sentencing a GM worker to four years in a penitentiary for killing a 12 year-old girl while drunk behind the wheel. The prosecutor was even less charitable, suggesting that both GM and the CAW deserved to be in the prisoner's box along with the accused. As was his "regular habit", the driver had started drinking in the company parking lot before going to several bars.

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This issue also arose in a recent Ontario civil case. The plaintiff, who was seriously injured in a crash caused by Flynn, sued both him and his employer. Flynn, whose BAC was double the legal limit, had finished the night shift 45 minutes prior to the crash. The employer knew that Flynn had a drinking problem, and it was established that Flynn had been drinking heavily prior to and throughout the night shift. The employer was held liable at trial, but this decision was reversed by the Court of Appeal. It held that, contrary to what the trial judge assumed, there was no proof that the employer knew that Flynn had been drinking before or during his shift. The Court of Appeal emphasized that Flynn made a concerted effort to conceal his drinking from his supervisor.

Based on the sentiments expressed in the criminal case and *Flynn*, it appears that employers may be held liable for ignoring workers who drink on the job and then drive home. What is less clear, however, is just how vigilant employers must be to prevent such conduct.

#### **(d) ALCOHOL, VEHICLES AND AUTOMOBILE INSURANCE**

While the specific provisions vary from province to province, the general rules about alcohol, vehicles and insurance are similar. There are two major points that employers need to appreciate. First, under both statute and common law, an employer is legally responsible for damages or injuries caused by “at-fault” drivers who are operating its vehicles with its express or implied consent. In other words, as the owner, employers are held liable for damages arising from permitted uses of their vehicles.

Second, if a driver causes an at-fault crash while intoxicated, the owner’s automobile insurance company is not required to provide compensation for damages to the vehicle, regardless of the collision insurance the owner purchased. It does not matter that the owner was unaware of the driver’s intoxication or had repeatedly told him or her not to drink and drive. In essence, the driver’s intoxication negates the owner’s collision coverage. It may also reduce some of the “no-fault” benefits that would otherwise be payable to the intoxicated driver. Depending on the jurisdiction, the owner may also be required to compensate the insurance company for any property or personal injury damages that it has had to pay out to the other parties. Thus, despite having bought collision and liability insurance, the owner may be legally responsible for the entire loss.

Although there is considerable variation in the provincial laws, the owner’s coverage may be similarly negated or limited if the driver is unlicensed, prohibited from driving or has a suspended licence. The onus is on the owner to ensure that the driver is legally entitled to drive.



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# A CHECKLIST FOR ALCOHOL-RELATED EVENTS AND ACTIVITIES

Employers need to develop an approach that responds to the full range of their potential liability. We have outlined below some of the essential elements of a comprehensive risk minimization plan for hosting, organizing or sponsoring alcohol-related events. The nature, size, location, and history of an event will dictate which of the following measures are appropriate. Employers need not impose a single pre-set formula on all events. While there is no single quick fix, with some planning, common sense and basic precautions, employers can dramatically reduce their chances of being sued and held liable.

## PLANNING

- Prepare written policies governing alcohol use at all company events and activities. Broadly distribute and publicize these policies to avoid any misunderstanding of your expectations.
- Do not sponsor, organize, supervise, or allow on your property or property you rent any inherently dangerous events or activities, such as drinking contests, underage drinking, or all-you-can-drink stags or similar events.
- Avoid combining alcohol and potentially dangerous activities. If this is not possible, alcohol should only be available after the physical events are completed. Event staff should screen potential participants for signs of intoxication.
- If the event is on your property, consider hiring trained servers and staff to help run large events. You should also consider holding large events at a licensed establishment that has experience in running such events.
- Investigate any prior alcohol problems with an event or group and take steps to avoid a recurrence. Employers who ignore past problems or known risks severely compromise their legal position in any subsequent civil suit.
- Do not make or allow drinking to be the focus of an event.
- Have a plan in advance to ensure that guests who may be intoxicated can be taken home safely.





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## MANAGING

- Inspect the premises on which any company event will be held to ensure that it complies with the relevant building and safety codes, and is reasonably safe for those who will be drinking. Even minor changes, such as improving the lighting on stairways, tightening a loose handrail, and taping over electric cords, can significantly reduce the risks.
- Ensure that the security arrangements are adequate given the size of the event, its location, the likely participants, and any previous problems.
- If the event is one that young people will be attending, implement identification procedures, such as requiring young patrons to produce a driver's licence, age-of-majority card or other similar government-issued photo identification.
- Ensure that servers have some experience and training. At a minimum, they should be able to identify the signs of intoxication, understand their obligations under the liquor legislation, and realize that they may be held civilly liable.
- Require the event staff to abstain from drinking before or while they are working at the event.

## SERVING

- Do not serve, provide or make alcohol available to any person who is or may be under the legal drinking age.
- Make food and non-alcoholic beverages available. People who have eaten absorb alcohol more slowly than those who have not, thereby lowering their peak level of intoxication.
- If you are providing alcohol, serve drinks rather than having an open, self-serve bar. Such bars encourage some people to drink excessively.
- Do not encourage intoxication by serving extra-strong drinks, double shots or high-alcohol content beer.
- If alcohol is being sold at the event, do not set the price so low as to encourage heavy consumption. Limit the number of drinks that can be purchased at any one time.
- Stop serving alcohol long before the event is to end. Do not announce "last call". It is simply not smart to serve people just before they drive or otherwise try to get home.



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## SUPERVISING

- Do not provide, or permit alcohol to be given, to a person who is or may be intoxicated. Such conduct only increases the risks of a mishap and your chances of being sued.
- The servers should be given explicit authority to refuse service to any guest who they believe is underage, intoxicated or rowdy. Those supervising the event should support the servers' decisions, regardless of the person involved.
- Refrain from drinking or drink moderately at events for which you are responsible. The more you drink, the more difficult it will be for you to anticipate problems, supervise the event, and intervene to avoid risks.
- If your guests are endangering themselves or others on your property, you will be expected to take reasonable steps to defuse the situation. While the courts are unlikely to require you to intervene physically, a simple verbal warning to desist may not be viewed as sufficient.
- Event staff should be trained to focus on the guests' behaviour and appearance. Both you and the staff should be prepared to have a friendly word with anyone who is becoming intoxicated.
- If gentle persuasion fails, you may have to verbally insist that an intoxicated guest not attempt to drive home, even if that means threatening to call or calling the police.
- Arrange for guests who may be intoxicated to be taken home safely.



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## THE NEED FOR A BROAD POLICY REVIEW

This brochure has focused on employers' potential liability for hosting, organizing and sponsoring events involving alcohol. However, as the initial headline about the pilots and some of the cases illustrate, an employer's liability for alcohol incidents is not limited to social events. Consequently, employers would be well advised to take this opportunity to conduct a broader review of their workplace alcohol policies and, where necessary, develop additional policies. We have outlined below some of the areas in which employment policies are warranted:

- alcohol consumption prior to or during the work day;
- employees who arrive or are found at work under the influence of alcohol, and their safe transportation home;
- alcohol consumption on company property, including parking lots;
- the provision of alcohol during business meetings or entertaining;
- the claiming of alcohol as a company business expense;
- alcohol consumption prior to driving any company vehicle, whether for employment or personal purposes; and
- procedures to ensure that drivers of company vehicles have a valid licence and are legally entitled to drive.

## CONCLUSION

**Being a good host means ensuring that your employees, colleagues, friends, and clients have both an enjoyable and safe time at your events. Moreover, the steps you take to avoid alcohol-related injuries and deaths will, of necessity, reduce your risks of civil liability. While there are no 100% guarantees, your exposure to alcohol-related liability is largely in your own hands.**





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