

FEATURE
ALCOHOL RISK MANAGEMENT, Part 2

THE PERILS OF PARTIES: MINIMIZE YOUR EXPOSURE AND STILL HAVE A GOOD TIME

by Shelley Timms

You are an employer. For years, you have had a number of company events such as the summer picnic, the office Christmas party, and client lunches. But recently, you have become increasingly nervous about these parties, especially if alcohol is served. You have heard that employees may sue the employer for damages if the employee suffers injuries resulting from consuming too much alcohol. You don't want to be sued, but at the same time you would like to have events for employees and clients. Can you continue to host these events – and have alcohol at them?

First, whether or not to serve alcohol is a purely personal decision, but one that will determine what measures you should take to protect both your employees and clients from damage and yourself from liability. If you do decide to have alcohol as a component, you need to plan in advance to minimize problems.

Any host – commercial, business or social – needs to be aware that excessive consumption of alcohol has many consequences. The intoxicated guest is at risk but the person who comes into contact with the intoxicated person is at risk as well – from assault to being on the road at the same time as a drunk driver. This innocent third party can sue the host, although success of liability is still mixed at best. Technically, social host liability has not been successful in Canada but the law is always evolving. In other words, this weekend's party that spawns an incident could be new law in three to five years.

Further, consequences of excessive drinking are far and wide. They range from a simple hangover to potential

absence from work or school. They include assault, sexual assault, falling, choking on vomit, pedestrian incidents and, most notably, drinking and driving crashes. The results include death and severe injuries such as spinal cord damage and brain trauma.

At all times, you need to know that you have a responsibility to monitor and supervise your guests, client or employee, particularly when there is alcohol consumption.

Now that you are wondering why you would have alcohol at a party when the consequences are severe, there are tips that you can follow to minimize exposure to these consequences. At all times, you need to know that you have a responsibility to monitor and supervise your guests, client or employee, particularly when there is alcohol consumption. The courts have suggested that there is a special relationship between employee and employer. While the client relationship has not been thoroughly examined, it is better to assume that there is a special relationship there as well.

- First, know your insurance. Most companies will have a Comprehensive General Liability Insurance policy that includes coverage for damages resulting from incidents. You need to know the

CALENDAR

US NATIONAL HEALTH POLICY CONFERENCE

January 22 to 23, 2003

Washington, DC

- Seven hundred researchers and policy professionals meet for a unique opportunity to hear experts explain and debate timely health policy issues.

www.academyhealth.org/nhpc/index.htm

ONTARIO INJURY PREVENTION CONFERENCE

February 23 to 25, 2003

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email: OIPC2003@smartrisk.ca

www.smartrisk.ca/OIPC2003

5TH ANNUAL NATIONAL PATIENT SAFETY FOUNDATION CONGRESS

March 12 to 15, 2003

Washington, DC

- Focus on results: Success stories in safety improvement in plenary, concurrent breakout, breakfast roundtables and poster sessions, presentations from organizations and individuals that have succeeded in reducing or eliminating risks to patients and improving the safety of their care.

www.mederrors.org/overview.html

13TH ANNUAL ALCOHOL POLICY CONFERENCE: PREVENTING ALCOHOL PROBLEMS AMONG YOUTH – ENVIRONMENT AND ACCOUNTABILITY: WHO IS RESPONSIBLE?

March 13 to 16, 2003

Boston, Massachusetts

- Wide range of alcohol problems associated with youths (underage drinking, high-risk consumption in higher-education and military settings, impaired driving and injury control), specific policy measures (regulating commercial and social host liability; retail outlet licensing and land-use permits; legislating driver blood alcohol levels; establishing fair rates of excise taxation; regulating advertising and media depiction).

<http://www2.edc.org/alcoholpolicy13>

NEW PUBLICATIONS

HEALTH UNITED STATES 2002: WITH CHARTBOOK ON TRENDS IN THE HEALTH OF AMERICANS

Paperback, \$85 Cdn
Claitors Publishing Division
ISBN: 1579808298

INJURY FACTS 2002

Paperback, \$75 Cdn
National Safety Council
ISBN: 0879122463

ACCIDENTS IN NORTH AMERICAN MOUNTAINEERING: NUMBER 2, ISSUE 55 (2002)

by Jed Williamson & Nancy Hansen
Paperback, \$15 Cdn

- Annual investigative handbook offers detailed reports on climbing accidents in the United States and Canada in 2001. Produced jointly by the Safety Committees of the American Alpine Club and the Alpine Club of Canada, the book details what happened and analyzes what went wrong in each situation to give mountaineers the opportunity to learn from others' mistakes.

American Alpine Club
ISBN: 0930410920

SOCIAL ECONOMY: HEALTH AND WELFARE IN FOUR CANADIAN PROVINCES

Edited by Yves Vaillancourt & Louise Tremblay
Translated by Stuart Anthony Stilitz
\$16.95 Cdn

- Contributors from a three-year study (by researchers at Université du Québec à Montréal, Université de Moncton, University of Ottawa and University of Regina) explore health and welfare in changing social and economic conditions. They see the crisis of the welfare state as an opportunity for development of a solidarity-based economic model involving new relationships among third-sector, state, market and informal economies.

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extent of the coverage and, particularly, to study the exclusions to ensure that incidents from the party would be covered. Alternatively, you can obtain special Party Alcohol Liability policies for one-shot events.

- You need to know what relevant legislation exists in your province. Every province has a liquor act, but only some have occupiers' liability legislation. It is worth a review to understand what obligations are placed on commercial servers. While the standard, presently, is not as high for other servers of alcohol, that standard could change. It is also worth knowing what obligations are placed on those who serve for a profit. Further, your event may need a special-occasion permit. Many of the provincial liquor acts have special provisions regarding when a permit is needed and specify the obligations that are associated with the permit.

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- Does your company have an alcohol policy? If not, it may be worth developing one in order that all employees are "working from the same page." If there is a policy, when was it last reviewed? Has it been provided to all employees?

Do the employees understand what it means? All policies need to have the three "C"s – clarity, consistency and communication. If that is not the case, you, the employer, need to ensure that it becomes the case.

- Several days before an event, even if it is a "simple" client lunch, it worth sending a memo or note reminding the guests of the event and that the company does not endorse drinking and driving. In fact, the company expects all guests to make arrangements for alternative transportation if the guests intend to consume alcohol. You may want to offer taxi chits, but make it clear that drinking and driving is not on the agenda. It is strongly recommended that companies take a zero-tolerance approach on this subject and make sure that all guests, employees and clients clearly understand this approach.
- If your company entertains regularly, it is worthwhile reviewing the commercial training programs available to commercial hosts and waitstaff. These programs include videos and workbooks that explain some of the chemistry of alcohol as it affects the human body, provide an overview of liability issues, describe signs of intoxication, and suggest how to manage the intoxicated patron. All this is useful, even to the business/social host. It may also be worthwhile to have certain employees designated to be trained in liquor liability and management, and assign them responsibility for organizing social events at which alcohol may be served.
- You need to determine where the event will be held. If a party is held on the premises of the company, there will be an even greater responsibility upon you, the employer, to monitor and supervise the consumption of alcohol. For

this reason, you may wish to hold the event at a commercial establishment with trained staff. However, do not think that this will absolve you, the host, from all liability should an incident occur. Because the event is held at your invitation, you still have a responsibility to monitor and supervise the consumption of alcohol of your guests. Holding the event at a commercial establishment will simply spread the liability.

- As for the party itself, make it about other things, not just drinking. Spend a little more money on good food and entertainment. Make sure there is lots of food and that much of it is high in protein and fat, which will slow the absorption of alcohol into the bloodstream. Remember that salty foods increase the desire to drink, and that sweets do not mix well with alcohol.
- Avoid a cash bar, or at the very least, limit the number of drinks per guest. Be aware that both tickets and bar service have their difficulties, as it is difficult to track the number of drinks consumed by guests. If you can afford the expense, have waitstaff. If not, try to have a professional bartender. At the very least, do not have a self-serve bar. If employees are bartending, they must not consume alcohol themselves, and they must keep the liquor behind the bar to discourage the self-serve approach.
- Consider having designated non-drinkers (DNDs). You will likely have staff who do not consume alcohol for a variety of reasons but who may be happy to assist in monitoring guests who do drink. The DNDs should be rewarded in some fashion, because they are helping everyone have a good time in a safe environment. If a problem occurs, however, the DNDs should not be expected to “cut off” the

guest from further consumption, nor to break up a potential conflict. The DNDs should advise the employer of the problem and from there, the employer should take over managing it.

- Whether or not taxi cabs are advertised, they should be available, or at least some cash for taxis. Alternatively, reserve some hotel rooms for guests from out of town. Employers should note that, once a guest is intoxicated, the host should stay with that person until he or she is sober. The duty of care may extend until complete sobriety.
- A problem may arise if a guest refuses to give up his or her car keys or take a taxi. The host needs to use every persuasive technique to prevent that person from driving. If all else fails, then the police must be called. The courts have established that commercial hosts have this obligation, and while it is a bit muddy as to the extent of that duty to business/social hosts, it is better to be safe than sorry. Further, if a guest becomes violent, you must use only reasonable force that is necessary to protect yourself. The best course in such an instance is to call the police.

The reality is that most parties are successful and conclude without incident. However, to give yourself some peace of mind, develop a plan, include some strategies for the worst-case scenarios, and be sure that all guests are aware of these. You can have a good time at the party or event. Just do the best you can.

Shelley Timms is President of Timshel Services Inc., which provides services in alcohol risk management and dispute resolution. She received her LL.B. from the University of Toronto in 1984. In addition to numerous legal association memberships, she is a member of the American Bar Association's Alternative Dispute Resolution Services Section and a member of the Arbitration and Mediation Institute of Ontario. Shelley can be reached at sltimm@netcom.ca or 416-767-4210.

HUNT V. SUTTON GROUP: UPDATE

In Shelley Timms's article in the last issue of **LegalFocus**, and in Randy Bundus's article in this issue, the case **Hunt v. Sutton** was discussed. A retrial was expected to begin in March 2003. On December 20, an agreement was reached by both parties, the terms of which are confidential. However, both parties consider the terms to be fair.

Regarding another case noted in the final paragraph of Timms's article, it was announced on December 19 that the Crown dropped charges against the Windsor, Ontario bar owner, the first bar owner in Canada to face criminal charges in connection with a driving death of a bar patron. **LegalFocus** will continue to monitor alcohol liability issues and offer comment.

DWI SYSTEM IMPROVEMENTS: DEALING WITH HARD-CORE DRINKING DRIVERS

The third report from a major US study designed to identify ways to improve the efficiency and effectiveness of the DWI (Driving While Impaired) system for dealing with hard-core drinkers has been released in Washington, DC, in conjunction with the Washington Impaired Driver Traffic Safety Conference. The report, entitled **Sanctioning** (2002), deals with improvements in the adjudication and sanctioning phase of the DWI system, with the top problems faced by 900 judges in 44 states. These include:

- inadequate systems to ensure that sentences are carried out,
- insufficient and incomplete evidence at trial, which often results in cases being dismissed, and
- overwhelming caseloads.

Solutions identified include training and education for more judges, improved communication and cooperation with other professionals, and more efficient and timely access to records. The first two reports are **Enforcement** (2001) and **Prosecution** (2002). The fourth and final report, **Monitoring** (expected in April 2003), will examine system improvements related to monitoring hard-core offenders. View the study on the Traffic Injury Research Foundation's website, www.trafficinjuryresearch.com, or log on directly at www.trafficinjuryresearch.com/anheuserBusch/dwi_system.htm.