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### Point Counter Point

## Warm summer days and legal risk

Norm Streu and Chris Hirst

As we approach the final stretch of summer, and with another long weekend around the corner, many people are planning parties and barbecues. Those hosting the parties, the "social hosts" can reduce their party-planning stress by preparing strategies to deal with potential drinking and driving.

In a seminal decision released in 2006, the Supreme Court of Canada determined that social hosts do not, as a general rule, have any responsibilities regarding their guests' alcohol consumption. Unless the intoxicated guests are under age, or the social host has actual knowledge that an intoxicated attendee intends to drive, or does something "extra" to create a risky environment, a social host will not incur liability in the event a partygoer is subsequently involved in an accident.

Where a social host has actual knowledge that a partygoer is intoxicated and intends to drive, an obligation to take positive action to prevent that person from driving will arise. Actual knowledge means that the social host knows (or can reasonably presume) that a person is intoxicated and sees them preparing to drive, knows they are planning to drive or has some other similar knowledge beyond mere speculation.

Social hosts have also been found liable for creating a "risky environment" where guests have been encouraged to participate in a risky activity (such as a dangerous sport) in addition to the provision of and consumption of alcohol. The court has, however, been careful to point out that merely providing alcohol or allowing guests to bring alcohol to a party is not sufficient to attract liability for a social host.

While not legally required, the prudent social host may alleviate their worries with respect to drinking and driving by taking any of the following steps:

Ensure guests have pre-arranged rides or accommodations;

Offer to call a taxi for a guest that appears intoxicated;

Request that guests without a designated driver turn over their keys on arrival;

If under-age persons are attending, ensure safeguards are taken to prevent these guests from consuming alcohol.

Significantly, employers who host a party for employees have more responsibility to monitor alcohol consumption, and to prevent drinking and driving. Factors that can affect whether an employer may have exposure to liability include:

Whether the party is on work premises or during work hours;

Whether the employees typically drive to and from work;

Whether the employer has actual knowledge that an employee intends to drive after the party, while intoxicated.

Where a party occurs on work premises or during work time, the employer will have a heavier burden in

monitoring employees as the employees are considered to be under the "control and supervision" of the employer. However, where a party occurs in a private setting after work hours, a positive obligation on the employer may be lifted.

A prudent employer-host will take active steps to ensure that employees do not drink and drive. Commonly, employers will arrange for alternative transportation to and/or from a work party for employees wishing to consume alcohol at the party. Such measures can include:

Handing out taxi chits or offering to reimburse taxi fares;

Arranging for carpooling, designated drivers, or another means of "group" transportation;

If an employee is causing concern, additional measures include calling a taxi, arranging for the employee to go home with a sober guest or taking away the employee's keys.

By factoring these few, but critical, points into party-planning this summer, whether you are an employer or social host, you can better ensure the enjoyment of all your guests, as well as limit your own liability.

*Norm Streu and Chris Hirst are partners in the Construction & Engineering Group of the Vancouver law firm Alexander Holburn Beaudin & Lang LLP. Norm is a past chair of the Vancouver Regional Construction Association. This article was prepared with the assistance of Bethany Tapp, articled student.*

*If you have any questions about this article, or any construction law related issue, please feel free to call Norm or Chris at (604) 484-1700.*

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101-4299 Canada Way, Burnaby, BC V5G 1H3  
Phone: 604-433-8164 | Fax: 604-433-9549  
Toll free: 888-878-2121  
E-mail: [jocinfo@reedbusiness.com](mailto:jocinfo@reedbusiness.com)

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