

SERVING ALCOHOL? BE CAREFUL

Sadly, too often we hear about people attending a party, having too much to drink, attempting to drive home, and then getting in an accident.

Our courts have established two different standards when deciding if someone other than the driver is responsible for injuries resulting from this accident.

If the person serving alcohol is doing it in a commercial setting, a bar, restaurant, or club, (a commercial host) then the courts have found that there is a statutory duty under the Liquor Licence Act and a common law duty not to serve alcohol which intoxicates or increases a patrons existing level of intoxication .

The commercial host owes a duty of care to any person (not just the intoxicated party but also third parties) who might reasonably come into contact with the intoxicated person and to whom the intoxicated person may pose some risk.

The courts have in the past not gone this far with liability in the case of persons serving alcohol, for example, in their homes, (social hosts) when there is no sale or commercial transaction.

The Liquor Licence Act does not apply and the common law has not found the same duty of care as a licensed establishment.

However, the law in the area is changing.

In a recent Ontario Court of Appeal decision involving an adult child having an out of control party at his parents house, too much alcohol was served, a fight ensued, and someone was badly hurt. The party sued the child and his parents for not supervising properly.

Although the court found that the parents, under these circumstances, were not responsible, the court went on to very clearly state that under the right set of circumstances a court could find that a social host is responsible for damages that are caused by an intoxicated person, to himself or to a third party, if the host did not take reasonable steps to prevent the intoxicated person from driving.

The message is now clear. Even if you are serving someone in your home, if you serve that person to intoxication and then let him drive, you may be responsible if he later is involved in an accident causing injury.

I do not wish to dampen the Holiday Spirit, but please be careful. Make sure that anyone leaving your home, and to whom you have served alcohol, gets home safely, and without driving himself. You owe it to that person and to the other people using the roadways.

You do not want to be the defendant in the lawsuit in which the courts impose damages for social host liability.

This article is not legal advice.