

Alcohol Liability

by Joy Jackson

Most liquor laws are state that it is an offense to serve and allow individuals to become intoxicated or to serve individuals who are already intoxicated. In Ontario, this legislation is old. However, most lawsuits arise because excessive alcohol consumption relates to the Occupiers' Liability Act rather than directly to providing someone with alcohol to excess.

A 1973 Supreme Court of Canada decision in the case of the Jordan House v. Menow and Honesberger was pivotal in Canada's approach to how providers of alcoholic beverages should deal with an intoxicated person. The court took the position that commercial establishments owed a duty of care – not just to the intoxicated person, but also to others they could possibly endanger. This same attitude applies to non-profits organizations, work-related parties, municipalities and other social events.



What has become clear through the intervening years is that there are two common routes plaintiffs take when suing over excessive serving of alcohol. The first is that someone was served to the point where they were so intoxicated that they become a danger to themselves or others. The second is to ensure that the premises used was not reasonably safe to those present – sober or drunk.

Media focus on drinking and driving has drawn attention away from several other potential problems that arise when people become intoxicated. These include:

- injury and death from falls or burns.
- damage to property from vandalism, falling asleep while smoking, etc.,
- fighting – due to perceived provocation or other problems,
- child or spousal abuse, and
- public intoxication.

These incidents require police resources and often those of Fire and medical services as well.

A key strategy in loss prevention and control is to *write and implement* a Municipal Alcohol (Risk Management) Policy. Common components of these policies are:

- Have a written policies governing alcohol service (whether for sale or gratuitous) that is approved by municipal council.
- Train your employees on the policy to ensure they know its contents well and document the name of each person trained and the date.
- Publicize the policy and provide a copy to every facility renter to avoid any misunderstanding of your expectations
- Monitor the type of activities / events that will be held on municipal property and avoid the provision of alcohol where potentially dangerous activities will occur.
- Include a safe transportation plan in the policy that contains means by which drinkers can be taken home safely (ie. have a direct line to a cab company and encourage designated driver programs)
- Require all servers to have recognized training and experience.
- Don't permit people who are intoxicated to have additional drinks.
- Require servers to refuse service to intoxicated guests. Supervisors must support servers' decisions

- Insist that only plastic glasses and aluminum cans will be permitted at your facilities to prevent them being used as weapons during fights.
- Permit the serving of only regular drinks – no ‘doubles.
- Require that food be served – it slows the body’s ability to absorb alcohol and slows the rate at which people drink.
- Insist that a good selection of non-alcoholic and low-alcohol beverages are provided – discourage higher-alcohol beers and coolers.
- When guests pay for drinks, non-alcoholic drinks must be priced at least 30% less than the price of alcohol-containing drinks.
- For *Special Occasion Permits* issued by the Alcohol and Gaming Commission, require that the licensee (the person who signed the application) be on site during the event.
- All servers and bartenders must be easily identifiable by a name tag and/or item clothing.
- Servers and bartenders must never be permitted to arrive to work nor to drink while working.
- Appropriate signs governing sale of alcohol and permitted activities must be prominently posted in the venue. (If your venues have regular events with non-English speaking patrons ensure that signage is in the language being used!)
- Prohibit ‘last call’ to avoid patrons ‘stocking up’ before the bar closes.