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# Ontario Court: Employers obliged to "personally intervene" to prevent drunk employees from driving home

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In a highly publicized decision, an Ontario judge has ruled that an employer is partially liable for injuries sustained in a car accident by an employee who had consumed alcohol during an office party. Adding to the controversy provoked by the decision are the facts that the employer had offered to make other arrangements to drive the employee home, and that the accident occurred after the employee had consumed a few more drinks at a pub after leaving the office party.

The decision, *Hunt v. Sutton Group* (February 5, 2001), concerned Linda Leigh Hunt, a receptionist who sustained serious and permanent injuries in a car accident while driving home in a snow storm. Among the injuries she suffered was severe brain damage leading to a variety of symptoms, including amnesia, headaches, dizziness and deterioration of her cognitive skills. Hunt brought an action against her employer claiming that it had been negligent in failing to prevent her from leaving work while in a state of intoxication.

The accident occurred at 9:45 p.m. on December 16, 1994, the day of the office party. By 4:00 that afternoon, the employer noticed Hunt's state of inebriation, and offered to call her spouse to take her home. When Hunt did leave the premises at 6:30, the Court found that her blood alcohol level was more than double the legal limit.

## EMPLOYER OBLIGED TO TAKE "POSITIVE ACTION" TO SAFEGUARD EMPLOYEE FROM HARM

The employer argued that, while it did have a duty to keep the workplace safe, this duty did not extend to supervising the drinking habits of its employees. The Court disagreed, holding that the employer-employee relationship was one that gave rise to a more extensive duty of care than that for which the employer argued. Quoting from the Supreme Court of Canada in its 1995 decision, *Stewart v. Pettie*, the Court held that the duty comprised some element of positive action:

> "Historically, the courts have been reluctant to impose liability for a failure by an individual to take some positive action. This reluctance has been tempered in recent years where the relationship between the parties is such that the imposition of such an obligation has been warranted. In those cases, there has been some 'special relationship' between the parties warranting the imposition of a positive duty."

Based on its survey of the case law on negligence, the Court held that Hunt's employer owed her a

positive duty to safeguard her from harm:

> "[The duty] extended beyond the simple duty while she was on his premises. It extended to a duty to make sure that she would not enter into such a state of intoxication while on his premises … so as to interfere with her ability to safely drive home afterwards."

## OFFER TO CALL SPOUSE NOT ENOUGH

The employer had argued that it should not be expected to control Hunt's private life by confiscating her car keys or insisting she take a cab home, stating that these measures were tantamount to theft and forcible confinement respectively. The Court rejected these submissions and stated that there were other alternatives open to the employer:

> "Sutton owed the plaintiff a duty to personally intervene and prevent an intoxicated employee from driving home and certainly more so in the weather conditions existing at the time. … It was open to the defendant to send the plaintiff home by taxi, if necessary to take her car keys away and to take custody of her car. Alternatively, it should have taken steps to call her common-law husband to come and pick her up. Alternatively, he could have taken her to a local hotel or found somebody else who had not been drinking to do so or to drive her home."

## STOP AT PUB NO BREAK IN LINE OF CAUSATION

As noted above, before the accident Hunt had stopped off at a pub for a few drinks after leaving work. This fact raised the legal issue of whether Sutton's negligence in permitting Hunt to leave work while intoxicated was the proximate cause of the accident. The Court, quoting from a 1981 decision of the Ontario Court of Appeal, held that Hunt's stop at the pub could also have been anticipated by the employer:

> "A break in the line of causation is subject to the qualification that if the intervening act is such that it might reasonably have been foreseen … as a natural and probable result of the original negligence, then the original negligence will be regarded as [a proximate] cause of the injury, notwithstanding the intervening event."

Having found both the employer and the pub owner negligent, the Court held both parties jointly and severally liable to Hunt for 25 percent of her damages, amounting to $281,229.

## In Our View

The employer and the Pub were held liable for only one quarter of Hunt's damages because Hunt herself was held to have been contributorily negligent for the remaining three quarters. Given the facts of the case, Hunt's counsel had conceded her role in the events, and suggested that she contribute 70 percent of the damages.

While it is unclear what the ultimate fate of this particular decision will be, the principle that an employer has a duty of care for the safety of its employees is here to stay. Employers should therefore take steps to reduce their liability when holding social functions. The measures indicated by the Court in this case are some examples of the steps a prudent employer may wish to consider. (For subsequent developments involving this case, see "Controversial Christmas party decision sent back for new trial by Court of Appeal" on our What's New page).

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