

COMPANY HOLIDAY PARTIES
Festivity or Liability?

Damien M. E. Buntsma



Happy Co. hosts its company holiday party for 200 staff and management at its head office, during work hours. Alcohol is served, but no one monitors consumption. Ted Garland consumes eight alcoholic beverages at the event and stops at the local pub on his way

home for a few more drinks. While driving home from the pub, Ted loses control of his car, rolls into a ditch, and sustains catastrophic injuries that leave him a quadriplegic.

While holiday parties are a great way to thank employees for their efforts over the past year, allow them to socialize, and boost morale for the year ahead, such parties are legal minefields for employers, particularly when alcohol is consumed. In the example above, Ted initiates a legal claim for damages against Happy Co., arguing that its negligence resulted in his catastrophic injuries. The Court awards \$2.7 million in damages and finds Happy Co. 75% responsible. The illustration provided herein is based on what is considered to be one of the leading cases on employer-host liability. In its reasons, the Court finds that even though Ted voluntarily consumed enough alcohol to become intoxicated, Happy Co. failed to provide a safe workplace, by introducing alcohol into the workplace.

Due to the substantial risks involved, we strongly recommend that employers prohibit the consumption of alcohol at company-hosted or sponsored events. Since many employers will continue to supply alcohol at such events, we recommend the following actions.

Before the Party

1. Have comprehensive policies on the consumption of alcohol at the workplace and during company events.
2. Provide information sessions and training on these policies for all staff.
3. Inform all attendees that overconsumption of alcohol, or drinking and driving at any company event or event attended on behalf of the company, are strictly prohibited. Failure to comply will result in discipline, up to and including termination of employment for cause.
4. Inform all managers that consumption of alcohol

must be in moderation when entertaining employees, guests and clients.

5. Forbid the consumption of alcohol at any company event without authorization.
6. Hire trained/certified servers and staff to run the event, or have it take place at a licenced establishment away from the workplace.

At the Party

1. Structure the event to limit alcohol consumption.
 - Monitor each employee’s consumption of alcohol.
 - Avoid having an open bar, or allowing employees to serve themselves.
 - Provide drink tickets and forbid sharing.
 - Limit hours that the bar is open.
2. Provide ample food and a selection of non-alcoholic beverages.
3. Prohibit potentially dangerous activities during the event, such as drinking games or other games that promote or encourage alcohol consumption.
4. Provide each employee with transportation home (i.e. taxi cabs), or accommodations if they have to travel a long distance.

After the Party

1. Where there has been a breach of company policy or directive, take appropriate, consistent action with employees, including management.
2. Update company policies where necessary.

The Last Word

Given the special relationship that exists between an employer on the one hand, and its employees and guests on the other, employers are always best served to strictly prohibit the consumption of alcohol at company-hosted or sponsored events. Lawrences’ Employment & Labour Law Group has considerable experience assisting employers in drafting appropriate policies and handling legal liability situations.



Damien Buntsma leads Lawrences’ Employment & Labour Law Group. He represents and advises public and private sector employers, unionized and non-unionized, in all areas of labour and employment law. Damien can be reached at 905-452-6876 or dbuntsma@lawrences.com

In this issue:

Festivity or Liability? 1

Enforcing Judgments 2

Who Owns That Tree? 3

Life at Lawrences[®] 4

ENFORCING JUDGMENTS

What Happens After You Win A Court Case?

Kiran Gill

Tasty Co., a catering company, sued a client for payment of unpaid bills for its services. The court decided in Tasty's favour, stating that the client must pay Tasty the full amount owing, plus court costs. Three months after the judgment, Tasty has yet to see a penny of the money. What can it do?

Since a lawsuit can often be highly stressful, expensive and drawn out, it is important to assess the likelihood of recovering money before even beginning a lawsuit. Even if a party is successful at trial (the judgment creditor) and obtains a monetary judgment, there is no guarantee that the opposing party (the judgment debtor) will abide by the court order. If the judgment debtor does not pay, there are three main mechanisms for enforcing judgments:

1. examination in aid of execution;
2. writ of seizure and sale of debtor's real property, and
3. garnishment of monies owed to the debtor, such as wages and bank accounts.

Examination in Aid of Execution

A judgment creditor is entitled to question the judgment debtor under oath. This process is called a judgment-debtor examination. At the examination, the judgment creditor may ask questions about the judgment debtor's financial standing and means of repaying the judgment debt. In such examinations, information about the judgment debtor's bank accounts, employer, the location of the judgment debtor's assets, or other sources of income for the judgment debtor can be obtained. With this information, the judgment creditor can pursue other means of enforcement such as writs or garnishment as described below. An examination in aid of execution against a debtor can generally be conducted only once a year.

Writ of Seizure and Sale

A writ is a document issued by the court that effectively liens a judgment debtor's real estate within each jurisdiction—a regional municipality or county—where it is filed. If the judgment debtor has property in various different jurisdictions, separate writs have to be filed in each. A writ must be renewed every six years. In the example above, if Tasty's client owns real estate, Tasty could obtain a writ and file it in the jurisdiction where the real estate is located.



Once filed, the writ binds the judgment debtor's real estate in that jurisdiction. If a judgment debtor attempts to sell that real estate, the writ search that the purchaser will perform will reveal the writ and the sale will not take place until the writ has been paid.

Garnishment

Garnishment is a mechanism that allows a judgment creditor to collect its debt from a third party who owes payment to the judgment debtor. Examples would include wages owed by an employer and monies in bank accounts. In the above example, Tasty might be able to garnish its client's bank accounts for payment.

Garnishment is an effective tool in enforcing a judgment if done properly and with the correct information. Once served with the appropriate documents by the judgment creditor, the third party (the garnishee) is required to pay into court any amounts it owes to the judgment debtor. These amounts are then paid out to the judgment creditor. The garnishee cannot ignore the garnishment and must file its response with the court.

Conclusion

Each case must be carefully assessed to determine the most effective and efficient method of enforcement. Lawrences has significant experience in enforcing judgments and has collected millions of dollars on behalf of our clients.



Kiran Gill is an associate in Lawrences' Litigation Group, where she practises civil litigation. Kiran can be reached at (905) 452-6890 or kgill@lawrences.com.

It is important to assess the likelihood of recovering money before even beginning a lawsuit.

DISPUTES OVER BOUNDARY TREES

Who Owns That Tree?

Heather M. Picken

The saying that “good fences make good neighbours” may not extend to trees after a recent Ontario Superior Court of Justice decision. A tree that grows on a property boundary (a “boundary tree”) is now considered the property of both neighbours, even if only one of the neighbours originally purchased it and planted it.

Hartley v. Scharper concerns a large, old Norway maple located on the Hartley property in central Toronto. Hartley feared it was unsafe and wanted to cut the tree down, but her neighbours opposed. When Hartley sought a declaration that she owned the tree and could have it removed, the court disagreed, stating that because part of the trunk of the tree below the soil straddled the property boundary, both neighbours owned the tree, regardless of who originally planted it. The case was upheld on appeal, so now one owner cannot unilaterally remove a boundary tree, even if it is decayed and poses a danger. Both owners must consent to the removal of the tree.

In the Hartley case, the judge quoted section 10(2) of the Ontario Forestry Act, “every tree whose trunk is growing on the boundary between adjoining lands is the common property of the owners of the adjoining lands,” but expanded the definition of “trunk” to mean “the entire trunk from its point of growth away from its roots up to its top where it branches out to limbs and foliage. It is not only the arbitrary point at which the trunk emerges from the soil that governs.”

Under Section 10(3) of the Ontario Forestry Act, it is an offence to injure or destroy a tree growing on the boundary between adjoining lands without the consent of both landowners. On conviction, an offender can receive a fine of up to \$20,000 and three months in jail!

Most municipalities have bylaws requiring property owners to obtain permits if they want to remove trees on private property. The City of Brampton’s bylaw provides for certain exemptions from this requirement, such as the removal of “hazardous trees” or “trees located within two metres of an occupied building.” However, a property owner who wants to remove a tree that is overgrown or no longer aesthetically pleasing will have to submit a report from a qualified arborist to demonstrate that the “injuring of the tree” is justified, with details about how the tree will be removed and what mitigation measures will be taken, including the planting of a replacement tree to the City’s satisfaction. The City of Brampton also requires the written consent of the adjoining property owner if the tree is a boundary



tree. A person convicted of any offence under the City of Brampton’s by-law is liable for a fine of up to \$100,000.

Even if a permit is obtained from the municipality, if the tree is a boundary tree property owners must still obtain their neighbours’ consent to destroy the tree. The Hartley case also confirms that even if a boundary tree is decayed so that a municipal removal permit may not be required, the consent of the adjoining owner must be obtained before removal of the tree or civil liability may arise. Shared ownership of a boundary tree may also mean shared financial obligations for its maintenance or removal.

Lawrences’ Real Estate and Litigation Groups have extensive experience helping property owners resolve disputes promptly and efficiently.



Heather Picken is co-managing partner and head of Lawrences’ Real Estate Group. Heather can be reached at (905) 452-6891 or hpicken@lawrences.com.

Most municipalities have bylaws requiring property owners to obtain permits if they want to remove trees on private property.

Life at Lawrences®

Lawrences®' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.

At the Podium

Lawrences lawyers have been busy on the speakers' circuit this year.



Anthony E. Bak recently addressed an audience of over 200 car dealers at the 2014 Canadian Used Vehicle Dealer Summit, presented by the Ontario Used Car Dealers Association. Tony's presentation dealt with the various licensing, regulatory and discipline-related issues dealers

face. Tony is a leading authority on regulatory matters in the automotive industry.



Chris Markou has been an active member of the Ontario Bar Association this year. In May, he presented a paper on probate and co-chaired the program on Estate Administration for the OBA's Young Lawyers Division. In October, he co-chaired a second

program on residential real estate transactions for the same group and presented a paper on title insurance myths. In December, he is co-chairing a program on corporate tax, again for the Young Lawyers Division.

In Perpetuity



Lawrences has created a scholarship at the University of Windsor Law School in memory of our late partner, Robert J. van Kessel, a 1987 alumnus of the school who passed away in May, 2012.

Rob's passion was writing; he was the author of five textbooks that are frequently cited by courts in their reasons for judgment. To honour his exceptional career, the scholarship will be awarded annually to an upper year law student for a paper on commercial or corporate litigation. The first recipient will be chosen in 2016. Lawrences is proud to have exceeded its goal of raising \$25,000 for the scholarship such that the Robert J. Van Kessel '87 Memorial Writing Prize has now been endowed in perpetuity.

In this festive season, we take this opportunity to thank you, our friends and clients, for your continued support and for your business.

We wish you and your family a happy holiday season and health and prosperity in 2015.

In lieu of sending holiday cards this year, Lawrences will be contributing to

The Robert J. van Kessel Memorial Fund at the Brampton and Caledon Community Foundation in memory of our friend and partner, the late Robert J. van Kessel

LAWRENCES®
LAWYERS

THE LAWRENCES® LETTER

The Lawrences® Letter is a free newsletter offered by Lawrence, Lawrence, Stevenson LLP. If you have colleagues who would be interested in receiving the newsletter, please have them send their contact information to newsletter@lawrences.com.

If you do not wish to continue receiving the newsletter, please send an e-mail to newsletter@lawrences.com with the word 'unsubscribe' in the subject line.

The information in this newsletter is not, nor is it intended to be, legal advice. You should consult a lawyer for specific advice about your own situation. Use of this newsletter does not create a solicitor/client relationship between Lawrence, Lawrence, Stevenson LLP and the reader.

Lawrence, Lawrence, Stevenson LLP
43 Queen Street West
Brampton, ON L6Y 1L9

T: (905) 451-3040
F: (905) 451-5058
E: info@lawrences.com
www.lawrences.com