

**ONTARIO COURT OF APPEAL ORDERS NEW TRIAL IN CASE WHERE EMPLOYER WAS HELD PARTLY RESPONSIBLE FOR CAR-CRASH INJURIES SUFFERED BY EMPLOYEE WHO CONSUMED ALCOHOL AT OFFICE CHRISTMAS PARTY**

*Hunt by her Litigation Guardian Hunt et al. v. Sutton Group Incentive Realty Inc. et al.*  
(2002), 60 O.R. (3d) 665 (O.C.A.)

Linda Hunt ("Hunt") was employed by Sutton Group Incentive Realty Inc. ("Sutton"). She consumed alcohol at an office Christmas party where there was an unmonitored open bar. She then went to a pub where she consumed more alcohol before driving home. On the way home, she was seriously injured in a motor vehicle accident. Her blood alcohol level, at the time, was well over the legal limit. Hunt sued Sutton and the pub for negligence, alleging that they owed her a duty of care on the following basis: a) she was intoxicated because of alcohol supplied by Sutton; b) Sutton knew or should have known she was intoxicated; c) Sutton knew she intended to drive; and, d) Sutton should have taken more steps than it did to protect her.

At trial, Hunt's application to discharge the jury due to the complexity of the issues and the notoriety of the case was granted. Hunt was found 75 per cent responsible for the accident, and the pub, which did not defend the action, and Sutton were found to be jointly and severally responsible for the remaining 25 per cent. Damages were assessed against Sutton at \$288,004.00.

Sutton appealed the decision on the following grounds: (1) the trial judge erred in discharging the jury; (2) Sutton was not guilty of any negligence which was the proximate cause of the accident; and (3) the trial judge erred in permitting plaintiff's counsel to cross-examine two lay witnesses with respect to the standard of care of commercial hosts.

The Court of Appeal allowed the appeal and ordered a new trial on the issues of liability and damages. Writing for the Court, Austin J.A. found that the trial judge erred in law when he discharged the jury. First, the trial judge erred in considering the length of time it would take to prepare to charge the jury. Second, the trial judge erred in failing to consider splitting the trial. Third, the trial judge erred in giving weight to the difficulty he would have in instructing the jury as to matters of law.

The Court of Appeal gave no effect to the grounds of appeal respecting either the evidence of the two lay witnesses or the issue of causation.