Summer Fun, Fall Lawsuit

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Employers often express their appreciation to employees by hosting events such as seasonal parties, barbeques or other social events. While the employer's intentions may be good, the result isn't always a reflection of those good intentions.

Employers can be held liable for unfortunate acts which occur at these social events, even if the acts were completely unexpected, unapproved or arguably beyond the employer's ability to prevent. A case in point is *K.L. v. Calypso Water Park Inc.*, 2015 ONSC 2417 (CanLII).

In this case, Calypso held an end-of-season staff appreciation event at its Ottawa-area waterpark. The event was intended to be a fun get-together for staff. Unfortunately it allegedly became anything but fun for the Plaintiff, K.L., who was a 19 year old female employed in the park's maintenance department.

K.L. alleged that throughout the summer, her supervisor, a co-defendant in the action, had made sexual advances towards her. At the end-of-season party, it is alleged that her supervisor acted on those advances and sexually assaulted K.L. K.L. sued her supervisor and Calypso for sexual harassment, sexual assault, assault, battery, false imprisonment, and intentional and/or negligent infliction of mental suffering.

K.L. alleged that Calypso was liable for all of the actions committed by the supervisor and sought significant financial compensation. Calypso brought a motion to strike K.L's action against it (and related corporations) on the basis that the claim failed to disclose a reasonable cause of action.

At the motion, the judge determined, based on prior precedent, that there is no cause of action in Ontario for sexual harassment and struck that claim against Calypso. However, the judge found that the other claims against Calypso had some chance of success and allowed those matters to proceed to trial.

Some of the key allegations of fact which the judge used to support his decision were the following:

- The assault took place during an unsupervised work function;
- The assault occurred on workplace property;
- The employer was either supplying or permitting the unsupervised and unregulated consumption of alcohol; and
- The park was expansive and it was conceivable that K.L. may find herself alone with the supervisor.

Clearly no employer would condone the conduct which is alleged to have occurred at this event. However, that does not mean the employer has no liability for those acts. As noted by the Supreme Court of Canada in *Bazley v. Curry*, [1999] 2 S.C.R. 534:

Underlying the cases holding employers vicariously liable for the unauthorized acts of employees is the idea that employers may justly be held liable where the act falls within the ambit of the risk that the employer's enterprise creates or exacerbates. Similarly, the policy purposes underlying the imposition of vicarious liability on employers are served only where the wrong is so connected with the employment that it can be said that the employer has introduced the risk of the wrong (and is thereby fairly and usefully charged with its management and minimization). The question in each case is whether there is a connection or nexus between the employment enterprise and that wrong that justifies imposition of vicarious liability on the employer for the wrong, in terms of fair allocation of the consequences of the risk and/or deterrence.

When hosting these types of events, employers need to be mindful of employee safety. Some of the things employers ought to keep in mind:

- Make sure the venue is one where it is unlikely that a small number of employees can go to be unseen (i.e. “blind spots” where trouble may occur);
- Limit the consumption of alcohol by employees;
- Appoint senior managers to supervise the event or hire a third party to supervise (i.e. bartender or security);
- Make sure that all attendees have a safe way home (free cab chits, transit or bus service); and
- Make sure the event does not take place at a location where there can be a higher than usual risk of personal injury.