



Insurance Bulletin

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SOCIAL HOST LIABILITY

Ted Frankel

It's summer time and you're having friends over for a bring-your-own-booze BBQ. The sun is shining and your pals are washing down the good times with cold beer, wine and spirits. But what if one of those guests decides to drive drunk and harms, or kills, someone on the trip home? Can you be held liable to the injured third party who your friend has harmed?

This was essentially the scenario presented to the Supreme Court of Canada in *Childs et. al. v. Desormeaux et. al.* ("Childs") – the first time our highest court has considered the issue of "social host liability." Upholding the Superior Court and Court of Appeal below, the Court's decision was unanimous: "social hosts", in most situations, are not responsible for the conduct of guests once they walk out the door – no matter how catastrophic the consequences.

The story of *Childs* began innocently enough. On December 31, 1999, Dwight Courier and Julie Zimmerman invited friends over for a party to usher in the new millennium. The party was "BYOB" and the only alcohol served by the hosts was champagne in small glasses at midnight. One of the guests, Desmond Desormeaux, arrived with two friends and a case of 24 beers, a bottle of

Amaretto, and a bottle of wine. Desmond was a long-time friend of Dwight's and a self-confessed alcoholic. As the party wound down, Desmond gathered his two friends and walked to his car to leave. Dwight walked with him and asked "are you okay, brother?", to which Desmond responded "no problem." In the past, Dwight had let Desmond sleep over, but he did not offer on this evening.

Desmond proceeded to drive his vehicle into oncoming traffic, killing one person and seriously injuring three others, including teenager Zoe Childs, who was paralyzed from the waist down. The trial judge later concluded that Desmond had consumed 12 beers over 2.5 hours for a blood-alcohol concentration three times the legal limit.

In a decision authored by the Chief Justice, the Court found that the hosts, Dwight and Julie, could not be held negligent because it was not "reasonably foreseeable" that their guest would become a hazard on the road. Even if it was "foreseeable", the Court rejected the idea that a social host be held responsible for an omission or *failure to act*. It may have been different, the Court wrote, if the hosts had served alcohol to a drunk person and then watched him zoom away. However, the evidence was that Desmond's drinking was not observed and he was showing no signs of intoxication.

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While rejecting social host liability in this case, the Court reinforced the long-standing view that commercial hosts, such as tavern owners, owe a duty of care to patrons and the public at large. This is because commercial hosts have a “special responsibility” arising from the fact that they are able to monitor alcohol consumption, must adhere to legal regulations and profit from the sale of alcohol. These factors, the Court wrote, give rise to a *positive duty to act* – a duty which does not exist for social hosts – or at least on the narrow *Childs* facts.

Aside from tavern owners, the Court identified two other “relationships” where there is a positive duty to act: paternalistic relationships of supervision and control (such as parent-teacher), and relationships between enterprises which invite third parties to participate in an activity which involves inherent risk (such as high speed boating).

Interestingly, the Court wrote that what unites these three areas is “reasonable reliance” – the idea that “there is a reasonable expectation on the part of the public that a person providing services, often under licence, will take reasonable precautions to reduce the risk of the activity, not merely to immediate clients, but to the general public.”

It is unusual for the Court to apply a concept like “reliance” – normally used in the context of contractual relations – to the realm of negligence.

This suggests that the Court's expectations of commercial hosts may be rising, underlining a need for these businesses to be especially vigilant where public safety is concerned. ■

EXPECT THE BEST

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