

SOCIAL HOST LIABILITY – DO NOT RELY ON THE HOST

Stuart J. Blake

Does a host of a private party owe a duty of care to a public user of a highway? This question was recently addressed by the Supreme Court of Canada in *Childs v. Desormeaux*.

In short, the Court has determined that no such duty of care exists, unless the social host is directly implicated in the creation or enhancement of the risk.

The case involved an impaired guest who attended a New Year's Eve "bring your own beer" party at a private home, left the party and drove his vehicle into oncoming traffic, colliding head-on with another vehicle. One of the passengers in the vehicle was killed and three others were injured including Zoe Childs. Ms. Childs, then a teenager, severed her spine and is a paraplegic.

Ms. Childs filed suit against the host of the party for her loss and damage. The action was dismissed, at both the trial and appeal levels. Those courts concluded, for different reasons, that social hosts do not owe a duty of care to a member of the public injured by an intoxicated guest.

In a unanimous decision, the Supreme Court of Canada dismissed Ms. Childs appeal. Chief Justice McLachlin analyzed the proximity between Childs and the social host and stated:

I conclude that the necessary proximity has not been established and, consequently, that social hosts of parties where alcohol is served do not owe a duty of care to public users of highways. First, the injury to Ms. Childs was not reasonably foreseeable on the facts found by the trial judge. Second, even if foreseeability were established, no duty would arise because the wrong alleged is a failure to act or nonfeasance in circumstances where there was no positive duty to act.

Counsel for Ms. Childs had argued that his client and the social hosts were linked by their foreseeable harm due to the manner in which the social hosts exercised "control or influence over" the party at which the impaired individual was drinking. The Court noted that the trial judge did not find that the social hosts knew or ought to have known that the impaired person was too drunk to drive. Although the impaired person, Mr. Desormeaux, had consumed 12 bottles of beer at the party, there was an absence of any evidence that he had displayed signs of intoxication. In addition, there was no evidence that anyone relied on the hosts to monitor the guests' intake of alcohol or prevent intoxicated guests from driving. Thus, without evidence that the social hosts knew or ought to have known that their guest was about to drive impaired, the requirement of foreseeability was not present. Further, the fact that Mr. Desormeaux had driven drunk in the past was insufficient to create foreseeability.

The Court refreshingly placed an element of responsibility on an individual to control his own conduct. McLachlin J. stated:

“A person who accepts an invitation to attend a private party does not park his autonomy at the door. The guest remains responsible for his or her conduct. Short of active implication in the creation or enhancement of the risk, a host is entitled to respect the autonomy of a guest.”

The Court also highlighted and distinguished three situations where the special relationship between the parties created a positive duty to act. These situations include:

- (a) where a defendant intentionally attracts third parties to an inherent and obvious risk that he controls or created (i.e.; a dangerous inner tube competition);
- (b) paternalistic relationships of supervision and control (i.e. parent – child or teacher – student);
- (c) a public function or commercial enterprise (i.e. a tavern).

The Court stated that: “running through all of these situations is the defendant’s material implication in the creation of risk or his or her control of a risk to which others have been invited...It is only when these third parties have a special relationship to the person in danger or a material role in the creation or management of the risk that the law may impinge on autonomy.”

The Court concluded that the situation of a social host who serves alcohol to a guest does not fall within any of these categories. The Court stated:

“Holding a private party at which alcohol is served – the bare facts of this case is insufficient to implicate the host in the creation of a risk sufficient to give rise to a duty of care to third parties who may be subsequently injured by the conduct of a guest. The host creates a place where people can meet, visit and imbibe alcohol, whether served on the premises or supplied by the guest. All this falls within accepted parameters of non-dangerous conduct. More is required to establish a danger or risk that requires positive action.”

This is not to say that in every instance a social host will be free of liability. The Court left room for narrow exceptions and stated:

“It might be argued that a host who continues to serve alcohol to a visibly inebriated person knowing that he or she will be driving home has become implicated in the creation or enhancement of a risk sufficient to give rise to a *prima facie* duty of care to third parties, which would be subject to contrary policy considerations...”

While Manitoba’s no fault automobile legislation ensures that a lawsuit based on the same or similar facts would not arise in this province, the Child’s case is still an

important one. This decision underscores that proximity between the parties remains the foundation of the modern law of negligence. The parties' legal relationship is paramount to the finding of a duty of care. In the case of a social host, the necessary proximity and control is not present. Thus, the Court determined that it would be unfair to impose a general duty of care on a social host to third parties.

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