

Social Host Liability – Where are we now?: A Commentary on *Childs v. Desormeaux* [2006] S.C.J. No. 18

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The Supreme Court of Canada's decision in *Childs* was the first of its kind to deal with the issue of whether or not hosts of a party where alcohol is served could be held liable for the actions of their guests after leaving the party.

The case of Zoe Childs was about as sympathetic as they come. As a consequence of a head on collision with the Desormeaux's vehicle, Ms. Childs was paralyzed from the waist down. Mr. Desormeaux was found to have a blood alcohol concentration exceeding the legal limit.

Prior to driving Mr. Desormeaux had attended a BYOB (Bring Your Own Booze) party thrown by the defendants, Zimmerman and Courier. The hosts had only served a small amount of Champagne at midnight; all other alcohol had been brought by the guests. Mr. Desormeaux was known to be a heavy drinker. Mr. Courier had asked Mr. Desormeaux if he was okay; Mr. Desormeaux responded "No problem" and drove off.

The Supreme Court of Canada concluded that hosting a party where alcohol is served, whether BYOB or supplied by the hosts, does not in itself, without further actions on the part of the host to enhance the risk, impose a duty of care on the hosts to members of the public who might share the road with a guest who has become intoxicated at that party.

The duty proposed by the plaintiffs was novel in Canadian jurisprudence. The closest comparable duty was the duty established on commercial hosts.

The Court noted the differences in the relationship between social hosts and their commercial counterparts. Firstly, commercial hosts have the ability to monitor alcohol consumption; persons expect consumption to be monitored and servers receive special training about intoxication. Secondly, commercial hosts are regulated by legislation which imposes special responsibilities on those who profit from the sale of alcohol; social hosts don't have the institutionalized methods for monitoring and enforcing limits on alcohol consumption. Lastly, there is a contractual relationship present whereby over

consumption is more profitable than responsible consumption; while over consumption costs the individual and tax payers, it is profitable to the commercial host only.

The Court found on the facts of this case that the injury to Childs was not reasonably foreseeable, absent evidence that the hosts knew of the driver's intoxication. The Supreme Court held that the trial Judge's finding that the hosts ought reasonably to have known that, because Mr. Desormeaux had driven drunk in the past, unless his consumption was monitored, he would again drive drunk was too tenuous and could not establish reasonable foreseeability.

Furthermore, the Court found that foreseeability alone would not establish a duty of care in this case. The allegation against the hosts in the Childs case was that they should have stopped Mr. Desormeaux from driving. There was no positive act alleged. Ultimately the law permits parties witnessing risk to decide not to intervene. While risks may arise from what guests choose to do or not do at a party, there is nothing inherently dangerous in organizing a party.

However, Chief Justice McLachlin 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 prime facie duty of care to third parties." Once that duty of care is established, the Court would then move to a consideration of whether the burden on the Canadian public in imposing liability would be too great. The Court did not need to decide this on the facts in the Childs case.

Although the Supreme Court of Canada found in the Childs case that there was no duty and thus no liability on the social hosts, it remains open to the courts to find that a duty of care may be owed in other circumstances. For example, the court suggested that a host who took the keys of their guests and froze them in ice until released would be exemplary, but not required under the law. However, once the act has been undertaken, if you, as host, released those keys (or took other positive steps to increase the risks) could you then be found to owe a duty of care to users of the roads?

The Court has not provided a guideline as to what conduct of a host might implicate her in the creation or exacerbation of the risk. There is no formula to follow. The only lesson to be taken from a review of the Childs case is that without further actions on the part of the host to enhance the risk, hosting a party where alcohol is served does not impose a duty of care on the host to members of the public who might share the road with a guest who has become intoxicated at that party. It remains to be seen whether the Court will impose a duty on social hosts in different circumstances.