

The Risks of Social Hosting: *Wardak v. Froom*

Kevin S. Adams

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Earlier this year, the Ontario Superior Court of Justice reconsidered social host liability issues in the context of a terrible car accident which left a young man a brain-injured quadriplegic.¹

The defendant parents hosted a house party in their basement for their son's 19th birthday. Although the defendants were not serving liquor, they were aware that guests had brought their own liquor and that many of the guests were under the age of 19.

The plaintiff, Dean Wardak, was an 18 year-old guest at the party and a good friend of the defendants' son. Dean lived a short walking distance from the defendants' home. He had walked to the party and was drinking that night.

Just before 11:00 p.m., the defendant father noticed Dean was wobbling and that Dean's behaviour was "odd". The father offered to walk Dean home twice, but Dean declined.

Sometime later, the defendants' daughter saw Dean leaving the house. She and her boyfriend drove past Dean's house to ensure he arrived home safely and saw Dean reversing his vehicle out of his driveway. The daughter called 911 to advise that Dean was driving while intoxicated and tried to follow him. Once he noticed Dean was missing, the defendant father walked over and knocked on Dean's door to speak with Dean's father, who later went out looking for him.

¹ *Wardak v. Froom*, 2017 ONSC 1166

Dean was not driving long before he hit a street light pole and suffered catastrophic injuries. The plaintiffs (Dean and his family) brought a personal injury action and the defendants brought a summary judgment motion seeking a dismissal of the action on the basis that there was no social host liability.

Citing *Childs v. Desormeaux*², the defendants argued that they owed no duty of care because, they did not serve alcohol at the party and, if they did owe a duty, then they did not breach the standard of care because they “did everything they could to get him home safely”.

In *Childs*, the Supreme Court of Canada concluded that the defendant social hosts (the Childs) did not owe a duty of care to the third party highway user. However, the Supreme Court left the door open for cases where a host may owe a positive duty to act where foreseeability of harm is present and there is sufficient proximity between the plaintiff and the defendant, including where there is a “paternalistic relationship of supervision and control”.

In this case, the Court agreed with the plaintiffs’ argument that *Childs* did not preclude a finding of a duty of care. The Judge recognized that there was a paternalistic relationship, since Dean Wardak was an underage invited guest. She also noted that, unlike in *Childs*, the injured plaintiff was an intoxicated party-goer, not a third-party highway user. The Court stated that “although serving alcohol is relevant to the analysis, it is not, by itself, determinative of social host liability post-*Childs*”³.

With respect to the standard of care, the Judge noted significant deficiencies and unreliability regarding the evidence put forth by both parties, which included hearsay, unsworn witness statements and summaries of “anticipated evidence”.

The Judge pointed to numerous contradictions in the parties’ evidence, but declined to use her fact-finding powers or order a mini-trial, as permitted by the summary judgment rules. Instead, Justice Matheson dismissed the defendants’ summary judgment motion on the basis

² 2006 SCC 18 [*Childs*]

³ *Wardak*, *supra* note 1 at para 54

that there were genuine issues requiring a trial on the facts needed to reach a decision on the merits.

Unfortunately, the decision raises more questions than it provides answers regarding the level of supervision and control which hosts must exert over their guests in certain circumstances. However, the clear message is that, even if hosts do not serve alcohol to guests, they may still be found liable if a guest is involved in an accident.