Party On? Supreme Court of Canada Rules on Liability of Social Hosts for Guests' Drunk Driving.

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On May 5th the Supreme Court of Canada released *Childs v Desormeaux* 2006 SCC 18, its long awaited first decision on the possible legal liability of a social host when an intoxicated guest subsequently causes injury in a motor vehicle accident. The unanimous judgment of the Supreme Court was delivered by Chief Justice McLachlin and concluded "that as a general rule, a social host does not owe a duty of care to a person injured by a guest who has consumed alcohol."

Zoë Childs was seriously injured when the car in which she was riding was struck by a car driven by Desmond Desormeaux, who had recently left a BYOB party hosted by Julie Zimmerman and Dwight Courrier (the Hosts) at their home. Childs alleged the negligence of the Hosts contributed to her injuries. The trial judge made the following findings of fact which were not appealed:

- The Hosts provided no alcohol to their guests;
- There was no evidence to show the Hosts knew how much Desormeaux drank;
- The Hosts did not know Desormeaux was impaired when he departed;
- The Hosts knew Desormeaux's history of heavy drinking; and
- Desormeaux's blood alcohol level was more than twice the legal limit.

Both the trial judge and the Ontario Court of Appeal held (for different reasons) that the Hosts were not liable and that they owed Childs no duty of care on these facts. The Supreme Court reached the same conclusion.

A significant part of the Supreme Court's analysis focused on what distinguishes a social host from a commercial host. The Court had affirmed in a 1995 decision "that a special relationship existed between taverns and the motoring public that could require the former to take positive steps to protect the latter." If a strong analogy existed between commercial and social hosts, the liability of social hosts could be inferred.

The Court held that commercial hosts differ from social hosts in significant ways. First, commercial hosts have a greater capacity to monitor their guests' alcohol consumption, which brings with it an expectation that they will monitor consumption. Second, commercial hosts are strictly regulated by provincial and territorial legislation and this regulation imposes "special responsibilities [on] those who would profit from the supply of alcohol." By contrast, a social host "has neither an institutionalized method of monitoring alcohol consumption and enforcing limits, nor a set of expectations that would permit him or her to easily do so." Third, a commercial host's profit-making is an incentive to over-serve. Therefore, a countervailing duty to monitor alcohol consumption must be imposed on commercial hosts in the public interest. Social hosts are not subject to the same profit incentive. For these reasons the Supreme Court declined to draw an analogy from commercial to social hosts.

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The Supreme Court held that the allegations against the Hosts were based on their failure to act as opposed to their overt misdeeds. The law of tort does not generally recognize a positive obligation to protect other individuals from harm and will find a party liable for its failure to act in only certain situations, most significantly where a relationship of supervision and control exists between the parties (for example, a parent-child or a teacher-student relationship). The Supreme Court held that this case did not fit within any of the exceptions where liability should be based on one's failure to act.

The Supreme Court clearly intended its decision to apply to social hosts generally, not just those who host BYOB parties. Nonetheless, *Childs* will not be the last suit in which allegations of liability are made against a host. We identify two significant areas which this decision did not settle.

First, the Supreme Court concluded:

> "… that hosting a party at which alcohol is served does not, without more, establish the degree of proximity required to give rise to a duty of care on the hosts to third-party highway users who may be injured by an intoxicated guest." [emphasis added]

The door is left open to reach a different conclusion when a case arises where the social host's liability is based on some fact beyond the mere hosting of the party. The Court specifically left unanswered whether "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…". Although the *Childs* decision confirms that social hosts will not be held to the same standard as commercial hosts, social hosts would be well advised to continue to take reasonable precautions against the possibility of plainly intoxicated guests getting behind the wheel.

Second, while a tavern owner is clearly a commercial host and an individual serving drinks to friends in his home is clearly a social host, the Supreme Court did not define "social host". In *Calliou (Estate) v Calliou (Estate)* Madam Justice Moen of the Alberta Court of Queen's Bench suggested that there are hosts that are intermediate between commercial and social hosts. The duties of these "intermediate" hosts remain unclear. For example, it is not clear that *Childs* would absolve from liability an employer hosting a party for its employees, or an enterprise hosting a function for clients or prospective clients. We anticipate cases will arise where It will be argued that such hosts are not strictly social hosts and owe an enhanced duty, more analogous to that of commercial hosts.

While the criteria considered by the Supreme Court in *Childs* will aid in deciding future cases involving intermediate hosts, *Childs* should not be treated as an invitation to abandon common sense practices for office or business functions, like making taxis and taxi vouchers available to guests and, where appropriate, hiring experienced personnel to monitor alcohol consumption of guests at an event.

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