

Personal Injury**Courts still searching for 'something more' to hold social hosts responsible**By **Joseph Cescon and Brandon Pedersen**

Joseph Cescon

(September 21, 2020, 3:10 PM EDT) -- Fifteen years ago, the Supreme Court of Canada in *Childs v. Desormeaux* 2006 SCC 18 established, as a general rule, private party hosts (legally known as "social hosts") do not owe a duty of care to someone who is injured as a result of a party guest.

In this seminal case, the Supreme Court reviewed the categories of situations that courts had recognized as imposing a positive duty on social hosts to act. These categories are: a) where a defendant intentionally attracts and invites third parties to an inherent and obvious risk that he or she has created or controls; b) paternalistic relationships of supervision and control, such as those of parent-child or teacher-student; and c) defendants who either exercise a public function or engage in a commercial enterprise that includes implied responsibilities to the public at large (commercial host liability).



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Chief Justice Beverley McLachlin stated in *Childs* that: "[H]osting a party where 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." (See para. 47; authors' emphasis.)

In the aftermath of *Childs*, courts noted that potential liability on hosts could be found if there existed "something more" than serving alcohol to guests at a private social gathering.

The interpretation of something more has typically centred on the host's knowledge of a guest's intoxication and/or plans to engage in a potentially dangerous activity. In a decision in *Williams v. Richard* 2018 ONCA 889, where the defendant host supplied alcohol to a guest who subsequently got behind the wheel of a vehicle, the Ontario Court of Appeal summarized

the state of the law regarding social host liability:

The post-*Childs* jurisprudence on social host liability ... demonstrates that there is no clear formula for determining whether a duty of care is owed by social hosts to third parties or guests. Rather, the determination of whether such a duty of care exists usually hinges on fact specific determinations pertaining to two main issues. The first issue is the host's knowledge of a guest's intoxication or future plans to engage in a potentially dangerous activity that subsequently causes harm. This is a foreseeability analysis.

The second determination asks if "something more" is present on the facts of the case to create a positive duty to act. The "something more" could be facts that suggests the host was inviting the guest to an inherently risky environment or facts that suggest a paternalistic relationship exists between the parties. This is a proximity analysis. (See para. 24.)

Is there specific duty to protect minors who drink at a party?

The latest on social host liability comes from a 2020 British Columbia Supreme Court decision. In

McCormick v. Plambeck 2020 BCSC 881, the defendant adult homeowners allowed their daughter to have a party of around 65 minors and young adults.

The parents supplied some alcohol and eventually, two of the young partygoers left the party, stole a neighbour's car and subsequently drove the car off the road, resulting in the death of the driver and serious injuries to the passenger plaintiff. The passenger plaintiff brought an action against both the owner of the car and the hosts of the party. The trial judge found that the injuries suffered by the plaintiff were not foreseeable by the hosts and therefore no duty of care existed between them.

The trial judge in *McCormick* effectively narrowed the second category referred to in *Childs*. Although the facts of *McCormick* suggest that the relationship between the parent hosts and minor guests could be considered "paternalistic," the trial judge noted that even if the injuries suffered had been reasonably foreseeable, the hosts would have met the requisite standard of care by taking certain steps to prevent any dangerous incidences from occurring.

The hosts continuously monitored the party, collected car keys of those guests the hosts knew had driven to the party and provided rides home for some.

Despite providing alcohol to underage guests, the court found that the measures taken met the standard of care. The court also found that the conduct of a defendant is to be measured against what the careful and prudent parent would do according to the immediate community standards of the time (see *McCormick*, para. 258). This involves taking into account what other parents in similar circumstances in the specific community in question would do. This predominantly contextual approach can yield varying outcomes.

Future of social host liability

As always, the question remains: what happens from here?

What we know is that no conclusive authority exists in Canada with respect to social host liability. It remains open that depending on the circumstances, a social host may be implicated in the creation of the risk to third parties. However, *McCormick* confirms that hosting a private party, and allowing the use of drugs and alcohol by party guests, is insufficient to give rise to a duty of care to third parties who may be subsequently injured by the conduct of a guest, even when those guests are underage.

We will continue to closely monitor what amounts to the "something more" that creates an "inherent and obvious risk" at a private social gathering.

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