



The Supreme Court of Canada recently granted leave to appeal from an Ontario Court of Appeal decision regarding social host liability which may signal that a significant change is about to occur in this area of the law.

In *Childs v. Desormeaux* (2004), 239 D.L.R. (4th) 61, the plaintiff suffered injuries when the car in which she was riding was struck by an impaired driver. Prior to the collision, the impaired driver was at a “bring your own booze” (“BYOB”) party at the defendants’ home and became impaired. The plaintiff sued the defendants as social hosts in negligence for damages. The Trial Judge held that there was a duty on the social hosts to monitor the impaired driver’s drinking because of his history of being a heavy drinker and because he arrived at the party with two intoxicated passengers. However, for policy reasons, the Trial Judge declined to impose a duty of care on the social hosts, and dismissed the action.

The Court of Appeal dismissed the plaintiff’s appeal. It stated that there is no conclusive authority respecting social host liability in Canada. The Court confirmed that, although a number of courts at the trial level have held that social hosts owe a duty to their guests when they leave their homes as well as to the users of the roads, in none of these cases have the social hosts been held liable. Accordingly, the Court had to consider whether, in light of the development of the duty of care in commercial host cases, a duty of care should be held to apply to the social hosts of a BYOB party in the present case.

The Court held that finding the social hosts liable in the circumstances of this case would have involved the recognition of a new duty of care. Social host liability is not simply an extension of commercial host liability. The Court stated that the trial judge erred in holding that the social hosts owed a duty of care to users of the road in the specific facts of this case. Specifically, the social hosts did not provide, serve or control the alcohol consumed at the party. Furthermore, they had no statutory duty to monitor the consumption of alcohol or to control the structure of the atmosphere in which alcohol was served. Also, there was no evidence to suggest that the social hosts knew how much alcohol the impaired driver drank while at the party. Additionally, the trial judge did not find that the social hosts knew the driver was impaired when he drove away from the party.

The Court of Appeal held that the Trial Judge erred to the extent that his reasons might be read as holding that the social hosts should have known that the driver was intoxicated because, despite knowing his history as a heavy drinker, they did not monitor his drinking. The Court confirmed that a person’s drinking history is not the basis for imposing a duty on a social host to monitor drinking at a BYOB party. The Court stated that it was not necessary to decide whether liability should be negated for policy reasons, and that such a conclusion should be left for another case.

It is interesting to note that in this case the Court recognized the certainty that the future of social host liability in Canada is fraught with uncertainty, and that it is a controversial and unsettled area of tort law which has engaged considerable legal and policy debate. This recognition makes the Supreme Court's decision to grant leave to appeal very significant. The Supreme Court's decision in this case should provide some certainty in this area of the law by better defining the tort liability of the social host.

Parlee McLaws LLP is continuing to monitor this case and future updates will be published as required. Should you have any questions or require any assistance in this regard, please feel free to contact a member of the Parlee McLaws LLP Insurance Litigation Practice Group.

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*This legal alert is intended to provide general information concerning developments in the law and is not intended to provide legal advice in respect of any particular situation.*

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