



Lancaster, Brooks & Welch LLP

BARRISTERS AND SOLICITORS

Business Bulletin, September 2006 Social Host - How to Host a Party Without Being Sued by Sheila Marcantonio¹

The Supreme Court of Canada recently handed down a decision related to the liability of home owners hosting a party. Zoe Childs, an 18 year old girl, was rendered a paraplegic and her boyfriend was fatally injured when the car that they were riding in was struck head on by a vehicle driven by Desmond Desormeaux. Mr. Desormeaux was on his way home from a "BYOB" (bring your own booze) house party. His blood alcohol reading when he left the party was 235 mg/100 ml (the legal limit is 80 mg/100 ml). The issue was whether the hosts of the house party, Julie Zimmerman and Dwight Courier, should be held liable to innocent users of the road, for allowing an intoxicated guest to drive away from their premises.

At the lower court level, it was held that there could be social host liability but that the evidence did not support such a finding in this case. It was found that the hosts did not serve Mr. Desormeaux alcohol, since it was a BYOB party, and that they were not aware when he left that he was impaired. However, this court said that, depending on the evidence, a social host could be found responsible if the social host knew that an intoxicated guest was going to drive a car and did not make reasonable efforts to prevent the guest from driving.

The Supreme Court of Canada, in its decision, narrowed social host liability even further. The court has ruled that holding a private party at which alcohol is served does not in itself create a duty on the host. If, however, a host continues to serve alcohol to a visibly inebriated person knowing that he or she will be driving home, then that may be sufficient to create liability to innocent users of the road.

In order to prevent being sued while hosting a party, it is worthwhile to look at the trial judge's decision in the case where he considered the following steps set out by the LCBO in hosting a party:

1. Don't drink too much yourself.
2. Plan ahead so that it's easy to try some of these tips.
3. Stop serving alcohol a few hours before the party is over.
4. Find out how guests will be going home from your party.
5. Plan to deal with guests who drink too much.
6. Serve drinks yourself instead of having an open bar.
7. Be prepared for overnight guests.
8. Serve snacks.
9. Have low-alcohol and alcohol-free cocktails and drinks available too.
10. Don't plan physical activities, like swimming, skiing, snowmobiling and skating when you serve alcohol.

Basically, the Court is suggesting that when hosting a house party, we avoid item #6 on the LCBO list of suggestions, or, in other words, we, as host, should not serve the alcohol. If you have an open bar or a BYOB party, then it is the individual who drinks that is responsible and not the host or hostess. The host or hostess can only be responsible if they serve alcohol to a visibly intoxicated person.

One could argue that we should owe a duty to an innocent child walking her dog on the side of the road if we let some inebriated person leave our house and strike her with their car. After all, it could be "our child". We are a community and we should be concerned about what we are letting loose onto the road. But for now, the Supreme Court of Canada has said otherwise. The Commission's focus, however, would shift to what the Ontario government is calling "proactive measures" to address systemic discrimination – public education, promotion and public advocacy, research and analysis.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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