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## THE S.C.C. RULES THERE IS NO GENERAL DUTY OF CARE OWED BY SOCIAL HOSTS TO THIRD PARTIES FOR THE ACTS OF INTOXICATED GUESTS



Last month in *Childs v. Desormeaux*, 2006 SCC 18, the Supreme Court of Canada considered, for the first time, whether social hosts owe a duty of care to third parties that are injured by an intoxicated guest.

### FACTS & BACKGROUND

Desmond Desormeaux attended a "BYOB" party at the home of Julie Zimmerman and Dwight Courier (the "Social Hosts"). Mr. Desormeaux was known by the Social Hosts to be a heavy drinker. After leaving the party, Mr. Desormeaux caused a head-on collision with a vehicle carrying four passengers. Three of the passengers were severely injured and the fourth died. The Trial Judge found that Mr. Desormeaux was almost three times over the legal drinking limit at the time of the accident. As a result of the accident, the Plaintiff was rendered a paraplegic at the age of 18. She brought an action against the Social Hosts and Mr. Desormeaux for the injuries she sustained.

The issue was whether social hosts who invite guests to an event where alcohol is served owe a legal duty of care to third parties who are injured by their intoxicated guests.

The Trial Judge found that a reasonable social host would have foreseen that Mr. Desormeaux might cause an accident and injure a third party, however, the *prima facie* duty of care was trumped by policy considerations. The Plaintiff's case was dismissed against the Social Hosts.

The Court of Appeal dismissed the Plaintiff's appeal finding that the circumstances did not disclose a *prima facie* duty of care stating that unless social hosts are actively implicated in creating the risk that gives rise to the incident, they are not liable.

## THE RULING

The Supreme Court of Canada, in a unanimous decision, agreed with the Court of Appeal and held that social hosts do not owe a duty of care to third parties for the actions of their intoxicated guests unless the social hosts are implicated in creating the risk. Their reasoning was two-fold.

Firstly, the Court declared that the necessary proximity was not established as the injury sustained by the Plaintiff was not reasonably foreseeable to the Social Hosts.

Secondly, the Court declared that even if foreseeability was established, no duty would arise because the alleged failure to act arises in circumstances where there is no positive duty on a social host to act.

However, the Court did not entirely close the door on future claims in this area stating that a social host who continued to serve alcohol to a “visibility inebriated” person knowing that the guest will be driving home may become implicated in the risk.

## IMPLICATIONS TO THE INDUSTRY

This case has a direct impact on p&c insurers by clarifying a previously undetermined area of law.

There remains, however, ongoing exposure in situations where a social host may be “actively implicated” in creating the risk that leads to the loss. The *Childs* decision suggests that liability will follow social hosts in these limited circumstances. Accordingly, while insurers can expect an abatement of claims against social hosts as a result of *Childs*, egregious conduct by social hosts must remain a concern.

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