DOLDEN WALLACE FOLICK LLP

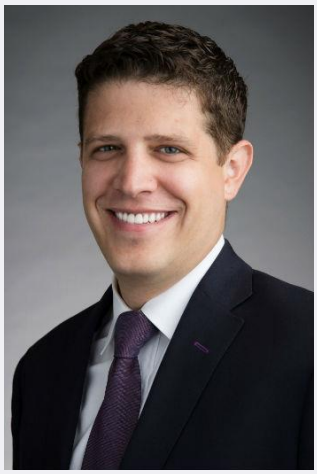
February 25, 2019

INSURE UPDATES

Contents

IN THIS ISSUE

Social Host Liability in the post-*Childs* Era: the Case of *Williams v. Richard*



18th FLOOR – 609 GRANVILLE ST
VANCOUVER, BC. V7Y 1G5
Tel: 604.689.3222
Fax: 604.689.3777
E-mail: info@dolden.com

302-590 KLO RD,
KELOWNA, BC. V1Y 7S2
Tel: 1.855.980.5580
Fax: 604.689.3777
E-mail: info@dolden.com

850 – 355 4th AVE SW
CALGARY, AB. T2P 0H9
Tel: 1.587.480.4000
Fax: 1.587.475.2083
E-mail: info@dolden.com

14th FLOOR –20 ADELAIDE ST E
TORONTO, ON. M5C 2T6
Tel: 1.416.360.8331
Fax: 1.416.360.0146
Toll Free:1.855.360.8331
E-mail: info@dolden.com

Social Host Liability in the post-*Childs* Era: the Case of *Williams v. Richard*

By Chet Wydrzynski, *DWF Toronto*,

Email: cwydrzynski@dolden.com

In its seminal 2006 ruling in *Childs v. Desormeaux*[1], the Supreme Court of Canada refused to establish a duty of care for social (non-commercial) hosts to members of the public who may be injured by an intoxicated driver. Writing for a unanimous Court in *Childs*, then-Chief Justice McLachlin stated that there was no requisite proximity to establish a duty and that the injury to users of the road was not reasonably foreseeable.

Additionally, the Supreme Court of Canada reiterated that there is rarely a positive duty to act. The Court noted that a social host differs in this regard from a commercial host, which engages in commercial enterprise and is governed by legislation and regulations. Chief Justice McLachlin noted that drinking is a personal choice, writing:

> *"A person who accepts an invitation to attend a private party does not park his autonomy at the door… Short of active implication in the creation or enhancement of the risk, a host is entitled to respect the autonomy of a guest."*

[1] [2006] 1 SCR 643

Justice McLachlin further noted that unless the host's conduct "*implicates him or her in the creation or exacerbation of the risk,*" there is no social host duty of care. This statement, of-course, leaves the door slightly open for an argument that in certain specific situations, a social host may be liable.

Recently, the Ontario Court of Appeal considered *Childs* in *Williams v. Richard*[2], an appeal from a summary judgment motion. At the hearing of the motion, Justice Gorman, relying on *Childs*, dismissed two claims against defendant social hosts, determining that there is no duty of care.

The facts of *Williams* are terrible. Mark Williams ("Mark") was killed in a motor vehicle accident after rear-ending a tractor. He had three minor children in the vehicle.

The alleged social hosts are Eileen Richard ("Eileen") and her son, Jake Richard ("Jake"). Jake and Mark worked together and were friends, regularly socializing and drinking beer together. On the date of the accident, Mark went to the Jake and Eileen's home, where he drank approximately 15 beers over four hours. Jake supplied all of the beer out of his fridge. Tragically, Mark got into his vehicle and the accident occurred while dropping off a babysitter.

The Court of Appeal distinguished the facts in *Williams* from those in *Childs*. The Court focused on the fact that this was a small gathering, Jake supplied all the alcohol, and there was no doubting Mark's level of intoxication. In other words, the Court was of the opinion that it is possible that the social host's conduct potentially "*implicated him… in the creation or exacerbation of the risk*", as Chief Justice McLachlin discussed in *Childs*. Therefore, the Court of Appeal set aside the motion judge's order dismissing the action.

Take Away

This decision is troubling for insurers. However, it is significant to note that there is still no decision at any level establishing a social host duty of care. What we can take away from *Williams* is that defendants in social host cases need to be careful when bringing a summary judgment motion. The easier it is to

[2] 2018 ONCA 889

distinguish the facts in *Childs*, the less likely a defendant will be successful on a summary judgment motion.

Until a duty is established, insurers should continue to fight social host cases. We cannot forget Chief Justice McLachlin's comment; "*Holding a private party at which alcohol is served… is insufficient to implicate the host in the creation of a risk to give rise to a duty of care to third parties.*"

EDITOR

Chris Stribopoulos
Tel: 647 798 0605
Email: cstribopoulos@dolden.com

Please contact the editor if you would like others in your organization to receive this publication.