

Parents beware: an update on social host liability in Ontario

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Introduction

On February 2 2017 the Ontario Superior Court of Justice released an important decision regarding the law of social host liability in Ontario. The 19-year-old plaintiff in this case brought a claim against his friend's parents after he became a quadriplegic following a serious motor vehicle accident that occurred after he left a party hosted by the parents. Ten years after *Childs v Desmoreaux*,⁽¹⁾ the leading Supreme Court of Canada decision on social host liability, the court in *Wardak v Froom*⁽²⁾ revitalised the possibility of finding a duty of care for social hosts. The court denied the defendants' motion for summary judgment and declined to use the expanded fact-finding powers available to it on a summary judgment motion.

Facts

Stephen and Carol Froom hosted a 19th birthday party for their son, Graeme, in April 2011. While the defendants did not serve alcohol, they were aware that guests would be drinking at the party and were also aware that many of the guests were below the legal drinking age. The defendants supervised the party from upstairs, yet there was underage drinking involved. The defendants observed Dean Wardak displaying signs of intoxication and when he was about to leave the party, the defendants offered to walk him to his house which was close by. He declined the offer and went back downstairs to rejoin the party. However, sometime later he walked home. Upon arriving home, he entered a motor vehicle and was subsequently involved in a single-car accident, rendering him quadriplegic with significant cognitive impairments. The plaintiff commenced a social host liability claim against the defendants, who subsequently moved for summary judgment to dismiss the claim.

Analysis

Summarily deciding the standard of care owed

To succeed on their motion for summary judgment, the defendants had to demonstrate that based on the evidence, there would be no genuine issue requiring a trial since:

- the judge was able to make the necessary findings of fact;
- the judge was able to apply the law to the facts; and
- summary judgment was a proportionate, the most expeditious and the least expensive means of achieving a just result.

In disclaiming their duty of care – if they owed a duty to the plaintiff – the defendants argued that:

- they had not served the plaintiff drinks or encouraged him to drink;
- they had not seen the plaintiff drink or act in a suspicious manner before leaving their house; and

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- once they suspected something was wrong, they had made attempts to get him home safely.

However, the court noted the following reviewed evidence which suggested otherwise:

- The defendants knew that there would be drinking at the party and that a group of the guests were underage.
- The defendants went down to the basement where the plaintiff was intoxicated about eight times throughout the night.
- The defendants did not try to stop the plaintiff from drinking when they saw him acting oddly when he appeared as though he was about to leave the party.
- There was conflicting evidence regarding the defendants' daughter's attempts to monitor the plaintiff.

As a result of the conflicting evidence, the court concluded that there were genuine issues requiring trial. While the court noted that the defendants had not put their best foot forward in terms of providing all of the evidence necessary to resolve the matters, it also declined to exercise the expanded fact-finding powers available to it. This seems inconsistent with the Supreme Court of Canada's pronouncement in *Hryniak v Mauldin*(3) that it is expected that a judge in appropriate circumstances will use these powers to try to resolve and dispose of matters sooner than through the traditional trial process.

Consideration of social host liability

In *Childs*, the Supreme Court of Canada concluded that social hosts owe no duty of care, and therefore cannot be liable in negligence, to third parties injured by intoxicated guests. However, the court left open the possibility as to whether a duty of care exists in other circumstances and reasoned that:

"hosting a party at which 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". (Emphasis added)(4)

This allowed Justice Matheson to find that a duty of care could arise in other circumstances – for example, where harm is foreseeable and other aspects of the relationship between the plaintiff and the defendant establish a special link or proximity.

In *Wardak*, the defendants agreed that they were hosting and supervising the party, and Matheson found that the relationship between the plaintiff and the defendants was a paternalistic relationship of supervision and control which, as the Supreme Court of Canada noted in *Childs*, was one of the three situations that could precipitate a positive duty to act. The plaintiff was a guest, rather than a third party, and in terms of foreseeability and proximity, a host's relationship with a guest is likely closer than the relationship between a host and a third party. Therefore, *Childs* did not preclude a finding of duty of care in this case.

Comment

This case is a wake-up call for social hosts – in particular, the parents of teenage children – who assume that they have no risk or exposure of liability if an intoxicated guest leaves their home and injures themselves or someone else. While the court in *Wardak* ruled only that *Childs* did not preclude a finding of duty of care in this case, the decision indicates that there is a real risk that social hosts may be found liable for the actions of intoxicated house guests in similar factual circumstances. Accordingly, *Wardak* provides some guidance as to when a duty of care may arise and what would constitute a breach of that duty. *Wardak* indicates that a host's knowledge of alcohol consumption – while supervising a party – may be sufficient to establish a relationship of proximity. Moreover, the court's emphasis on the paternalistic relationship between the plaintiff and defendants as one of supervision and control suggests that adult homeowners who host underage guests will face greater scrutiny.

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Endnotes

(1) 2006 SCC 18.

(2) 2017 ONSC 1166.

(3) 2014 SCC 7, [2014] 1 SCR 87.

(4) *Childs* at para 47.

Articling student Josh Shneer assisted in the preparation of this update.

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