



Current Articles 2006 – June

Social Host Liability

A recent Supreme Court of Canada decision may lead to an incorrect understanding of “Social Host” Liability in Ontario.

The Liquor License Act of Ontario applies to commercial establishments who sell or supply alcoholic beverages to their patrons. This Act would make the licensed establishment responsible for damages caused by an inebriated patron and also for injuries to their customer. However, the difficulty has always rested with the premise as to which establishment supplied the quantity of alcohol that made the person drunk. Commercial liability policies include such liability. The addition of a Liquor Liability endorsement only supplies a rating method based on receipts of beer, wine and liquor. It does not, nor does it need to extend the provisions of the policy.

Personal Liability policies would also include liquor liability coverage, if it can be proven and **subject to the legal precedents of Social Host Liability.**

In the recent case, Childs vs. Zimmerman and Courmier, Childs was rendered a paraplegic when injured by a guest of the plaintiff's who left their premises and was driving the vehicle while impaired. Although lower courts attached liability to the hosts the Supreme Court overruled for the following reasons: (1) the hosts did not know or ought to have known that the guest who was leaving the party was impaired (2) there was no duty to monitor guest's drinking or to prevent them from driving (3) Hosts would be ignorant of the driver's condition when it was a BYOB (Bring Your Own Bottle) and therefore had no legal liability to users of the highway.

A comparative case in BC a few years ago found the social host liable when a host offered a “paternalistic relationship” with under-aged alcohol consuming guests on their premises. After a severe motor vehicle accident, once again the lower court found the host liable but this was also overturned by the higher court (Prevost v. Vetter)

In the Ontario Court the judge was sympathetic to the fact that a finding of liability would place too large a burden on social hosts and personal liability insurance premiums would be substantially increased or exclusions and sub limits would be introduced.

Although the Supreme Court reversed the lower courts decision in the “Childs” case, I think the message is loud and clear. This decision will not be considered a precedent unless ALL facts in a similar case are the same. If it can be shown that the social host knew that an intoxicated guest was going to drive and did nothing to protect innocent third parties, liability could be assessed to the social host. Similarly, if the Social Host supplied the alcohol, there may be legal responsibilities on the host.

Remember when you are advising clients that this recent decision has not exonerated social hosts from personal liabilities. If the circumstances in another case are different, the outcome will be

different. Lower courts seem to be more generous in awarding damages against a social host. If it is necessary to appeal a lower court decision to a higher court this will incur costs to your client or to your client's insurer and resultant higher premiums. It may only be a matter of time before the higher courts support the lower courts and apply liability against the social host.

Have a good summer and remember this case when you have guests at your cottage, pool parties or Bar BQ's.

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