

# House Party Drunkenness: Should Parents Be Liable For Catastrophic Injuries Suffered By Guests?

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The recent decision of Hon. Justice Wendy Matheson of the Ontario Superior Court of Justice in *Wardak v. Froom*, 2017 ONSC 1166 has certainly caused a media sensation and sent tongues wagging on talk radio. The case has again stirred the debate whether homeowners are responsible for the drunken behaviour of a social guest who consumed alcohol in their home; a debate which many felt had been finally determined by the Supreme Court of Canada in *Childs v. Desormeaux*, 2006 SCC 18 (CanLII), [2006] 1 S.C.R. 643.

The facts in *Wardak* will be all too familiar to the parents of many teenagers. The defendant parents hosted a party for their son's 19th birthday. The party was 'BYOB' and attended by a number of guests some of age and some not. The parents knew that some of the kids at the party were underage. The plaintiff was one such guest. The parents were physically present at the party. They apparently interacted with the guests including the plaintiff and went down to the basement to check on the party on several occasions throughout the evening. As Justice Matheson noted in her reasons: "The defendants have admitted that they were hosting the party and that throughout the party they supervised their guests."

Her Honour went further noting that the guests were playing what has become a staple of any teenage event: "beer pong". For those who are unfamiliar with this latest twist on the age old series of games designed to inspire the otherwise timid drinker, the game involves a table with plastic cups on each end filled usually with beer. The players take turns firing a ping pong ball at their opponents cups. If they land the ball in the cup the opponent must drink the beer.

The parents certainly were quite involved in the party. This was not a case where the parents were out of town or out for the evening. In fact, the Father apparently observed that the plaintiff was intoxicated and offered to walk the plaintiff home twice. There was some evidence that other members of the family apparently also observed him intoxicated. Eventually the plaintiff left without his shoes and without his jacket. While there were no facts in the decision about the weather that evening the party was in April and this is Canada. Apparently, the defendant family was so concerned about the well-being of the plaintiff that the Daughter went so far as to drive around the neighbourhood with her boyfriend looking for him. Remarkably she confronted the plaintiff as he got into his car and told him not to drive. Tragically he did not follow that instruction and was involved in a catastrophic accident rendering this young man of only 18 years a paraplegic.

The situation is obviously an unmitigated tragedy in all directions and for all concerned. The practical reality is that the plaintiff's life has been unalterably destroyed and his reality will be one of constant care in a life confined to a wheelchair. A night of celebration of youth and coming of age with friends was turned into a night of tragedy. What is chilling for parents is that many of us have witnessed similar events and know that many teenagers routinely engage in such activities at their gatherings. Ironically, the motion court left open the possibility that the parents' involvement in supervising the party, which many might consider admirable and responsible behaviour, may ultimately be the very fact which incurs liability for them.

While the writer has no knowledge or involvement in the specifics of the case, it must be assumed that the Parents' home insurer had taken carriage of the defence of the matter. Obviously this area of risk would be of huge concern to home insurers and would create a potentially significant underwriting risk. Homeowners would invariably bear the cost of that increased risk in increased premiums.

In reviewing the matter, Justice Matheson commenced her analysis with a discussion of the Supreme Court's decision in *Childs v. Desormeaux* which many took to be the last word that Canada did not recognize a duty of care on a social host for the intoxicated behaviour of a social guest after the guest had left the home where they had consumed alcohol. In sending the case on to trial in Wardak, however, Justice Matheson noted that in *Childs*, the injured person was a third-party, not a party guest stating at para. 38:

these defendants agree that they were hosting and supervising the party. In *Childs*, the Supreme Court found that the connecting factor between the three situations where there may be a duty "is the defendant's material implication in the creation of risk or his or her control of a risk to which others have been invited".

The Court reasoned that the welfare of a known guest is something far more in the contemplation of the host than the welfare of a third party who might be injured by the intoxicated behaviour of a guest. Here the family appears to have been very aware of the state of the plaintiff to the point where they sought to accompany him to his home and then even went out to look for him when he left. Quoting from the Supreme Court's apparent disposition of social host liability, Justice Matheson stated:

I conclude 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.]

Here the "more" may ultimately be the added vigilance and supervision of the family of the plaintiff and the other guests throughout the evening. The argument appears to be that having taken on the task and responsibility of supervising the party and monitoring the guests, including the plaintiff, the defendants had an obligation to perform that responsibility with the required degree of diligence and care. The fact that they performed this task at all might be considered an acknowledgment on their part that they had a duty to monitor the state of the guests at the gathering.

The decision must, however, be seen in context. This was a motion for summary judgment by the defendant and likely carried by their home insurer. The Court noted the less than optimal evidentiary record on the motion and determined that "the relevant factual matrix quickly becomes complicated and cannot fairly and justly be determined on this motion." The Court also determined that the facts were significantly distinguishable from *Childs* that "...the claim [is not] bound to fail on the law".

That, of course, does not mean that the case will succeed either. The reality is that the plaintiff is in dire need of compensation and realistically the only insurer that could possibly respond to that need is the homeowner insurer of the defendant. The automobile coverage would likely be excluded by his intoxication if not for other reasons. All the Court ultimately did, however, was leave the door open on this particular claim. The motion judge was clear that she was not making any determinations that would be binding on the parties or anyone else for that matter stating that: "I have specifically considered to what extent I have made determinations of law that are intended to be binding on the parties at trial. I do not intend to make any such determinations." Accordingly, what law will ultimately apply in this case remains to be seen.

The case not only raises significant issues for insurers and homeowners, but also for parents.

Are parents better off from a liability perspective to be the proverbial three monkeys when it comes to underage drinking or other activities in their home by their children's friends? Did the seemingly responsible conduct of the parents in fact create a duty of care where none may have existed if they had left town that weekend?

These questions remain to be answered if this matter ultimately proceeds to a trial.

In the end, the only certainty at this point is that the lives of a number of people have been irretrievably damaged and none more than the plaintiff. Who will be responsible in law for that tragedy and to what extent remains to be determined.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



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