

# BRIEFING NOTE

## **No Social Host Liability for Parents who Hosted a High School Graduation Party**

In *McCormick v. Plambeck*, 2020 BCSC 881, the BC Supreme Court considered whether parents who hosted a high school graduation party are liable for injuries suffered by a guest who was involved in a car accident after leaving the party. Guild Yule acted as defence counsel for the parents. The claim was dismissed in its entirety.

The case concerned a high school graduation party in a remote BC community. The parents who hosted the party did not provide any alcohol to their guests, but were aware that guests would bring their own. The parents put a number of rules in place for the party, including a strict rule against drinking and driving. They also collected car keys from any guests who drove, walked through the party periodically, and offered to drive guests home if they did not have a ride or a place to stay nearby.

The plaintiff, age 17, arrived at the party on foot. After the party ended, he and a friend, age 18, left on foot. They stole a car from a property about a kilometer away. Shortly after, the car went off the road. The driver was killed and the plaintiff, who was a passenger, suffered serious injuries. The plaintiff alleged that the parents were liable for allowing minors to wander off into the street after consuming alcohol and marijuana on their premises.

In the end, the court held that the parents did not owe the plaintiff a duty of care because circumstances of the accident and injuries were not reasonably foreseeable. The court also held that even if there was a duty, the parents' conduct did not breach the standard of care.

### **Duty of Care**

This was the first trial decision in Canada to consider whether social hosts owe a duty of care to underage guests who consume alcohol. It follows the Supreme Court of Canada's decision in *Childs v. Desormeaux*, 2006 SCC 18, where the court held that there is no general duty of care between a social host and users of public highways injured by an adult party guest.

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However, the court in *Childs* set out three categories of relationship that could give rise to a social host duty of care:

- (a) Where the defendant intentionally attracts and invites third parties to an inherent and obvious risk that he or she has created or controls;
- (b) Paternalistic relationships of supervision and control, such as those of parent-child or teacher-student; and
- (c) Where the defendant exercises a public function or engages in a commercial enterprise that includes implied responsibilities to the public at large.

In negligence actions, defendants can only be liable for the reasonably foreseeable consequences of their conduct. The question in this case was whether physical injury was a reasonably foreseeable result of letting minors who have consumed alcohol and/or marijuana leave the party on foot at night.

The court held that the accident and the plaintiff's injuries were not reasonably foreseeable because:

- (a) the plaintiff and the eventual driver were not intoxicated; and
- (b) there was no reason to believe the plaintiff would have access to a vehicle.

As the plaintiff was not intoxicated, the court found there were no obvious signs that he would suffer injury by walking home from the party. The fact that local residents commonly leave cars unlocked with the keys inside did not make it reasonably foreseeable that a party guest would steal a vehicle after drinking alcohol. The court held that the fact people did not lock their cars was evidence of just how *unlikely* car theft was in the community.

In the end, the court held that any duty of care owed by the parents did not extend to foreseeing that one or more of the party guests would steal a car and drive it unsafely.

### **Standard of Care**

Despite finding that no duty of care existed, the court went on to consider whether the parents had breached the standard of care. As hosts, the parents had to take all reasonable steps to minimize the risks of harm to their guests, including the plaintiff. However, the standard is one of reasonableness, not perfection.

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The court found no evidence that any of the guests at the party, other than the plaintiff and his friend, drove while impaired or rode with a driver who had been drinking. In addition, the parents' plan of taking keys from anyone who might have intended to drive after consuming alcohol in their home and offering rides to those who had no safe way of leaving the party was successful in avoiding reasonably foreseeable harm to their guests.

As it was not reasonably foreseeable that guests who arrived on foot would subsequently have access to and drive a car, the parents were not required to take steps to minimize this risk. As the court stated:

In my view, the standard proposed by the plaintiff is essentially one of perfection; anticipating all possibilities and avoiding any risks. That is simply not the way the world works. The duty is to act reasonably, not to act perfectly. It is never possible to eliminate all risks and the [Parents] were not required to do so.

The court also held that although high school parties involving alcohol are a breach of the *Liquor Control Act*, the bare fact that a minor was permitted to consume alcohol does not require social hosts to meet a higher standard of care. As stated by the court:

... the court takes judicial notice of the fact that graduation parties are an established custom in British Columbia, notwithstanding that they constitute, when minors are involved, a breach of the law.

### **Analysis**

The *McCormick* decision is the first to consider whether adult party hosts owe a duty of care to underage guests who consume alcohol and then become injured after leaving the party. Combined with the Supreme Court of Canada's decision in *Childs*, it appears that Canadian courts are reluctant to impose liability on social hosts. This is a different situation from commercial hosts, such as restaurants and bars, who clearly owe a duty of care to those injured by their intoxicated patrons.

However, this decision does not necessarily preclude a finding of social host liability in all cases. The court's foreseeability analysis in *McCormick* turned largely on the fact that (a) the plaintiff was not intoxicated, and (b) he arrived and left on foot. There is still room for a court to find social host liability in cases where, for instance, an underage guest drives to a party and becomes obviously intoxicated before leaving in a vehicle. It does appear, though, that the circumstances would have to be fairly egregious for a social host claim to succeed in Canada.

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This decision also establishes that hosts who take reasonable steps to guard against foreseeable risks will meet the standard of care, regardless of the fact that allowing minors to consume alcohol is breach of statute. The case is a good reminder that a breach of statute, without more, is not sufficient to ground a finding of negligence.

At the time of writing this brief, it is unknown if the plaintiff will file an appeal.



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