

## SOCIAL HOST LIABILITY

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The consumption of alcohol, and the assumption of the risks of impaired judgment, is in almost all cases a personal choice and an inherently personal activity.

With that statement the Supreme Court of Canada in *Childs v. Desormeaux* a unanimous judgment released May 5, 2006, chilled on the developing field of Social Host Liability.

Justice Chadwick at the Trial Level found that the Social Host owed a duty of care but that duty was negated by policy considerations.

The Ontario Court of Appeal found that no duty of care was owed.

Justice McLachlin speaking for the Court agreed with the Ontario Court of Appeal.

I conclude that as a general rule a social host does not owe of duty of care. On that basis it was unnecessary for her to consider whether or not such a duty of care would be negated by policy considerations.

In holding that there was no duty of care the Court found that the injury to the innocent third party was not reasonably foreseeable and perhaps more importantly that even if it was foreseeable there was no duty because the wrong alleged was a failure to act in circumstances where there was no positive duty to act.

Although there is no doubt that omission may be negligent, as a general principle the common law is a jealous guardian of individual autonomy.

The Court noted that there were significant differences between a Social and Commercial Host:

1. A Commercial Host was in a position to monitor alcohol consumption;
2. The sale of alcohol by a Commercial Host was strictly regulated by legislatures;
3. There was a contractual relationship between the Commercial Host and patron.

A word of caution to those insurers who think the tort dead. The Court did suggest that a host who continued to serve alcohol to a visibly inebriated person knowing he or she would be driving might create a sufficient risk to give rise to a *Prima Facie* duty of care. That caution in my mind will give solace to the Plaintiffs bar who will attempt to reopen the door with better facts.