

# HOST LIABILITY

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# Host Liability

- It is now well established that hosts who serve alcohol can incur liability if an accident results as a consequence of the drinking.
- However, the law recognizes a distinction between the “commercial host” and a “social host”.
- The standard of care governing a commercial host is more stringent than what the law requires of a social host.

# Host Liability

- Some cases have also recognized that a “host” may not be neatly categorized as either a “commercial” or a “social” host, but fall somewhere in between.
- These distinctions are important, because whether or not liability is incurred, may well depend on the characterization.
- This characterization will also effect what the “host” must do to avoid liability.
- Case law developed over time, and firstly concentrated on “commercial” hosts.

# *Jordan House Ltd. v. Menow* (1974) SCR 239

- One of the first cases was *Jordan House Ltd. v. Menow* (1974) SCR 239.
- In that case, the patron was a well known patron of the bar.
- He drank too much and was ejected by the waiters who knew, that in order to get home, he would have to walk along a busy highway.

# *Jordan House Ltd. v. Menow* (1974) SCR 239

- While walking home, he was struck by a car.
- He then sued the bar for damages.
- The Supreme Court of Canada held that the bar owed a duty of care to the Plaintiff not to place him in a situation where he was at risk of injury.

# *Jordan House Ltd. v. Menow* (1974) SCR 239

- The Court stressed that it was not the mere provision of liquor, which founded liability.
- Rather, in this case, they were also aware of the Plaintiff's intoxicated condition, and the risk that the Plaintiff faced in trying to reach home on foot, on a well traveled highway.

# *Jordan House Ltd. v. Menow* (1974) SCR 239

## Case Notes:

- It is somewhat interesting to note that, in this case (and in many others), it is the Plaintiff who was the intoxicated person, and the person suing for damages.
- It is also interesting to note that the bar in question stopped serving the Plaintiff and refused to serve him more.
- Many of the cases involve establishments which did the opposite.

# *Stewart v. Pettie* [1995] 1 SCR 131

- The next case of major consequence is *Stewart v. Pettie* [1995] 1 SCR 131.
- This case involved two couples who attended an Edmonton area dinner theatre as part of a corporate Christmas party.
- The two men drank alcohol but their wives did not.

# *Stewart v. Pettie* [1995] 1 SCR 131

- One of the husbands, who drank 10-14 ounces of liquor through the evening, drove both couples home.
- On his way home, the roads were frosty, he lost control of the vehicle, and ran into a telephone pole.
- One of the women struck her head badly and was rendered a quadriplegic.

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# *Stewart v. Pettie* [1995] 1 SCR 131

- The woman who was injured was the driver's sister. She sued for damages, and named the dinner theatre as a Defendant.
- It was established through Examination for Discovery and trial, that none of the other participants thought the driver was drunk, or exhibited signs of intoxication, notwithstanding the amount of alcohol that he drank.

# *Stewart v. Pettie* [1995] 1 SCR 131

- The trial Judge accepted this.
- The waitress who served them also testified that the driver did not look intoxicated. However, she knew, or ought to have known, the amount that he drank, given that she served him, and also kept track of a running tab of the drink orders.

# *Stewart v. Pettie* [1995] 1 SCR 131

- Upon leaving the hotel, there was a discussion in the parking lot among the four persons as to whether or not the driver should drive. No one had any concerns however, so despite the fact that there were two persons who had not consumed any alcohol, one of the persons who had been drinking, drove home.

# *Stewart v. Pettie* [1995] 1 SCR 131

- The Supreme Court of Canada held that the dinner theatre was a “commercial” host.
- It was in business to make a profit, and a significant aspect of that business was selling alcohol.
- As such, they had a duty of care to monitor their guests and ensure that they did not get overly intoxicated, and as a result, may not have been able to properly look after themselves.

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# *Stewart v. Pettie* [1995] 1 SCR 131

- In addition, the commercial host also owes a duty to those persons who use the highway, as the risk of an accident and injury was foreseeable.
- The fact that the Plaintiff, in this case, was a passenger, and had also been present at the dinner theatre, was of no relevance to this principle.

# *Stewart v. Pettie* [1995] 1 SCR 131

- The commercial host owed a duty of care to all users of the highway who might come in contact with their intoxicated patrons.
- However, the commercial host will only be required to take some action to prevent the risk from materializing if there is some foreseeable risk of harm to the patron or a third party.

# *Stewart v. Pettie* [1995] 1 SCR 131

- Here, the commercial host took no steps to ensure that the patron did not drive, and did not ask the patron if he intended to drive, or could do so.
- However, because the driver did not appear to be intoxicated, and because he was sitting at a table of two couples, with two persons not drinking, it was reasonable for the establishment to assume that one of the non-drinking parties would drive home.

# *Stewart v. Pettie* [1995] 1 SCR 131

- The mere fact that the driver did not appear intoxicated, would not have had the effect of avoiding liability in and of itself, given that the establishment kept a running tab of the amount of alcohol being served.

# *Stewart v. Pettie* [1995] 1 SCR 131

- Further, the Court indicated that a commercial host could not avoid liability by intentionally structuring their environment so as to make it impossible to know whether intervention is necessary (e.g., monitoring consumption). However, in this case, all of the circumstances, and most particularly, the presence of sober related individuals, absolved the establishment of liability.
- It was reasonable for them to assume that one of the sober persons would have driven.

# *Stewart v. Pettie* [1995] 1 SCR 131

## Case Notes:

- This case extended liability for commercial hosts, in that they were held not only to have a duty of care to their patrons, but also to all users of the highway.
- Given the scope of the duty, and its extension, this case also raised concerns about whether such a duty would be extended to “social” hosts.

# *Childs v. Desormeaux* 2006 1 SCR 643

- After the *Stewart v. Pettie* case was decided by the Supreme Court of Canada, lower courts dealt with a number of “social” host situations. However, this was the first “social” host case that went to the Supreme Court of Canada.
- The Court held that, at least in a general sense, a social host who served alcohol at a party was not under a duty of care to members of the public who might be injured by a guest’s action.

# *Childs v. Desormeaux* 2006 1 SCR 643

- However, the Court also indicated that exceptions to this general principle were possible, particularly where the hosts conduct implicates him or her in the creation or exacerbation of the risk.
- The Court indicates that there were major policy considerations which distinguished commercial and social hosts, and that it was a completely normal situation for people to host parties in their homes, and it was not reasonably foreseeable that harm would result as a consequence.

# *Childs v. Desormeaux* 2006 1 SCR 643

- In this case, there was a “BYOB” party, at the Defendant’s home.
- The Plaintiff was a guest, but the hosts did not “serve” alcohol in the normal sense. Rather, those that attended were responsible for bringing their own alcohol.
- Unlike a commercial host, there was no statutory duty to monitor consumption or control the premises where alcohol was served.

Continued

# *Childs v. Desormeaux* 2006 1 SCR 643

- In this case, the party ended in the early hours of the morning, and those present dispersed.
- The trial Judge found as a fact that, although the Plaintiff would be showing signs of impairment, there was no evidence that the hosts knew or ought to have known that Mr. Desormeaux was too drunk to drive.
- The Plaintiff did drive home, and collided head on with another vehicle.

# *Childs v. Desormeaux* 2006 1 SCR 643

- One person died, and three others were seriously injured.
- Blood alcohol tests were done, and the Plaintiff was clearly intoxicated (the trial Judge found that he probably drank 12 beers over 2 and a half hours).
- One of the hosts did ask the Plaintiff if he was okay before he left the party. The Plaintiff indicated that he was.

# *Childs v. Desormeaux* 2006 1 SCR 643

## Case Note:

- Many in the legal community found this case surprising. *Stewart v. Pettie* seemed to expand the potential for host liability, but this case significantly decreased the risk, at least for “social” hosts.
- Although the facts of this case arose from a BYOB party, the comments in the case indicate that they will apply to most social host cases.

# *Childs v. Desormeaux* 2006 1 SCR 643

- One of the surprises is that the Court found, that at least from a general perspective, there was no duty of care owed by a social host.
- To find liability, a number of factors must be present, including a duty of care. However, if there is no duty of care, the remaining factors or questions are of no further importance. There is no liability.
- The question remains as to what circumstances might find liability for a social host.

Continued

# *Childs v. Desormeaux* 2006 1 SCR 643

- The Court gave no particular indication in that regard, however, commentators have speculated that liability might be found where:
  - (a) There are clear and obvious signs of (gross) intoxication and knowledge that the person would be driving (or likely to drive);

# *Childs v. Desormeaux* 2006 1 SCR 643

- (b) The subject guests could be minors, or persons under some form of disability;
- (c) Some other factor which would increase the foreseeability of risk.

# Host Liability

- Commercial hosts are typically taverns, lounges, restaurants, clubs, etc., that serve alcohol for a profit.
- Social hosts are typically those who have a private party in their homes, and do not charge for alcohol.
- There are other situations, however, and the law related to them is not clear.

# Host Liability

- In one case arising in Alberta (Calliou Estate 2002 A.J. 74), a hockey team organized a local hockey tournament, and charged the other teams \$350 to attend.

# Host Liability

- The purpose of the \$350 entry fee was to pay for officials, ice rental, prize money, and the purchase of a quantity of beer for each team (presumably dependent upon how much money was left over).
- However, there was no evidence as to whether or not the host team made a profit from this venture, or intended to make a profit from the sale of beer.

# Host Liability

- After a member of one of the attending teams got into a serious car accident, the persons who organized the tournament on behalf of the unincorporated host club, were sued.

# Host Liability

- In this case, the trial Judge indicated that the relationship of the host to the guest was more than a mere social host situation, but less than a full commercial relationship. The Judge also indicated that the thread running through both commercial and social host cases was a question of the duty of care, and the knowledge of the state of intoxication of the guest who drives and injures himself or a third party. The trial Judge found that a duty of care arose, but dismissed the case against the hockey club for other reasons.

# Host Liability

- The evidence was to the effect that none of the host club members had any reason to believe that the other team involved in the accident were intoxicated. Further, a significant period of time (9 hours) elapsed between the time that the team was given beer, and the time of the accident. In the intervening time, the other hockey club had stopped in several other drinking establishments.

# Host Liability

- There was no suggestion in the case report that anyone saw the bartender drinking. However, he did have a blood alcohol level of .070, slightly below the legal limit. It was, therefore, apparent that he did in fact have something to drink.
- Evidence was led that a number of people talked to the bartender, but no one thought he was intoxicated, or not fit to drive.

# Host Liability

- In this case, the service club who actually hosted the event, was held to be a “commercial” host.
- The event was a fundraiser. The service club intended to make a profit from the event, and the commercial host standard therefore applied.

# Host Liability

- Nonetheless, for other reasons, the case was dismissed against both service clubs.
- The primary factor was the lack of evidence of intoxication, and therefore, a lack of foreseeable risk.

# Potential Municipal Liability

- Host liability has become an issue for municipalities in several respects.
- Firstly, municipalities, from time to time, do host social events, like Christmas parties, etc.
- Secondly, municipalities sometimes rent out facilities to others, who have social events where alcohol is served.

# Potential Municipal Liability

- Municipalities can minimize their liability in several ways.
- When acting as a host:
  - Decide whether you wish to charge for alcohol or not.
  - Charging for alcohol can be deemed to be a way of controlling consumption. However, if a profit is made, or intended to be made, the “commercial” hosts rules could come into effect.

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# Potential Municipal Liability

- You may therefore wish to operate on a “break even” basis.
- However, even then, you will wish to ensure that people do not become too intoxicated, or if they do, there is either a designated driver, or program established to have persons driven home, either by cab, or volunteer.

# Potential Municipal Liability

- Another way of controlling consumption is to offer a limited amount (two) free tickets, with the remainder being subject to a charge.
- Clearly, if someone appears to be too intoxicated to drive, steps should be taken to prevent them from driving.

# Potential Municipal Liability

- In regard to hall rental situations, unless it is a “municipal” function, the municipality should not be considered a “host”.
- However, that is not to say that a municipality might not be sued, either under occupiers liability legislation, or otherwise.

# Potential Municipal Liability

- In addition, the potential for host liability has led to increased insurance costs, and a tendency, among municipalities or other organizers, to require adequate insurance coverage before they will make a facility available.

# Potential Municipal Liability

- Often, insurance costs have been prohibitive for local service clubs, and this has been the course of many complaints.
- Notwithstanding this however, as there is some form of profit motive involved in most of these events, liability concerns remain significant.

# Thank You

Questions are welcome

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