MCKENZIE LAKE
LAWYERS

MORE THAN JUST A PARTY: WHEN HOSTS CAN BE HELD RESPONSIBLE

What is negligence?

Negligence is conduct that falls below the standard of care established by the community.[1] A negligence claim requires the plaintiff to establish that the defendant owed them a duty of care, breached the applicable standard of care, and was the factual and proximate cause of the plaintiff's injury or loss.[2]

What is a duty of care?

Understanding the test for a duty of care is essential in understanding negligence claims such as social host liability. Social host liability cases turn on whether there is a legal obligation to take reasonable steps and whether the defendant took those steps.[3] The test traces its roots to the famous "snail in the ginger beer bottle" – *Donoghue v Stevenson* (1932) case[4] where a consumer was served a ginger beer with a snail at the bottom of the glass. For the first time the House of Lords held that a person owes a duty of care to those who are so closely and directly affected by their actions that they ought to have contemplated the person when acting.[5]

The modern framework for determining whether a duty of care exists has evolved through subsequent jurisprudence.[6] Today, courts first ask whether the relationship falls within an established category of duty of care.[7] For example, a commercial host taking reasonable steps to ensure their customers do not cause harm to others while intoxicated.[8] If the relationship does not

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[1] Allen M Linden, Lewis N Klar & Bruce Feldthusen, *Canadian Tort Law: Cases, Notes & Materials*, 16th ed (LexisNexis Canada, 2022) at page 151 [*Allen M Linden*].

[2] Juliet S Robin, "Professions and Occupations" in *Canadian Encyclopedic Digest* (Western) (Toronto: Thomson Reuters Canada, March 2001, updated January 2024) (Westlaw Canada).

[3] *Allen M Linden, supra* note 1.
[4] *Donoghue v Stevenson*, [1932] A.C. 562.
[5] *Childs v Desormeaux*, 2006 SCC 18 at para 10 [*Childs*].
[6] *Ibid* at paras 11-13.
[7] *Ibid* at para 15.
[8] *Ibid* at para 16.

fall within one of the established categories, the court applies the two-stage *Anns* test to determine whether a novel duty should be recognized.[9] First, the court considers whether the harm was reasonably foreseeable and whether the relationship between the parties is sufficiently close.[10] Second, if a *prima facie* duty is established, the defendant may point to broader policy considerations that justify limiting or negating the duty.[11]

What is social host liability?

A social host is a person who provides alcohol to others in a social setting, rather than as a licensed commercial vendor.[12] In *Jordan House Ltd v Menow* (1973), the Supreme Court of Canada recognized that commercial establishments serving alcohol may owe a duty of care to intoxicated patrons and third parties.[13] This introduced the idea that those who provide alcohol can, in certain circumstances, bear responsibility for the actions of others.

In following years, the courts were reluctant to extend this principle to social hosts.[14] In *Dryden v Campbell Estate* (2001), the court suggested that a duty of care may arise where a host has personal knowledge of a guest's drinking habits and knows the guest is intoxicated.[15] Finally, in *Calliou Estate v Calliou Estate* (2002), the Alberta Court of Queen's Bench confirmed that social host liability is fact-specific and absent sufficient knowledge of the guest's intoxication, a host will generally not be liable.[16] Together, these cases show the gradual development of social host liability in Canada leading up to the Supreme Court of Canada's landmark decision in *Childs v Desormeaux* (2006).

***Childs v Desormeaux*, 2006 (SCC)**

After leaving a party at a private home, Desmond Desormeaux drove into oncoming traffic and caused a head-on collision that killed one passenger and seriously injured several others, including Zoe Childs, who was left paraplegic.[17] The party was a "BYOB" (Bring Your Own Booze) event.

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[9] *Ibid* at para 15.
[10] *Ibid* at para 12.
[11] *Ibid* at para 13.
[12] Merriam-Webster, sub verbo "Social Host", online: Merriam-Webster Legal Dictionary <https://www.merriamwebster.com/legal/social%20host> (accessed 30 July 2026).
[13] *Jordan House Ltd. v Menow*, 1973 CanLII 16 (SCC) at pages 250 -251.
[14] *Baumeister (Guardian ad litem of) v Drake*, [1986] BCJ No 3008; 5 BCLR (2d) 382 paras 16 – 22.; *Wince v Ball*, 1996 CanLII 10414 (AB QB) at para 22.
[15] *Dryden v Campbell Estate*, [2001] OJ No 829 paras 82-101.; [2001] OTC 143.
[16] *Calliou Estate v Calliou Estate*, 2002 ABQB 68 at para 50.
[17] *Childs*, *supra*, note 4, at para 2.

The only alcohol served by the hosts was three-quarters of a bottle of champagne at midnight.[18] Ms. Childs brought an action against the hosts of the party for the injuries she suffered.

While commercial host liability was an established category, the relationship between a social host and their guests was distinguishable for three reasons.[19] First, commercial hosts have more resources to monitor alcohol consumption.[20] Second, the sale and consumption of alcohol is strictly regulated by legislatures.[21] Third, the contractual nature between a commercial host is different from the range of social relationships that can characterize private parties.[22] Thus, the Supreme Court applied the two-stage *Anns* test to determine whether to recognize a novel duty of care.[23]

As the Supreme Court was concerned about the positive duty to prevent Mr. Desormeaux from driving, the Court considered whether the harm was reasonably foreseeable and whether the parties were in a sufficiently proximate relationship.[24] As Mr. Desormeaux did not appear intoxicated when leaving the party, the Supreme Court held that only considering his history of impaired driving was too speculative and it was not reasonably foreseeable he would drive impaired again.[25]

The Court also found that no special circumstances existed to create a sufficiently close relationship between the hosts and their guest justifying a positive duty of care.[26] Hosting a private party where alcohol is served is deemed a common social activity and is not inherently dangerous. In addition, these hosts did not have a paternalistic relationship with their guests, nor do they act in a public or regulatory capacity.[27]

Since a *prima facie* duty of care had not been established, the Supreme Court found it unnecessary to consider if policy considerations negate a duty of care.[28] Overall, hosting a party where alcohol is served, without more, does not suggest the creation or exacerbation of risk required to impose a duty of care on the host to members of the public who may be affected by a guest's conduct.[29]

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[18] *Ibid* at para 4.
[19] *Ibid* at para 17.
[20] *Ibid* at para 18.
[21] Ibid at para 19.
[22] *Ibid* at para 22.
[23] *Ibid* at para 23.
[24] *Ibid* at paras 32-34.
[25] *Ibid*.
[26] *Ibid* at para 41.
[27] *Ibid* at para 42.
[28] *Ibid* at para 48.
[29] *Ibid*.

***Williams v Richard*, 2018 (ONCA)**

Mr. Richard and Mr. Williams were having beers after work in Mr. Richard's garage. Mr. Richard became aware of his friend's intention to drive home while intoxicated. Mr. Richard threatened to call the police, but he did not.[30] While driving home, Mr. Williams drove into the rear of a stationary tractor towing a trailer. He was ejected from the vehicle and died as a result of his injuries.[31] On a motion for summary judgment, the motion judge found that the defendants did not owe the plaintiffs a duty of care as social hosts in the circumstance. The claims were dismissed and the plaintiffs appealed.

As the threshold for social host liability was still unclear, the Court of Appeal established a loose formula from case law after the *Childs* case.[32]

First, reasonable foreseeability of harm is focused heavily on a host's knowledge of the guest's level of intoxication. Behavioural signs of intoxication may make it reasonably foreseeable that the guest could cause an accident.[33]

Second, to determine whether the parties were sufficiently close, the courts ask if there is "something more" in the relationship. In *Childs*, the court established 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.[34]

This is commonly referred to as the "without more" exception to the general rule that liability does not attach to a social host. However, inviting guests to an inherently risky environment may constitute "something more," thus creating a duty of care. A paternalistic relationship may also create a duty of care.[35] The Court of Appeal compiled case law post-*Childs* to create a spectrum for an inherently risky environment. At the low end is *Childs*[36] and parties of a reasonable size[37] or an invitation to a co-worker's home to have dinner and drinks.[38] Further up the spectrum is young adults throwing a large party, providing alcohol, the use of illegal drugs.[39] Finally, on the high end

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[30] *Williams v Richard*, 2018 ONCA 889 at para 4-14 [*Williams*].
[31] *Ibid*.
[32] *Ibid* at para 24.
[33] *Ibid* at para 25.
[34] *Childs supra*, note 4 at para 47.
[35] *Ibid* at para 24.
[36] *Ibid* citing *Childs*, *supra*, note 4 para 44.
[37] *Ibid* citing *Robinson v Lewis*, 2015 ABQB 385 at paras 72-77.
[38] *Ibid* citing *Allen v Radej*, 2014 ABQB 171 at para 78.
[39] *Ibid* citing *Kim v Thammavong*, 2007 CanLII 52791 (ON SC) at paras 9-10, 25.

is teenagers throwing a house party with over 100 people, underage drinking, and their parents are out of town. Such a scenario likely implicates the host in the creation of an inherent risk.[40]

The Court of Appeal concluded that the facts of the case raised a genuine issue requiring a trial to determine whether Mr. Richard, as a social host, may have invited Mr. Williams into an inherently risky environment that he controlled and created, thereby creating a positive duty of care.[41]

Foulidis v Schummer, 2026 (ONSC)

Two friends, Aliya and Sara, threw a 16th birthday party for Aliya at Sara's family home. They planned and organized the party with knowledge that Sara's parents were out of town that weekend. Noa, Aliya's older sister, purchased a small bottle of vodka for her sister and friend.[42] Aliyah provided Sara with a guest list of twenty-five people, but the guest list grew after publicizing the event on social media. Around 100 underage people attended the party.

Nikolas Foulidis, the plaintiff, attended the party and admitted to drinking others' alcohol at the party. Daniel Ribeiro, the defendant driver, attended with his friend, Stone Schummer, also a defendant. Daniel did not consume any alcohol as he was the licensed driver of Stone's Range Rover, given to him by his parents, Michelle Schummer and David Schummer. His parents were also defendants.[43]

While leaving, Daniel drove by Nikolas. There was some talking, and then Nikolas attempted to hold onto the outside of the front passenger door. As Daniel drove away, Nikolas fell off with his right foot being run over by the car resulting in a crush injury to the right foot and ankle with fractures requiring multiple surgeries and an incomplete recovery.[44]

The three girls sought a dismissal of the cross-claim for contributory negligence advanced against them by the defendants on the basis that as social hosts they owed no duty of care to Nikolas.[45]

They relied on *Childs*, claiming that hosting a party where alcohol is served, without more, does not impose a duty of care on the host.[46] However, counsel for Daniel submitted there was much more, and relied on the far end of the inherently risky environment spectrum in *Williams*.[47]

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[40] *Ibid* citing *Oyagi v Grossman*, 2007 CanLII 9234 (ON SC) at paras 6-7, 12.
[41] *Ibid* at para 38.
[42] *Ibid* at page 2.
[43] *Ibid*.
[44] *Ibid* at page 3.
[45] *Ibid* at page 2.
[46] *Ibid* at page 3-4.
[47] *Wiliams*, supra, note 30.

Justice Dow emphasised that the breach of a statute, such as the *Liquor License Act,*[48] does not constitute negligence *per se*, but it may afford a useful standard of reasonable conduct, prohibiting the supply and consumption of alcohol to and by minors. [49]

The two hosts were found to have a duty of care because they deliberately without parental knowledge or approval organised the party with underage drinking. This was sufficient to overcome the fact that they did not know of the risks of hosting a large party.[50]

For policy considerations, the hosts claimed that establishing a duty would fundamentally change tort law and expand liability interfering with personal freedom and autonomy. But, Justice Dow believed that holding minors responsible for illegal alcohol consumption supports existing laws that prohibit supplying alcohol to minors and underage drinking.[51]

As a result, the hosts were found to be contributorily negligent in the harm of Nikolas Foulidis.[52] However, the sister was not found to have a duty of care because she did not know about the large party and uncontested evidence showed that Nikolas did not have any of the vodka provided. [53]

What does this mean for social host liability today?

Although under appeal, *Foulidis* emphasized the use of a risk-spectrum approach focusing on the extent to which a host creates, controls, or enhances an inherent dangerous situation. As a result, the decision suggests that courts are more likely to impose a duty of care where hosts play a significant role in creating or facilitating an inherently risky environment.[54]

While this case may be seen as an expansion of social host liability in Ontario, arguably, it seems consistent with case law. The approach looks at all the facts to determine if a duty of care exists. If you have a potential social host claim, a detailed factual analysis will be necessary to determine if the social host may be found negligent.

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[48] *Liquor License Act*, RSO 1990 cL19 at s 30(1) and 30(8).

[49] *Foulidis*, supra note 41 at page 6 citing *The Queen (Can) v Saskatchewan Wheat Pool*, 1983 CanLII 21 (SCC) at pages 227-228.

[50] *Ibid* at page 7.

[51] *Ibid* citing *Childs supra*, note 4 at para 39.

[52] *Ibid*.

[53] *Ibid* at page 8.

[54] *Wiliams*, supra, note 30.

It seems clear that a positive duty of care may exist if foreseeability of harm is present and other aspects of the relationship between the plaintiff and the defendant establish a special link or something more.

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