

The Top Five 2006

Each year Justice Stephen Goudge of the Ontario Court of Appeal identifies five cases that are of significance in the educational setting. This summary, based on his comments and observations, is appropriate for discussion and debate in the classroom setting.



***Childs v. Desormeaux*, [2006] 1 S.C.R. 643**

<http://scc.lexum.org/en/2006/2006scc18/2006scc18.html>

Party hosts found not responsible for injury to another caused by an intoxicated party guest who is in a car accident after leaving their home.

Two individuals hosted a BYOB party at their private home, during which they only served three-quarters of a bottle of champagne in small glasses at midnight. D, a party guest, was walked by one of the hosts to his car and asked whether he was “ok”. D answered “no problem”, then left the party and drove his car into oncoming traffic and collided head-on with another car. He seriously injured three of the other car’s passengers and killed one passenger. C (one of the passengers) was rendered paraplegic in the accident. C brought an action against the hosts of the party for the injuries she suffered.

The trial judge and the Ontario Court of Appeal concluded that social hosts of parties do not owe a duty of care to members of the public who may be injured by an intoxicated guest’s conduct.

The Supreme Court of Canada agreed with the lower courts and affirmed that social hosts are not responsible for the actions of their guests on public highways after they leave the hosts’ homes. In this case there was not enough proximity between the social hosts and harm caused to the passenger by the inebriated party guest in order to find liability. There was no evidence that the hosts knew, or ought to have known, that D, who was leaving the party and driving was impaired. Although the hosts knew that D had gotten drunk in the past and driven home, the court found that the hosts’ knowledge of D’s history of alcohol consumption and impaired driving was not enough. It was not “reasonably foreseeable” in this particular instance that he would be driving impaired and would pose a risk to other motorists.

The Court found that social hosts do not have a duty to act to monitor guests’ drinking or to prevent them from driving. The Court stated that consumption of alcohol and the assumption of the risks of impaired judgment linked to alcohol consumption are in most cases a personal choice and personal activity. The hosts did not do anything to implicate themselves or increase the risk that D would drive impaired and injure others. In this case

the hosts did not control the supply or service of alcohol or continue to serve D when he was visibly impaired.

The Court also found that there was also no evidence that anyone reasonably relied on the hosts to monitor guests' intake of alcohol or prevent intoxicated guests from driving. The Court distinguished the expectation put on social hosts from the expectation and reliance placed on commercial hosts who have the capacity to monitor what they are serving to an individual, are regulated by legislation, and are making profit off of selling drinks. These factors create a different relationship between bar owners/ bar servers and their patrons from that of social hosts and their guests. With this different relationship comes a duty to protect the public from individual's who become impaired on their premises and pose a threat once they leave the premises and get into their cars.

Discussion Issues:

- Do you think there should be a distinction between social and commercial hosts?
- Would the outcome have been different if it wasn't a BYOB party and the hosts had been serving alcohol to D all evening and were aware of how much he was drinking? If they had been making "shots" for D all evening and initiating drinking games? If it had been a house party where they were selling drinks?
- Would it have been different if D had been falling over on his way to the car and had not answered "no problem" to the question as to whether he was ok but still got in the car to drive?
- Do you think that bar tenders and bar owners should be responsible for the actions of their patrons after they leave the bar? What about if they have stopped serving someone and that person leaves and still causes a car accident?
- Is this an issue that should be dealt with by legislation or by the courts?