



PERSONAL INJURY LEGAL ALERT

for the Personal Injury Industry

Summer 2006

A publication of Miller Thomson LLP's
Personal Injury Industry Practice Group

Miller Thomson LLP is pleased to introduce the *Personal Injury Legal Alert*. This free information service is offered by Miller Thomson's Personal Injury Lawyers and summarizes legal issues relating to personal injury and insurance-related litigation.

SOCIAL HOST LIABILITY: ON THE HOUSE?

Summer is often a season when friends and family gather at homes for barbeques, graduations, weddings, family reunions and a variety of other events. In light of that reality, it is useful to note the May 2006 decision handed down by the Supreme Court of Canada in the case of *Childs v. Desormeaux*, which squarely addressed whether or not "social hosts", or people who invite others into their homes for social gatherings where alcohol is served, can be liable to other citizens when a person drinks at the house party and then drives and subsequently causes a collision that injures another person or damages another's property. Until the decision of the Supreme Court of Canada in *Childs*, this issue was unsettled in Canada.

In essence, the Supreme Court of Canada unanimously concluded that a social host will not generally be liable to people who are injured by his guests who have consumed alcohol at a party that he has hosted at his home.

In *Childs*, the homeowner hosted a BYOB party on New Year's Eve. One of the guests at the party, Mr. Desormeaux, consumed 12 beers over the course of 2 ½ hours and then left the party and caused a motor vehicle collision. The only alcohol provided by the host to the guests was approximately ¾ of a bottle of champagne in small glasses at midnight. The host knew that Mr. Desormeaux was a heavy drinker, and when he left the party, the host walked him to his vehicle and asked him "Are you okay brother?" to which Mr. Desormeaux responded "No problem".

After Mr. Desormeaux left the party, he caused a head-on motor vehicle collision with a vehicle containing Zoe Childs as a passenger. Ms. Childs was paralyzed from the waist down as a result of her injuries. Tragically, Ms. Childs' boyfriend was also a passenger in the vehicle and he was killed as a result of the collision; two other occupants of the Childs' vehicle were also seriously injured in the collision.

Mr. Desormeaux pleaded guilty to a series of criminal charges arising from the collision and was sentenced to 10 years in prison, however, he was an uninsured driver at the time of the collision, and, therefore, he did not have any insurance to respond to a civil lawsuit launched by Zoe Childs for her injuries. As such, Ms. Childs commenced a lawsuit against the homeowner/host of the party that Mr. Desormeaux attended before he got behind the wheel.

Note:

This *Legal Alert* is provided as an information service and is a summary of current legal issues of concern to Personal Injury Clients. *Legal Alerts* are not meant as legal opinions and readers are cautioned not to act on information provided in this *Legal Alert* without seeking specific legal advice with respect to their unique circumstances. Your comments and suggestions are most welcome. Please direct them to:
PI_Law_AB@millerthomson.com

The Supreme Court of Canada concluded in *Childs* that there was no finding of fact that Mr. Desormeaux would have been showing obvious signs of impairment and further, that the host did not know, and was not expected to have known, that Mr. Desormeaux was in fact too drunk to drive. There was no evidence in the *Childs* case that anybody relied on the host to monitor the guests' intake of alcohol or to prevent intoxicated guests from driving. It is notable that the Court concluded that a history of alcohol consumption and impaired driving does not make impaired driving and the consequent risk to other motorists reasonably foreseeable.

Further, the Court concluded that no duty arises from a homeowner to the general public in this instance because the wrong that is alleged against the homeowner is a failure to act in circumstances where there is in fact no positive duty to act. In this case, the allegation against the social host was that he should have interfered with Mr. Desormeaux's independence by preventing him from drinking and driving. The Court determined that a person who accepts an invitation to attend a private party does not park his autonomy at the door – guests remain responsible for their own conduct. The Court further determined that the consumption of alcohol and the assumption of the risks of impaired judgment is almost always a personal choice and an inherently personal activity. The Court concluded that private hosts neither undertake, nor are expected, to monitor the conduct of guests on behalf of the public.

The Court noted that "short of active implication in creation or enhancement of the risk, a host is entitled to respect the autonomy of a guest". That statement may leave the door open to some potential social host liability down the road and activity that could possibly implicate a host in the creation or exacerbation of risk might include something like a host conducting drinking games for his guests, knowing that they will be driving away from the party that he is hosting.

The Court considered the *Childs* case in light of its position regarding commercial host liability. Canadian courts have concluded that commercial hosts, or the owners of bars, lounges, taverns and the like, have a duty to ensure that no foreseeable harm occurs to their patrons or to others because of the bar's conduct, such as serving alcohol to a visibly impaired person and then ejecting him, or for what the bar fails to do, such as failing to take preventative steps like offering to call a taxi or calling the police if necessary. Further, the Courts have determined that commercial hosts have an obligation to determine their patrons' condition and not serve alcohol to people who are visibly intoxicated. This legal obligation is extended to commercial hosts because alcohol is the only legal intoxicating substance that can be sold with limited regulation and commercial hosts are profiting as their patrons are becoming intoxicated and acquiring less sound judgment. Put bluntly, the courts have determined that one of the costs of doing business and selling alcohol is a legal obligation to take reasonable steps to prevent drunk guests from driving.

Despite the conclusion of the Court in the *Childs* case, homeowners are encouraged to take steps to minimize the chance that their guests may drink and drive. A useful list of practical tips that may help social hosts in this regard is located at the website for the Canada Safety Council, which is www.safety-council.org.

ABOUT THE AUTHOR

Andrea Beckwith is a member of the Calgary Litigation Practice Group and practices in the areas of insurance defence, personal injury, dependent adults (guardianship and trusteeship, passing of accounts, mental capacity challenges) and estate litigation.

*Andrea E. Beckwith
Calgary
Tel. 403.298.2405
abeckwith@millerthomson.com*

Our Alberta Personal Injury Group is dedicated to providing comprehensive and integrated legal services to personal injury clients. For more information about our group, visit our website at www.millerthomson.com or contact one of our regional contacts listed below.

REGIONAL CONTACTS

Calgary

J. Derek Allchurch dallchurch@millerthomson.com	403.298.2415
Dean J. Barrett dbarrett@millerthomson.com	403.298.2427
Andrea E. Beckwith abeckwith@millerthomson.com	403.298.2405
Philip A. Carson pcarson@millerthomson.com	403.298.2403
K. Hollick Chipman hchipman@millerthomson.com	403.298.2420
Michael J. Morcom mmorcom@millerthomson.com	403.298.2414

Edmonton

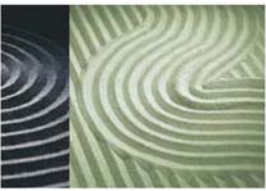
Robert L. Duke, Q.C. rduke@millerthomson.com	780.429.9754
James M. Kalyta jkalyta@millerthomson.com	780.429.9796
Michael J. Pucylo mpucylo@millerthomson.com	780.429.9789
Daniel C.P. Stachnik, Q.C. dstachnik@millerthomson.com	780.429.9761
Connie I. Taylor ctaylor@millerthomson.com	780.429.9780
Analea M. Wayne awayne@millerthomson.com	780.429.9741
Barrett K. Westerlund bwesterlund@millerthomson.com	780.429.9705

Note:

On January 1, 2004 privacy legislation came into force across Canada governing the collection, use and disclosure of personal information by organizations. Miller Thomson respects the privacy of persons who receive our newsletters and other information that we provide as a service to them. We wish to take this opportunity to confirm that we hold personal information about you in the form of the contact information we possess. We wish to confirm that you consent to our maintaining this information and continuing to use it for the purposes of providing our newsletters and similar mailings to you. All recipients of our newsletters also receive notices of firm seminars and other events that may be of interest to you or your organization as well as information respecting marketing of our firm and relevant legal developments from time to time. In addition, we may send you holiday cards and other greetings on occasion. We only use your information for these purposes and do not disclose it to any third parties outside of our firm's employees and independent contractors.

If you consent to our possessing and using your personal information for the above purposes, you need not take any further steps. If, on the other hand, you do not wish us to have your personal information for these purposes, please notify us by return e-mail and we will remove your personal information from our newsletter database and cease forwarding the above-noted communications to you.

Your comments and suggestions are most welcome. Please direct them to: PI_Law_AB@millerthomson.com



MILLER THOMSON LLP

Barristers & Solicitors
Patent & Trade-Mark Agents



Newsletter Subscription Request

Miller Thomson LLP produces several electronic newsletters & communiqués throughout the year to keep our clients informed of industry news. This is a free information service to our clients and is a summary of current legal issues of concern to the industry. Please indicate which newsletters & communiqués you would like to receive:

Alberta Newsletters

- Construction Communiqué - Alberta
- Focus on Alberta: Insurance & Risk Management Communiqué
- Health Communiqué - Alberta
- Immigration Law Alert - Alberta
- Labour and Employment Communiqué - Alberta
- Personal Injury Legal Alert - Alberta
- Securities and Corporate Finance Communiqué - Alberta

National Newsletters

- Aboriginal Law
- Charities and Not-For-Profit
- Competition Law Report
- Construction Law
- EnviroNotes!
- eSecurities Notes
- Financial Services & Insolvency
- FranNews (franchise law)
- Health Industry Updates
- Insurance
- International Trade, Customs and Commodity Tax Quarterly Bulletin
- Oil and Gas
- Privacy Communiqué/ Updates
- Tax Notes
- Technology & Intellectual Property

Name: _____ Title: _____

Company Name: _____

Address: _____ City: _____ Postal Code: _____

E-mail address: _____

Please feel free to distribute the following to other individuals within your organization who may benefit from our service.

Please fax this page to Miller Thomson LLP at 780.424.5866 or 403.262.0007

I confirm that I am providing you with personal information about myself. I consent to you maintaining this information and continuing to use it for the purposes of providing your newsletters and similar mailings to myself. I confirm that I am aware that all recipients of your newsletters also receive notices of seminars and other events as well as information respecting marketing of Miller Thomson and relevant legal developments from time to time. I understand that I maintain the right to be removed from your mailing list upon reasonable notice to you. For any questions pertaining to the collection and use of your information, please contact Linda Finn (Calgary) at 403.206.6356.