

Whatever Happened to ... Childs v. Desormeaux: Killer Hospitality

Posted By [Peter Bowal](#) On July 7, 2014 @ 9:03 am In [Famous Cases](#) | [No Comments](#)



[1] Can you be held legally responsible if you serve a friend alcohol at your house and he or she then drives away and injures or kills another person? Alcohol-fueled social gatherings give rise to the issue of social host liability, both to guests and to third parties who may be affected by your hospitality. The Supreme Court of Canada answered this in the tragic case of [Childs v. Desormeaux, 2006 SCC 18 \(CanLII\)](#) [2].

Facts

Desmond Desormeaux, 39 years old in 1998, had grown up in Ottawa where he met Dwight Courrier in his teenage years. Mr. Desormeaux and Mr. Courrier became good friends who would see each other about two or three times a month over 20 years, and would drink heavily together at some of these meetings.

In October of 1990, Desormeaux's brother died and he turned to alcohol to cope with the loss. His work was sporadic and he did not hold a stable job. He moved back in with his parents. He earned an impaired driving conviction in 1991, and a second conviction in 1994. To put the heavy drinking into perspective, a former girlfriend of Courrier described Desormeaux as falling down and urinating in his pants on occasion during the pair's drinking sessions.

On New Year's Eve of 1998, Courrier and his common-law spouse Julie Zimmerman decided to host a party. It was a BYOB (bring your own booze) event, and Desormeaux showed up with a 24-pack of beer. The hosts served three-quarters of a bottle of champagne to ring in the New Year as well.

There was a lot of drinking. An altercation took place when one of Desormeaux's friends wiped his hands on another guest's jacket. After this, Desormeaux and his two friends decided to leave. The social host needs to take part in the "creation or exacerbation of risk" in order to be found liable to injured third parties. When Desormeaux walked to his car after midnight to leave, the host, Courrier asked, "Are you okay, bro?" Desormeaux responded "No problem!"

But there was a problem, a very big problem. Desormeaux was not fit to drive. He had consumed about a dozen beers over two and a half hours at the party, and was almost three times over the legal limit when he left the party and started to drive away.

At about 1:30 a.m., Desormeaux's car crossed into oncoming traffic and collided head-on with Patricia Hadden's vehicle. Desormeaux's car carried two passengers and four passengers were in Ms. Hadden's car. One of her passengers, Derek Dupre, was killed in the collision and his girlfriend, 18-year old Zoe Childs, had her spine severed. She was rendered a paraplegic.

Desormeaux eventually pleaded guilty to criminal offences and was sentenced to 10 years in jail. He received a 10-year driving ban, the maximum allowed under the law. Where did that leave Childs in terms of financial compensation for her serious and permanent injuries?

Desormeaux had no insurance coverage at the time of the accident. Childs sued Desormeaux, and liability was easily found, as drivers owe a duty to other vehicles travelling on the road. However, it is common to attempt to spread the liability in accident cases, and so Childs also sued the hosts of the party, Courrier and Zimmerman. She claimed that they were liable

as the social hosts of the party on the grounds that they supplied alcohol to Desormeaux and allowed him to drive away, causing this tragedy.

The Civil Lawsuit

The courts were asked whether the social hosts owed a duty to Childs to prevent Mr. Desormeaux from driving and injuring her. Commercial host liability was very well established. The trial judge determined that the social hosts did owe a duty of care to Childs but did not hold them liable due to a broader public policy consideration, namely that the liability burden placed on social hosts would outweigh the potential benefits for users of the road. In the past, the courts have held that commercial establishments such as bars clearly owed a duty to guests and third parties and needed to take steps to prevent injuries caused by their patrons. (*Jordan House Ltd. v. Menow*, [1974] S.C.R. 239 [3]; and *Crocker v. Sundance Northwest Resorts Ltd.*, [1988] 1 S.C.R. 1186 [4])

Both the trial judge and the Ontario Court of Appeal agreed that Courier and Zimmerman were not liable for Childs' injuries, although for different reasons.

The trial judge determined that the social hosts did owe a duty of care to Childs but did not hold them liable due to a broader public policy consideration, namely that the liability burden placed on social hosts would outweigh the potential benefits for users of the road. This burden would require social hosts to monitor all guests and question them about their intoxication levels at arrival and departure. If social hosts found guests to be intoxicated, they would have to tell them not to drive. If guests did not comply, then the social hosts would be required to report this to the police. These obligations would be too onerous on social hosts. The trial judge said there was no liability for the social hosts because of this.

The Ontario Court of Appeal disagreed with the trial judge's finding that a duty of care from the social hosts to Childs existed in this case. It said simply that, because the hosts here did not know Desormeaux was intoxicated when he left, it was not foreseeable that Childs would be injured.

Supreme Court of Canada Decides

In 2006 the case reached the Supreme Court of Canada, eight years after the tragic event. The Court questioned whether there was a proximate relationship between the social hosts and Childs and concluded there was not. It was not even foreseeable that Desormeaux was intoxicated when he got into his car. The trial judge had made a finding of fact that, although Desormeaux drank enough alcohol to guarantee he was intoxicated, Courier or Zimmerman may not have seen any outward signs of this intoxication. In 2006 the case reached the Supreme Court of Canada, eight years after the tragic event. The Court questioned whether there was a proximate relationship between the social hosts and Childs and concluded there was not. Even though the social hosts knew of Desormeaux's history of drunk driving and drunken behaviour, the Court concluded that visible signs of intoxication were needed.

The unanimous Supreme Court of Canada then said that, even if there was foreseeability, that there still would not be a duty of care owed in this type of case. The Court differentiated commercial establishments from social parties. Bars and other businesses stand to profit more when a person gets drunk and they monitor how many drinks are served by charging the customer for these drinks. There are rules and regulations for these businesses, but not for the average person having friends over where alcohol is consumed. Courier and Zimmerman only *failed to act* in this case by not stopping Desormeaux, but a positive duty to act had to first exist for them to be liable. They did not create the danger to Childs by organizing a social event and facilitating the consumption of alcohol at their home.

A positive duty to act may arise in law where one "intentionally attracts and invites third

parties to an inherent and obvious risk that he or she has created or controls." But hosting a house party is not an inherently risky activity on its own. The Court stated "more is required" to create a dangerous environment. A possible example is that of a host who continues to serve alcohol to an intoxicated guest, knowing the guest will be driving. The social host needs to take part in the "creation or exacerbation of risk" in order to be found liable to injured third parties.

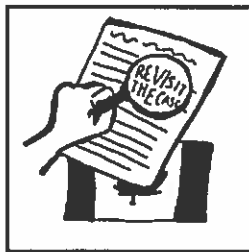
For those holding house parties this seems like a victory, but hosts will still need to take precautions to ensure they do not become legally responsible. Games of beer pong or encouraging someone to drink heavily on their birthday are examples of activities that might result in the "creation or exacerbation of risk," and this will result in hosts being liable.

Where are These Parties Today?

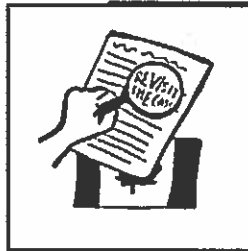
Desormeaux apologized to Childs at his criminal sentencing, saying he did not want this to happen. The judge described Desormeaux as a "ticking bomb" in a downward spiral that led to the accident. He was sentenced in 2000, and was given about 4 years credit for time spent in pre-trial custody. With a 10-year sentence and an opportunity for parole, we expect he was released before 2006. His driving ban ended in 2010.

Childs was unsuccessful in her lawsuit against the social hosts, and she even had to pay their legal costs for this case's journey through the courts. Before the criminal trial judge sentenced Desormeaux to 10 years in jail, he praised young Childs for her courage and compared her to Christopher Reeve, a late, famous quadriplegic. She still has to spend the rest of her life in a wheelchair.

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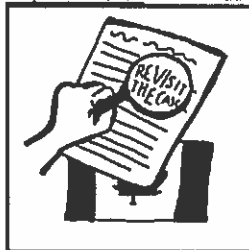


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[2] Childs v. Desormeaux, 2006 SCC 18 (CanLII): <http://canlii.ca/t/1n5gp>

[3] Jordan House Ltd. v. Menow, [1974] S.C.R. 239: <http://canlii.ca/t/1twvq>

[4] Crocker v. Sundance Northwest Resorts Ltd., [1988] 1 S.C.R. 1186: <http://canlii.ca/t/1ftcw>

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