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Personal Injury

Door still open to social host liability even after B.C. judge denies latest claim: lawyers

By **Michael McKiernan**

(June 24, 2020, 9:22 AM EDT) -- Lawyers on both sides of B.C.'s personal injury bar say social host liability cases will continue to flow even after a B.C. Supreme Court judge rejected the latest attempt to establish a claim.

In *McCormick v. Plambeck* 2020 BCSC 881, B.C. Supreme Court Chief Justice Christopher Hinkson declined to hold two parents who hosted a teenage birthday party responsible for injuries suffered by one of the guests in a fatal crash following the event.

According to the ruling, the plaintiff Calder McCormick was a passenger when his friend Ryan Plambeck drove a stolen car off the road on Salt Spring Island, shortly after leaving the party at Lidia and Stephen Pearson's house in 2012. Plambeck, who was 18 at the time, died at the scene, while the 17-year-old McCormick suffered life-altering injuries.

Although he found that the Pearsons placed themselves in a paternalistic relationship with the minor party guests, Chief Justice Hinkson ruled no duty of care was established in this case "because the injury complained of was not reasonably foreseeable" by the host parents.

Bill Dick, Murphy Battista LLP

But Bill Dick, a personal injury lawyer with Murphy Battista LLP, says it won't be the last time a Canadian court hears a similar claim.

"In the right set of circumstances, I think there is still an opportunity for enterprising plaintiff's counsel to push open the door and get a finding of liability against a social host," he said. "But it's going to have to be something at the far end of the spectrum."

The McCormick decision is believed to be the first trial verdict since the landmark Supreme Court of Canada decision in *Childs v. Desormeaux* 2006 SCC 18 ruled out the possibility of a general duty of care owed by social hosts to road users injured by adult party guests.

Despite that ruling, the unanimous panel in *Childs* left the door open to future claims in certain situations.

"A social host at a party where alcohol is served is not under a duty of care to members of the public who may be injured by a guest's actions, unless the host's conduct implicates him or her in the creation or exacerbation of the risk," wrote then-chief justice Beverley McLachlin for the court.

Lorne Folick, Dolden Wallace Folick LLP

That "crack in the door" left by *Childs* has always concerned insurance defence litigator Lorne Folick, a partner with Dolden Wallace Folick LLP in Vancouver. But the *McCormick* case made his insurer clients even more nervous, because of the defendants' admitted breach of B.C.'s *Liquor Control and Licensing Act* in allowing minors to consume alcohol on their property.

"That could have been seen as 'creation or exacerbation of the risk,' but as it is, the insurance industry will breathe a sigh of relief reading the decision," Folick said. "I see *McCormick* as narrowing even further the gap in which a court could find fault with a social host."

According to the ruling, the Pearsons allowed their twin daughters to host a birthday for a friend, acquiescing to alcohol consumption on certain conditions, including that their daughters would collect car keys from friends who drove.

The parents spent the evening in their bedroom, but patrolled the party occasionally, and later drove some partygoers home. However, McCormick and Plambeck were among a number of guests who both arrived at, and departed the party on foot.

Michael Wilhelmson, Harris & Brun Law Corporation

At trial, plaintiff's counsel Michael Wilhelmson argued that the Pearsons needn't have foreseen the theft of a vehicle in order for a duty of care to arise, but any number of personal injuries to intoxicated minors allowed to venture out on to the dark rural roads surrounding the house. However, Chief Justice Hinkson wasn't convinced:

"These harms may have all been possible, but my inquiry must focus on whether personal injury was foreseeable. I find that these harms were not foreseeable," he concluded, adding that he found neither Plambeck nor McCormick was intoxicated in any case.

Even if a duty of care existed, the judge found that the precautions taken by the parent hosts met the required standards.

"In my view, the standard proposed by the plaintiff is essentially one of perfection; anticipating all possibilities and avoiding any risks. That is simply not the way the world works. The duty is to act reasonably, not to act perfectly. It is never possible to eliminate all risks and the Pearsons were not required to do so," Chief Justice Hinkson wrote.

James Doyle, Guild Yule LLP

In an e-mailed statement, Wilhelmson, director at Vancouver's Harris & Brun Law Corporation, said his client is "obviously very disappointed," but has yet to decide whether to appeal.

"I certainly disagree anyone is looking for a standard of perfection," he added. "We sought accountability for what we say was foreseeable risk."

James Doyle, a partner at Guild Yule LLP who acted for the Pearsons, said the result "was the correct one."

"This terrible accident had tragic consequences for Calder McCormick and his family, but it has also weighed heavily on the Pearsons and everyone who lives in this tight-knit community," he added.

As reassuring as the result will be to insurers, Folick says that the fact-driven nature of social host cases means further claims are inevitable. If a court ever makes a finding of liability, he says it's most likely to come in a case involving intoxicated minors.

"When the party involves adults, it's an extremely tough row to hoe," Folick said. "But shifting into the minor forum, it is possible that in the future we will get a set of facts with parents who were not as diligent as the Pearsons were, or where the guests didn't walk to the party, or where the parents provided all the alcohol, and it could be judged a creation or exacerbation of the risk."