

A tall, slender glass filled with beer, set against a bright yellow background. The glass is the central focus, with the beer inside appearing golden and slightly hazy. The background is a solid, bright yellow, creating a high-contrast, warm atmosphere. The glass has a long neck and a wider top, typical of a beer stein or a similar style.

# **BEING SUED CAN RUIN A GOOD PARTY:**

**A Social Host's Guide To Understanding  
And Avoiding Alcohol Liability**

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# **BEING SUED CAN RUIN A GOOD PARTY:**

## **A Social Host's Guide To Understanding And Avoiding Alcohol Liability (Second Edition)**

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**Your hockey team won a tournament! Your best friend got engaged! Your son graduated from high school! To celebrate, you invite friends over for drinks. Your decision has important legal implications.**

**This brochure will help you understand your potential legal liability, safeguard your family and friends, and minimize the alcohol-related problems that generate civil suits.**

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## **YOUR PARTY: YOUR PROBLEM**

You want your party to be a good time – an opportunity for you and your guests to unwind. However, adding alcohol to any event raises important issues about your guests' safety and your liability.

Did you know that alcohol is involved in almost 40% of all traffic fatalities in Canada and that crashes are the leading killer of Canadians under 40? In 2003, alcohol-related traffic crashes were conservatively estimated to have resulted in more than 1,140 deaths, 67,400 injuries and 146,600 property-damage-only crashes (involving 222,900 damaged vehicles). The total financial and social costs of these losses were estimated to be as high as \$9.96 billion in that year alone.

The risks are not limited to driving. In Canada, 28% of fatally-injured cyclists, 38% of fatally-injured pedestrians, 56% of fatally-injured ATV operators, and 65% of fatally-injured snowmobile operators had been drinking, and most were legally impaired. Moreover, about 25% of suicides, 40% of boating and drowning deaths, 50% of violent crimes, and a significant percentage of residential fire deaths are alcohol related. While alcohol-related falls kill fewer Canadians than impaired driving crashes, such falls result in more people being hospitalized for longer periods of time. As a social host, you may be held partially liable for these deaths and injuries.

There are two major types of claims. First, you may be held liable for providing alcohol to visibly intoxicated individuals who subsequently injure themselves or others. Second, even if you do not provide any alcohol, you may be held liable as an occupier for any alcohol-related injuries that occur on your property.

## **BEING SUED AS A PROVIDER**

Although the term “provider liability” is widely used, it is somewhat misleading. No one has ever been held liable for giving, selling or serving alcohol in a reasonable manner, even if the person who was served later caused or suffered an alcohol-related injury. In other words, the law does not prevent you from serving alcohol or being a gracious host. Rather, liability has been limited to individuals who serve or provide alcohol to a person who they know or ought to know is already intoxicated.

Unfortunately, neither the legislation nor the courts have defined the term “intoxication”. Some courts have equated intoxication with a blood-alcohol concentration (BAC) of 0.08% – the level at which it becomes a federal criminal offence to drive. Nevertheless, all of the successful civil suits have involved drinkers whose BACs were almost double or more the 0.08% level. In virtually all of these cases, the individual was served even though he or she was visibly intoxicated or had already been given large amounts of alcohol.



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The courts have held that providers can be liable even if they do not serve the individual all or most of the alcohol causing his or her intoxication. For example, in *Schmidt v. Sharpe*, a bar was held liable for approximately \$1,500,000 because its staff served three drinks to an already intoxicated, underage patron, who subsequently caused a crash that left his 16 year-old passenger a quadriplegic.

Some older decisions indicated that over-service alone could give rise to liability, even if the provider was unaware that the patron was intoxicated or that he or she was likely to drive. More recently, the Supreme Court of Canada in *Stewart v. Pettie* narrowed this principle. The Court held that provider liability requires over-service of alcohol plus some other risk factor, such as obvious signs of intoxication or knowledge that the intoxicated drinker plans to drive.

## **What about a Private Social Host's Liability as a Provider?**

These provider liability principles were established in cases involving bars and other licensed establishments. However, a strong argument can be made that similar principles should apply to private social hosts. First, the provincial and territorial liquor legislation typically makes it an offence for anyone to sell, serve or give alcohol to a person who is, or apparently is, intoxicated. Second, the preventive goal of the legislation is obvious, and the risks are identical whether the provider is a bar or a private social host. Third, social hosts are more likely than commercial providers to know their guests' susceptibility to alcohol, and typically will have more opportunities to assess their guests' state of sobriety. Moreover, social hosts will usually have a broader range of options to safeguard an intoxicated guest, for example, by encouraging him or her to sleep over. Finally, social hosts can use their ongoing personal relationship with a guest to moderate his or her drinking and behaviour. As illustrated below, the earlier social host cases were consistent with the general principles of provider liability.

### *Baumeister v. Drake*

The Carefoots hosted a high school graduation party at their home for their son and 20 to 30 guests. After midnight, about 200 young people, including the plaintiff, crashed the party. Many of the uninvited guests had been drinking before they arrived and continued to drink their own alcohol at the party. The plaintiff, who was rendered a quadriplegic in a crash after the party, sued Drake, the intoxicated driver, and the Carefoots. The Carefoots were absolved of liability as providers because they had not given any alcohol to Drake, the plaintiff or any of the other young people. In resolving the case, the Court appeared to apply to the Carefoots the same principles of provider liability that applied to commercial licensed establishments. It was specifically stated that the Carefoots did not "permit, induce, encourage or enable" the plaintiff or Drake to get intoxicated. The Court also noted Mr. Carefoot's concerted efforts to discourage Drake from driving in his intoxicated condition.

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***Broadfoot v. Ontario (Minister of Transportation and Communications)***

Shortly after leaving the Jahier home, Mr. Broadfoot lost control of his car, crashed and was killed. Mr. Jahier had served the deceased several drinks, but the exact number was undetermined. However, there was no evidence that Mr. Broadfoot displayed any visible signs of intoxication. Neither Mr. Jahier nor Mrs. Broadfoot thought that Mr. Broadfoot was intoxicated, and his BAC was only slightly over the 0.08% level. The Court concluded that Mr. Jahier could not be held liable as a provider of alcohol. He did not know that Mr. Broadfoot was over the legal limit and he could not reasonably be expected to have known this in the specific circumstances.

***Dryden (Litigation Guardian of) v. Campbell Estate***

Parchem bought a bottle of rum for Campbell, which they consumed together in about 90 minutes while driving around in Campbell's truck. Parchem knew that Campbell was underage, had a drinking problem and often drove when severely intoxicated. After the first bottle was finished, Parchem bought a second bottle of rum for Campbell, which was almost full when he left it in Campbell's possession. In addition to drinking most of the remaining rum in the second bottle, Campbell had several more drinks at a nightclub. Shortly thereafter, Campbell, whose BAC was almost three times the legal limit, drove through a red light at 100km/h into the car in which Dryden was a passenger. Campbell and a passenger in the other car were killed, and Dryden was permanently and seriously injured. Parchem, as well as Campbell's estate, the owner of the truck and the nightclub, were all held liable to Dryden and his family for \$8.5 million in damages. Like the nightclub, Parchem was held liable for providing alcohol to Campbell, an underage, irresponsible driver who was obviously intoxicated.

As we shall discuss, the 2006 case of *Childs v. Desormeaux* involved a homeowner's potential liability for hosting an adult BYOB party. Nevertheless, the Supreme Court of Canada went on to suggest that social hosts who provide alcohol have no general obligation to discourage an intoxicated guest from driving, unless they actively created or increased the risk of drunk driving. For example, the Court stated that social hosts might be held liable for continuing "to serve alcohol to a visibly inebriated person knowing that he or she will be driving". Since the facts of the *Childs* case did not deal with provider liability, it remains to be seen if future courts will adopt such a narrow approach to a social host's liability as an alcohol provider.



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## BEING SUED AS AN OCCUPIER

Even if you do not provide any alcohol, you may face potential liability as an occupier for alcohol-related injuries that occur on your property or property you rent. An “occupier” is defined as anyone who has control over property with the power to admit or exclude others. Thus, you would be considered an occupier when hosting a party in your apartment, running a social at your service club or renting a hall for your daughter’s wedding.

Occupiers are not held liable for every injury that occurs on their property. Rather, they can only be held liable for negligently failing to safeguard entrants. As the following cases illustrate, occupiers must ensure that their property is reasonably safe in terms of the physical conditions, the people they allow to enter and remain, and the activities that they permit to occur.

### Liability for the Condition of the Premises

#### *Chretien v. Jensen*

The Jensens lived on an island connected to the mainland by a bridge that they had responsibility for building, maintaining and repairing. The bridge, which was about 20 feet above the river-bed, had a low guardrail made of logs but had neither handrails nor lights. As they had often done, the Jensens allowed their adult children to host a party for their friends, who brought and consumed their own alcohol. As in the past, the bridge was the gathering place for much of the socializing. Late in the evening, the plaintiff, who was very intoxicated, fell from the bridge onto a raft moored below and was rendered a paraplegic. The Court held that the Jensens were negligent as occupiers, because the bridge was unsafe for such alcohol-related gatherings. In particular, the Court was critical of the low guardrail and lack of handrails. Since the plaintiff was 40% contributorily negligent, the Jensens were held liable for 60% of the plaintiff’s losses.



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***Fryer v. Beta Theta Pi Alumni  
Assoc. of British Columbia***

The plaintiff was injured when he fell through a glass wall while dancing at a party hosted by the defendant fraternity. The glass wall was concealed by decorations, no warning was given as to its presence and no safety railing had been installed, despite a history of similar mishaps. In imposing liability, the Court emphasized that occupiers have a legal obligation to take positive steps to make their property reasonably safe for those permitted to enter. By concealing the glass wall without taking any safety precautions, the fraternity was negligent as an occupier. Due to the plaintiff's intoxication and irresponsible conduct, he could only recover 50% of his losses from the fraternity.



**Liability for the Conduct of the Entrants**

***Jacobson v. Kinsmen Club of Nanaimo***

The Club sponsored a “Bavarian beer garden” in a large curling arena. During the festivities, a patron climbed one of the I-beams supporting the roof, dropped his pants while hanging from the beam, and “flashed a moon”. Several minutes after his descent, he and a friend repeated the act. Shortly thereafter, a patron known only as “Sunshine” tried to mimic his more agile predecessors. Unfortunately, while hanging from the beam, he lost his grip and fell about 30 feet onto Jacobson, knocking him unconscious. Sunshine was not injured in the fall, except for the indignity of losing his pants. He got up, pulled up his pants and left. Jacobson sued the Club for allowing this unsafe conduct to take place.

The Court stated that the Club would not have been held liable if the injury had occurred during one of the first two climbs. However, by the time Sunshine acted, staff should have realized that such behaviour was dangerous. The Court concluded that, by not taking reasonable steps to stop Sunshine, the Club breached its duty as an occupier and was liable for Jacobson’s injuries.

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## Liability for Activities on the Premises

### *Stringer v. Ashley*

Stringer broke his neck diving from the Ashleys' second-storey bedroom window into their shallow swimming pool. Stringer and several other guests had dived or jumped into the pool between 10 and 22 times without incident. Mrs. Ashley had warned Stringer, who had at least six drinks at the party, not to dive. However, the jury held that simply providing a verbal warning to Stringer, who was obviously very intoxicated, was insufficient. According to the jury, Mrs. Ashley should have told Stringer to leave, stopped the party or called for help to dissuade Stringer. Mr. Ashley was held liable for failing to assist his wife. He should have asked Stringer to leave, locked the bedroom door or otherwise prevented further diving. Although Stringer was largely responsible for his own misfortune, the Ashleys were held 40% at fault for Stringer's \$5,000,000 in damages and thus were held liable for \$2,000,000.

In the preceding case, the specific danger was readily apparent to the occupier during the event. However, occupiers may also have some responsibility for simply allowing events to be held on their property that have previously been associated with violent, dangerous or irresponsible conduct. Indeed, this reasoning may have prompted a \$700,000 settlement in *Munier v. Fulton*, a case that arose from a "bush party" hosted by the defendant's son on the defendant's farm. Bush parties commonly involve underage drinking, severe intoxication, assaults, illicit drug

use, and impaired driving. The plaintiff in this case was left a quadriplegic following a fight that he had initiated at the event while intoxicated. Apparently, previous bush parties on the farm had also resulted in numerous problems. No formal invitations had been issued to the 300 youths who attended, nor did the defendant or his son provide any alcohol. The plaintiff sued the defendant as an occupier for merely allowing an event to be held on his property that he knew or ought to have known posed foreseeable risks of injury to those attending.



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## SOCIAL HOSTS & BYOB PARTIES

The courts have recently discussed whether hosts of adult BYOB parties have any responsibility for intoxicated guests after they leave the event. In such circumstances, hosts cannot be held liable as providers, because they do not provide any alcohol. Nor can they be held liable as occupiers, because no injury occurred on their property.

### *Childs v. Desormeaux*

Just after leaving a New Year's Eve BYOB party, Desmond Desormeaux crashed into a vehicle in which Zoë Childs was a passenger, killing her boyfriend and leaving her a paraplegic. Dwight Courier, a long-time friend and former housemate of Desormeaux, and Julie Zimmerman hosted the party. Both knew that Desormeaux had a severe drinking problem and drove while intoxicated. Desormeaux, a man of medium build, drank approximately 12 beers during his 2½ hours at the small party. His BAC was almost three times the *Criminal Code* limit for driving when he left the party. The trial judge held that Desormeaux was showing obvious signs of intoxication. Yet neither Zimmerman nor Courier, who walked Desormeaux to his car, did anything to discourage him from driving.

While Childs obtained partial recovery from Desormeaux, the Supreme Court of Canada rejected her claim against the social hosts. Surprisingly, the Court held that hosting an alcohol-related event does not create a risk of harm to guests or others that is sufficient to justify imposing a legal duty on the social host. The Court indicated that social hosts should be subject to narrower principles of liability than commercial licensed establishments. Accordingly, social hosts of BYOBs have virtually no legal responsibility for intoxicated guests who drive away and injure other users of the road.

The decision is troubling on several grounds. For instance, the Court's analysis of the risks of social hosting is inconsistent with statistics showing that there are more impaired drivers on Canadian roads coming from private homes than from commercial licensed establishments. In any event, the Supreme Court limited its comments in *Childs* to adult BYOB parties. As illustrated below, a broader duty is likely to be applied to BYOB parties involving underage drinkers.

### *Prevost (Committee of) v. Vetter*

The Vettters had a history of hosting large and loud parties in their home. While they did not provide any alcohol, they permitted both adults and minors to bring alcohol and become intoxicated. Mrs. Vetter had often taken steps in the past to protect intoxicated minors by inviting them to spend the night, taking their car keys or driving them home. On the night in question, Mrs. Vetter made no effort to supervise or intervene, even though she knew that the police had broken up the party and that the underage drinkers were about to leave. An underage niece of the Vettters who had become extremely intoxicated in their home crashed her car shortly after leaving, severely injuring Adam Prevost, one of her passengers. The trial judge stated that the Vettters' conduct in hosting underage drinking events in their home gave rise to a duty to protect the minors from the risks of impaired

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driving. The British Columbia Court of Appeal overturned the trial decision on largely technical grounds and ordered a new trial. The parties subsequently settled out of court.

## **OTHER BASES OF LIABILITY**

While the exact scope of alcohol liability continues to evolve, the trend until recently has been to expand liability. For example, in *Crocker v. Sundance Northwest Resorts Ltd.*, the Supreme Court of Canada held that organizers of potentially dangerous activities must take reasonable steps to prevent intoxicated individuals from participating. While this case has obvious implications for service clubs and other organizations that run snowmobiling, boating and similar activities, it is equally relevant to a private host who simply invites friends over for drinks around the backyard pool.

The Canadian courts have increasingly held staff of licensed establishments and others liable for using excessive or unnecessary force in subduing an intoxicated individual, even if his or her own conduct was provocative or irresponsible. The courts have also acknowledged that employers may be held liable for negligently failing to prevent alcohol-related injuries in the workplace and those arising from a company party or similar social event.



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## THERE ARE NO QUICK FIXES

Most of the proposals to reduce the risks of being sued focus on impaired driving, such as designated driver initiatives. These alternate transportation measures are a key component of an effective risk minimization plan. However, as we have seen, your legal vulnerability is not limited to impaired driving crashes. You need to adopt a broad approach that addresses the full range of your potential liability. With some common sense and planning, a host who adopts even basic precautions can dramatically reduce his or her risks of being sued.

## WHAT YOU CAN DO:

### Planning

- If there have been previous problems with a particular event or guest, take steps to avoid a recurrence of the problem.
- Large events, such as a family wedding, require considerable planning. Depending on the size of the event, consider hiring trained servers and staff.
- Do not combine alcohol with potentially dangerous activities, such as boating, snowmobiling, skiing, or swimming. If this is not possible, try to ensure that alcohol is available only after the physical activities are completed.
- Check the premises for potential hazards. Since drinking affects judgement, balance and co-ordination, a normally safe condition may endanger intoxicated guests. Even minor changes, such as locking the gate to the pool, replacing a burned-out light bulb or tightening a loose railing on the stairs, can significantly reduce your risks.
- Have a plan in advance to ensure that guests who become intoxicated can be taken home safely.



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## Serving

- Do not make drinking the focus of your party. Do not permit drinking competitions or other practices that promote intoxication.
- Make food available. Guests who have eaten absorb alcohol more slowly than those who have not, thereby lowering their peak blood-alcohol level.
- If you are providing alcohol, serve drinks rather than offering a self-service bar. A self-service bar may encourage heavy consumption and make it more difficult for you to keep track of your guests' drinking.
- Offer your guests non-alcohol and low-alcohol drinks.
- Do not encourage intoxication by serving double shots, extra-strong mixed drinks or extra-strength beer.
- Stop serving alcohol long before you expect the party to break up. It is simply not smart to serve people alcohol immediately before they drive or otherwise try to get home.



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## Supervising

- Refrain from drinking or drink moderately. The more you drink, the more difficult it will be for you to anticipate problems, supervise the event and intervene to avoid potential problems.
- Be attentive to your guests' behaviour and appearance. Be prepared to have a friendly word with a guest who is becoming intoxicated.
- Do not serve alcohol to a guest who is already intoxicated. Such conduct only increases the risks of a mishap and your chances of being sued. A guest may be significantly impaired and at risk well before he or she appears drunk.
- If your guests are endangering themselves or others on your property, you will be expected to take reasonable steps to defuse the situation. While the courts are unlikely to require you to intervene physically, a simple verbal warning to stop may not be viewed as sufficient.
- Remember that intoxicated guests may be at considerable risk, even if they are not driving.
- Arrange for a guest who may be intoxicated to be taken home safely or stay the night.
- If gentle persuasion fails, you may have to verbally insist that an intoxicated guest not attempt to drive home. Friends don't let friends drive drunk.



## CONCLUSION

**Being a good host means protecting your guests, yourself and others, as well as having a good time. The steps you take to protect your guests will reduce your likelihood of being sued. Your exposure to alcohol-related liability is largely in your own hands.**



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