

ALCOHOL, TEENS AND CATASTROPHE:



**WHAT EVERY PARENT
NEEDS TO KNOW ABOUT
AVOIDING ALCOHOL LIABILITY**

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ALCOHOL, TEENS AND CATASTROPHE:

**WHAT EVERY PARENT NEEDS TO
KNOW ABOUT AVOIDING ALCOHOL LIABILITY
(Second Edition)**

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CONSIDER THESE SITUATIONS:

You host a pool party and allow your son to invite some friends. You set out several coolers filled with beer, so that the guests can help themselves. When your friends leave, you plan to turn in for the night and leave your son and his friends to drink and party unsupervised.



Your daughter, who is almost legal drinking age, wants to have a New Year's Eve party for her friends at the family cottage. Past events there have been pretty wild, with lots of heavy drinking and unrestrained conduct. However, your daughter promises that she won't let people drive if they have had too much to drink.

One of the volunteer coaches of your son's hockey team calls you, indicating that the team wants to celebrate its victory in the under-18 tournament by having a party in the hotel hospitality suite. He is willing to get the pizza and asks you to pick up the beer.

Your son wants to buy a car and have it registered in your name to keep the insurance premiums affordable. You would like to help him, but he has previously been irresponsible about drinking and driving.

The decisions you make in these circumstances may jeopardize the safety of your children and friends, and have disastrous financial consequences for you. This brochure will help you understand your potential liability and take steps to avoid the situations that generate civil suits. As we will discuss, the most effective way to reduce your legal vulnerability is to minimize the risks of alcohol-related injuries and deaths.

APPRECIATING THE RISKS

Given the social acceptability of alcohol in most segments of Canadian society, it is easy to overlook the fact that alcohol is a drug and that its use is associated with significant risks.

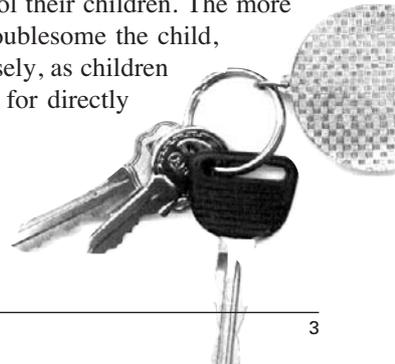
For example, alcohol is involved in almost 40% of all traffic fatalities in Canada, and crashes are the leading killer of Canadians under 40. In 2003, alcohol-related traffic crashes were conservatively estimated to have resulted in more than 1,140 deaths, 67,400 injuries and 146,600 property-damage-only 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. Unfortunately, 16-24 year-olds are over-represented in most of these statistics.

In addition to being inexperienced drinkers and inexperienced drivers, young people (particularly males) tend to be risk takers, in that they have relatively high rates of speeding and aggressive driving, and lower rates of seatbelt use. They also have the highest rates of weekly, monthly and total binge drinking (*i.e.* consuming five or more drinks on a single occasion). These hazardous patterns of alcohol consumption dramatically increase the likelihood of trauma deaths and injuries. For example, while 16-19 year-olds represented only 5.4% of the Canadian population in 2003, they accounted for 12% of the total alcohol-related traffic fatalities.

PARENTS, CHILDREN AND LIABILITY

Before turning to the specifics of alcohol-related liability, it is necessary to briefly discuss some of the general principles that govern parents' legal responsibility for their children's conduct. With the exception of the family car, parents are not held automatically liable for the losses or injuries that their children cause. Rather, parents can only be held responsible if they have been negligent in some way, such as in failing to properly supervise or control their children. The more hazardous the activity, and the younger and more troublesome the child, the greater the required care and supervision. Conversely, as children approach the age of majority, parental responsibility for directly supervising them generally decreases.



Although diminished, parental responsibilities do not necessarily cease when a child turns 18. For example, letting a young adult who has had no training or experience take his friends for a ride in the family's new speedboat might well attract liability if there were an ensuing crash. Obviously, parents would not be held liable for the injuries caused by an 18 year-old who was no longer living at home unless they somehow facilitated, encouraged or participated in the conduct causing the harm. Similar principles apply to teachers, coaches, counsellors, and others who work with children and young adults.

ALCOHOL-RELATED LIABILITY

There are two major types of alcohol-related claims. First, you may be held liable for providing alcohol to 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. While the courts will be more critical of alcohol-related events involving underage youth, this will likely be viewed as only one factor in determining liability. Thus, a father who gives his son's 17 year-old date a single glass of wine with dinner is most unlikely to be held civilly liable if she subsequently injures herself. Conversely, parents who ignore their daughter's drunken guests pushing each other off the diving board will not be immune from liability solely because the guests are over the legal drinking age.

LIABILITY 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 injury. Rather, liability has been limited to those who provide, serve or make alcohol available to a person who they know or ought to know is already intoxicated.

Some courts have equated the term "intoxication" with a blood-alcohol concentration (BAC) of 0.08% – the level at which it becomes a federal criminal offence to drive. Nevertheless, the successful claims have typically involved drinkers whose BACs were double or more this level. The courts will likely adopt a lower BAC threshold for underage, inexperienced or otherwise vulnerable drinkers.



Providers have been held liable even though they did 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 beers to Sharpe, an already intoxicated 18 year-old patron. Shortly after leaving the bar, Sharpe caused a crash that rendered Schmidt, his 16 year-old passenger, a quadriplegic. In imposing

liability on the bar, the jury specifically noted that Sharpe and Schmidt were served several beers, despite being underage, without being asked for any proof of age.

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. Nevertheless, the courts may impose a broader duty in the case of underage patrons.



What about a Social Host's Liability as a Provider?

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 home for their son and 20 to 30 guests. After midnight, about 200 young people, including Drake and 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, a passenger in Drake's car, was rendered a quadriplegic in a crash following the party. He sued Drake, who was intoxicated, and the Carefoots. The Carefoots were absolved of liability as providers because they had not given any alcohol to Drake, the plaintiff or any other young people. In resolving the case, the Court applied to the Carefoots the same principles of provider liability that applied to commercial licensed establishments. The Court specifically stated that the Carefoots did not "permit, induce, encourage or enable" the plaintiff or Drake to get intoxicated. It also noted Mr. Carefoot's concerted efforts to discourage Drake from driving in his intoxicated condition.

Dryden (Litigation Guardian of) v. Campbell Estate

Parchem bought a 26-ounce 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 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 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 nightclub and the owner of the truck, 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 or underage drinkers, future courts are unlikely to adopt such a narrow approach to social hosts providing alcohol to minors.

LIABILITY AS AN OCCUPIER

Even if you do not provide any alcohol, you may face potential liability as an occupier for 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 at home for your daughter's soccer team, running a teen social at the community centre or renting a hall for your son's engagement party.

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 those who may foreseeably enter. As the following cases illustrate, occupiers must ensure that the property is reasonably safe in terms of the conditions of the premises, the conduct of the entrants, and the activities they permit to occur.

(i) 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.



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.

(ii) Liability for the Conduct of the Entrants

McGinty v. Cook

A municipal conservation authority was held liable for more than \$210,000 after the McGinty family was assaulted by intoxicated youths. Although the park was advertised as a quiet family campground, the staff largely ignored the McGintys' complaints about the youths' noisy party. Later that evening, Paul McGinty was attacked when he responded to cries for help from the party. The intoxicated youths then viciously assaulted Gregory McGinty. The conservation authority was held liable as an occupier for negligently failing to control the assailants' conduct. Despite previous incidents with the group that summer and a violent confrontation earlier that evening, the staff did not eject the assailants or take any other steps to protect the other campers. The Court stated that, at a minimum, the police should have been called earlier in the evening and the quiet time should have been strictly enforced.

(iii) 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. He 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 it was not sufficient to simply warn Stringer, who was obviously very intoxicated. 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 found 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, in the past, 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.



SOCIAL HOSTS AND 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 Vettors 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

Vetters 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 Vetter's conduct in hosting underage drinking events in their home gave rise to a duty to protect the minors from the risks of impaired 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.

As the trial decision in *Prevost* suggests, parents who host or allow their children to host underage BYOB events on their property will likely be seen as owing a duty of care to protect the underage partygoers.

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. In addition to organizations that run snowmobiling, boating and similar activities, this case has important implications for parents who allow their children's friends to come over for drinks around the backyard pool.



CARS, KIDS, ALCOHOL, AND INSURANCE

As indicated, parents are not automatically held liable for the injuries caused by their children, with the exception of the family car. While the specific provisions vary from province to province, the general rules are similar across Canada. There are two principles that parents of driving-age children need to understand. First, as the owner of a vehicle, you are responsible for any damage or injuries that are caused by an “at-fault” driver who is driving with your express or implied consent. Second, if that driver is intoxicated or not legally entitled to drive, your insurance coverage may be dramatically reduced.

All car owners are required by law to purchase a minimum amount of “liability” coverage, which in most jurisdictions is \$200,000. If you or another driver of your car is in an at-fault crash, typically your insurance company will protect you from the other party’s claims for personal injuries and property damage up to your policy limit. This coverage also provides compensation for your personal injuries, those of your passengers, or, if you were not driving, those of the driver of your car. Many owners choose to purchase additional liability coverage to increase their policy limit to \$1,000,000 or more.

Moreover, many owners purchase “collision” coverage to ensure that if they or another driver of their car are in an at-fault crash, the damages to their own car will be covered, subject to the deductible in the collision policy.

If your child causes an at-fault crash while intoxicated, your insurance company is not required to compensate you for the damages to your vehicle, regardless of the collision coverage you purchased. It does not matter that you were unaware of your child’s intoxication or had repeatedly told him or her not to drive after drinking. In essence, the driver’s intoxication negates your “collision” coverage. It may also reduce some of the “no-fault” benefits that would otherwise be payable to the intoxicated driver. Depending on the jurisdiction, you may also be required to compensate your insurance company for any property or personal injury damages it had to pay out to the other parties. Thus, despite having bought ample collision and liability insurance, you may be legally responsible for the entire loss.

Although there is considerable variation in the provincial laws, your insurance coverage may be similarly negated or limited if the driver is unlicensed, prohibited from driving or has a suspended licence. The onus is on the owner to ensure that the driver is legally entitled to drive.

THERE ARE NO QUICK FIXES

Some events and patterns of behaviour dramatically increase your risks of being sued and held liable. A partial list would include: making large amounts of alcohol available to those who you know or ought to know are underage; organizing or hosting a bush party, an all-you-can-drink stag or similar event; allowing an underage drinking party to be held on your property; and lending your car to a person who might drink and drive. The only effective way to protect yourself from liability in these situations is to avoid them. In other words, there is no such thing, for example, as a safe bush party – these events are, by their nature, high risk.

Even if you avoid the preceding situations, there is no single measure that will eliminate all liability concerns. Most of the standard proposals to reduce the risks focus on impaired driving, such as designated driver initiatives. While these and other alternate transportation measures are very important, your legal vulnerability is not limited to impaired driving crashes. You need a broader approach that addresses the full range of your potential liability. Outlined below are some of the essential elements of a comprehensive risk minimization plan.

WHAT YOU CAN DO

Planning

- Ensure that your children and their friends understand your expectations concerning drinking, aggressive behaviour and driving.
- Use care in organizing youth events. Without a clear and limited invitation list, youth events can quickly grow and spiral out of control.
- If there have been previous problems with a particular event, group or person, take steps to avoid a recurrence.
- Large youth events require very careful planning and clear policies. Decide in advance who will be in charge of the event and who will be assisting in supervising and monitoring the guests. Depending on the size of the event, consider using an experienced manager, as well as trained servers and security staff.
- Do not combine alcohol with potentially dangerous activities.
- Check the premises for potential hazards. 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 reduce your risks.
- Have a plan in advance about how people will get to, and home from, the event.

Serving

- Do not serve, provide or make alcohol available to any person who is or may be under the legal drinking age. Not only is the conduct illegal (with few exceptions), it will also adversely colour a court's perception of your conduct.
- Do not permit drinking to be the focus of the party or event. Do not permit drinking competitions or other practices that promote intoxication.
- Make food available. People who have eaten absorb alcohol more slowly than those who have not, thereby lowering their peak BAC.
- Ensure that there is a variety of non-alcoholic drinks.
- If you are providing the alcohol, serve drinks, rather than providing an open bar. An open bar will encourage some people to drink excessively.

-
- Do not give youth unlimited and unsupervised access to alcohol, even at a BYOB event.
 - Stop serving alcohol or allowing it to be consumed long before you expect the event to break up. It is simply not smart to serve people alcohol or allow them to drink immediately before they drive or otherwise try to get home.

Supervising

- All of those responsible for running or supervising the event should 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 the guests' behaviour and appearance. Be prepared to have a friendly word with a person who is becoming intoxicated.
- Do not provide or make alcohol available 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.
- Arrange for a guest who may be intoxicated to be taken home safely or stay the night.
- Remember that an intoxicated guest may be at considerable risk, even if he or she is not driving home.
- If gentle persuasion fails, you may have to verbally insist that an intoxicated guest not attempt to drive home.

CONCLUSION

The number and kinds of alcohol-related civil claims have increased dramatically in Canada during the last 30 years. As a parent, you are not immune to these claims. Nevertheless, with some planning, common sense and basic precautions, you can dramatically reduce your exposure to liability. More importantly, these same measures will go a long way to protect your children and their friends from the substantial toll of alcohol-related injuries and deaths among Canadian youth.



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