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PRESIDENT'S MESSAGE

JUNE 2019



Finally! The weather is warming up, summer is just around the corner!

If you made it out for our May meeting, we hope you enjoyed the change in venue and meeting style. I was blown away with the Velocity and Communitex tours. What a cool and innovative way to collaborate, and it really gave an insight into the workplace of tomorrow. Plus, we learned about some really cool technology and new devices that could drastically change the way we look at insurance coverages and claims productivity.

Our annual John McHugh Memorial Golf Tournament is June 20, 2019. There is still time to register your foursome or be a hole sponsor. The best part about our hole sponsorship is all money for sponsorship goes directly to this year's charity, Nutrition for Learning! We are very excited to present our donation to Brain Banks from Nutrition for Learning at our dinner following the day of golfing. Plus, we will be drawing for our Facebook challenger winner! Check out Kitchener-Waterloo OIAA on Facebook and follow the contest directions for your chance to win a \$100 VISA gift card!

As always, if your company or organization have a celebration coming up or a special event or maybe even a promotion or new hire you want to celebrate or have showcased, let us know! We want to help you get the word out in our bulletin.

Have a great summer everyone! We are already in planning mode for our 2019-2020 year!

**Thank you,
Carrie Keogh
President of K-W OIAA**

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concerns or comments, please do
not hesitate to contact any of the
above committee members.**

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SOCIAL CHIT CHAT



June 2019



Well it looks like summer should be arriving just in time for the OIAA KW chapter golf tourney on June 20th!

As you likely all know, the golf tourney is the final event of this year's OIAA KW social calendar and this issue of the chapter bulletin is the last one until September. Hopefully we'll see many of you at Ariss Valley to offer our best wishes for a wonderful summer but in case we miss you, on behalf of Ashleigh Leon and myself, we hope that all of our amazing social members and their families have a safe and relaxing summer.

Now back to the subject of the golf tourney! There are still hole sponsorships and foursomes available so let's do our best to raise more than last year for this year's charity. Nutrition for Learning's mission is to support overall child well-being and the ability to learn, by ensuring that every student has the opportunity to attend school well nourished. You can learn more about this very worthwhile organization at www.nutritionforlearning.ca.

See you on the 20th!!

Kindest regards,
Your Social Director,
Randy Henderson





PROVINCIAL DELEGATE REPORT



Well that's a wrap, the 2018- 2019 year at the provincial level has wrapped up.

The year was a good one but not without its challenges. I am thankful for all of the opportunities I have had working with the Michael McLeod and the OIAA executive. There are a lot of great people, great ideas and great friendships too be had. I look forward to the remainder of my term as Provincial delegate.

The next 2019 provincial event will be the September kickoff. Details are yet to be determined.

Have a safe and happy summer!

Regards,

Jennifer Brown

K-W OIAA Chapter, Provincial Delegate





The K-W OIAA is pleased to be hosting the John McHugh Memorial Golf Classic at Ariss Valley Golf and Country Club. Please join us for a day of golf and fun among your industry friends. Every year the K-W OIAA president chooses a charity to be the beneficiary of a generous donation that will greatly assist that organization. This year the chosen charity is **Nutrition for Learning**.

PLEASE REGISTER ONLINE: <http://www.kw-oiaa.ca/>. REGISTRATION DEADLINE IS WEDNESDAY JUNE 12, 2019.

Itinerary for Thursday June 20, 2019:

- 8:30am Registration Opens - Breakfast
- 10:00am Shot Gun Start
- 12:00pm Lunch on the turn
- 4:00pm Approximate time for dinner

Players Golf Package

\$155 HST inclusive per person, Fees include one round of 18 holes of golf, use of a cart, breakfast, lunch and dinner. A team of 4 will be \$620.00

Other Options:

- All Day Food Tickets: \$50 (Breakfast, lunch and dinner)
- Dinner Only Tickets: \$35

Sponsorship

A generous donation will be made to **Nutrition for Learning** from all hole sponsorships.

Hole Sponsorship (2 types) is available for \$225. A prize hole (longest drive/ closest to the pin) requires sponsors to bring both a male and female prize in addition to sponsoring the hole. A non-prize hole has no additional requirements. ****Please note:** You are responsible for providing your own tent, table and chairs.

Title Sponsorship is also available should you be interested:

- You may display your banner at this portion of the event should you sponsor these.
- Breakfast Sponsor- \$500
- Lunch Sponsor- \$1000

Door Prizes are also a welcomed and are drawn for at the dinner. If you are donating a door prize, please advise Carrie Keogh (ckeogh@goremutual.ca) or simply bring it with you with a business card attached to it.

Questions? Please contact:

- Carrie Keogh (ckeogh@goremutual.ca) or by phone 800-265-8600 Ext 2545
- Jaime Renner (jaime.renner@economical.com) or by phone 519-570-8500 Ext 43031

K-W OIAA John McHugh Memorial Golf Classic

ARISS VALLEY GOLF AND COUNTRY CLUB Thursday June 20, 2019 - Shot Gun Start at 10:00am



REGISTRATION DEADLINE IS WEDNESDAY JUNE 12, 2019.

*****Please note that soft spikes and dress code will be strictly enforced*****

Directions

Ariss Valley Golf and Country Club is located just outside of Guelph on Road #86 (Elmira Road). They are #5700 on Road #86 North of Guelph between Marden Road and Country Road 51. Phone- 519-824-1551

Player 1

Name: _____
Employer: _____
Telephone: _____
Email: _____

Player 2

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Player 4

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I would like to sponsor a hole (\$225) _____
I would like to sponsor breakfast (\$500) _____
I would like to sponsor lunch (\$1000) _____
I would like to donate a door prize _____

Other Ticket Options

Extra Breakfast, Lunch and Dinner tickets at \$50 per person. _____
Extra Dinner Ticket at \$35 per person. _____

Payment Information

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Occupiers' Liability: Look out for Sk8er boy

By Laura Emmett



The Ontario Court of Appeal recently weighed in on the *Occupiers' Liability Act* and the appropriate evidence admissible on a motion for summary judgment motion. In *Drummond v. The Cadillac Fairview Corporation Limited*, the Plaintiff attended Fairview Mall with his family. While there, he was injured after he tripped over a skateboard that belonged to a young boy. The Defendant brought a motion for summary judgment to dismiss the action. Although the Plaintiff did not bring a cross-motion, the Motion Judge granted judgment in favour of the Plaintiff.

The Defendant filed an appeal on three grounds – (1) the judgment was the product of an unfair process; (2) the Motion Judge admitted inappropriate hearsay evidence; and, (3) the Defendant's summary judgment motion should have been granted. Fairview was successful on all three grounds.

First, the Court of Appeal found that the Motion Judge's decision was not a "fair and just determination." The Court of Appeal noted that the Plaintiff did not bring a cross-motion for judgment and argued in his factum that a trial was required to determine liability. Specifically, one of the reasons advanced in opposing the motion was that the case would be more fairly and justly determined at trial because further evidence from additional witnesses was needed. The Court of Appeal was also critical that contributory negligence, which was raised by the Defendant, was not considered by the Motion Judge. Finally, the Judge failed to put the Defendant on notice and in doing so, failed to afford the Defendant an opportunity to address litigation risk. The Court of Appeal concluded that the lack of procedural fairness on the motion was a sufficient basis to allow the appeal.

Second, the Court of Appeal found that the Motion Judge erred in admitting hearsay evidence for the truth of its contents. Specifically, the Court of Appeal accepted the Defendant's submission that the Judge's finding was grounded on his erroneous admission of hearsay evidence on key, contested issues. This error constituted an additional reason to set aside the Judgment.

Finally, the Court found that Fairview was entitled to summary judgment. The central issue was whether the Defendant breached its duty to take reasonable care for patrons visiting the mall. Once the inadmissible hearsay evidence was removed

from the negligence analysis, the remaining material evidence was all from the Defendant. This evidence established that: (1) Fairview had in place reasonable policies to ensure the safety of those entering the premises; (2) Fairview implemented policies in a routine and reasonable manner on the day of the incident through the patrols by the security guards; and, (3) Fairview had no reason to foresee that the young skateboard owner's conduct might pose a risk to the Plaintiff or any other patrons.

Unsurprisingly, the Court of Appeal decided that an occupier was not responsible for the actions of a guest on a property if the occupier put in place sufficient means in an attempt to decrease risk. Although there are always risks that are foreseeable, which ought to be addressed by the owner or occupier of a premises, there are other risks that are created by the actions of visitors that the occupier simply cannot foresee and cannot prevent.

See Drummond v. Cadillac Fairview Corporation Limited, 2019 ONCA 447 (CanLII), <<http://canlii.ca/t/j0ln>>.

Laura has a diverse practice where she focuses on accident benefits, bodily injury claims, product liability, cyber liability, privacy law and drone liability. lemmett@sbalawyers.ca

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To Serve or Not to Serve: An Update on Social Host Liability in Ontario



Authored by:

James Prior
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While *Childs v. Desormeaux*, 2006 SCC 18 (CanLII) (“*Childs*”) remains the leading authority on social host liability, the Ontario Court of Appeal recently provided additional guidance on how liability is to be assessed in social host cases in *Williams v. Richard*, 2018 ONCA 889 (CanLII) (“*Williams*”).

In *Williams*, Mark Williams became intoxicated after consuming approximately 15 cans of beer in about three hours while visiting his friend and colleague, Jake Richard, at Mr. Richard’s mother’s house. Shortly after leaving the Richard residence, Mr. Williams loaded his children and their babysitter into his car and drove the babysitter home. Although Mr. Richard claimed to have told Mr. Williams he would call the police if he were to drive with his children in the car, he took no further steps to prevent Mr. Williams from driving. On the way back to his own house, Mr. Williams was involved in a serious collision in which he passed away and his children suffered injuries.

Lawsuits were commenced by Mr. Williams’ children and their mother against both Mr. Richard and his mother. In response, Mr. Richard and his mother successfully brought summary judgment motions, with the motion judge dismissing the claims on the basis that the requisite duty of care had not been established and that even if it had, such duty of care would have ended once Mr. Williams safely arrived home to pick up his children and their babysitter.

On appeal, the Court of Appeal overturned the decision dismissing the claims and, in doing so, provided a useful overview of the duty of care

analysis that is to be applied in social host liability cases.

First, it must be determined whether the facts of a particular case fall within one of the three examples identified by the Supreme Court of Canada in *Childs* as situations in which a positive duty to intervene to prevent an individual from causing harm to others exists:

- (i) Where a defendant intentionally attracts and invites third parties into an inherent and obvious risk that he or she has created or controls;
- (ii) Paternalistic relationships of supervision and control; and
- (iii) Where a defendant exercises a public function or engages in a commercial enterprise that includes implied responsibilities to the public at large.

In *Williams*, the Court of Appeal emphasized that common to the above three situations is “the defendant’s material implication in the creation of risk or his or her control of a risk to which others have been invited”. The Court of Appeal explained that there are two primary issues at the heart of this analysis, including:

- (i) The host’s specific knowledge of the level of intoxication of his or her guest; and
- (ii) The presence of “something more” to create a positive duty to act.

Knowledge of the Level of Intoxication

A social host’s knowledge of his or her guest’s level of intoxication is critical to determining the foreseeability of a guest’s potentially harmful actions.

In *Williams*, Mr. Williams consumed 15 cans of the host's beer in the host's garage with no other guests present. Further, Mr. Williams made comments about having to drive upon leaving the host's property. On such facts, it was quite clear that the social host had knowledge of Mr. Williams' level of intoxication.

Presence of "Something More"

The next question that must be considered is whether "something more" exists that creates a risk that requires a positive duty to act. Factors to consider on this aspect of the analysis include the following:

- (i) Whether alcohol is served or supplied, or whether guests bring their own;
- (ii) The size of the gathering;
- (iii) The participants involved in the gathering;
- (iv) The type of party/gathering (and whether other risky behaviour was occurring at the party/gathering);
- (v) Underage drinking; and
- (vi) Drug use.

In *Williams*, the Court of Appeal explained that social host liability cases can be viewed on a spectrum. At one end of the spectrum would be a "bring your own alcohol" party where the social host provides minimal alcohol, which courts have held is not inherently risky. At the opposite end would be a scenario in which a young person throws a large house party with many underage drinkers while their parents are out of town. The facts in *Williams* can likely be said to have fallen somewhere in the middle of this spectrum.

Appeal Decision

Ultimately, the Court of Appeal allowed the appeal and remitted the case to trial, holding that there was enough conflicting evidence that there was a genuine issue requiring a trial as to whether it was reasonably foreseeable that Mr. Williams would drive his children and their babysitter home after leaving the Richard residence. The motion judge also failed to consider the factual differences between the scenario in *Williams* and the other decided cases along the above-referenced spectrum, nor the comments from the case law that a host that continues to serve alcohol to a visibly inebriated person knowing that he or she will be driving has become implicated in the

creation or enhancement of a risk sufficient to give rise to a duty of care to third parties. As such, the Court of Appeal held that the facts in *Williams* gave rise to a genuine issue requiring a trial as to whether Mr. Richard, as a social host, may have invited Mr. Williams into an inherently risky environment that he controlled and created, thereby creating a positive duty of care.

With respect to the claim against Mr. Richard's mother, the Court of Appeal found that there was conflicting evidence as to whether she knew that her son and Mr. Williams habitually drank on her property and that Mr. Williams would be driving while intoxicated on the evening in question. The Court of Appeal held such factors could potentially implicate Ms. Richard in the creation or control of an obvious and inherent risk, thereby opening her up to the possibility of a duty of care.

Finally, the Court of Appeal also found that the motion judge misinterpreted the case law as establishing a general rule that a duty of care ends when an impaired driver returns home safely. To the contrary, in social host liability cases, there is no automatic rule that the duty of care expires once an impaired driver arrives home safely. Rather, the limits of the duty are determined by the unique facts of each case.

Key Takeaways

The decision in *Williams* makes it clear that the duty of care analysis in social host liability cases is extremely fact-driven, with the Court of Appeal noting that "there is no clear formula for determining whether a duty of care is owed by social hosts to third parties or guests". That said, what is made clear by this case is that given the right fact pattern, a social host may owe a duty of care to injured third parties.

James Prior is a Partner in the Waterloo office of Miller Thomson LLP. His practice focuses on insurance defence, including the defence of personal injury and property claims, as well as commercial general liability and subrogated recovery matters.

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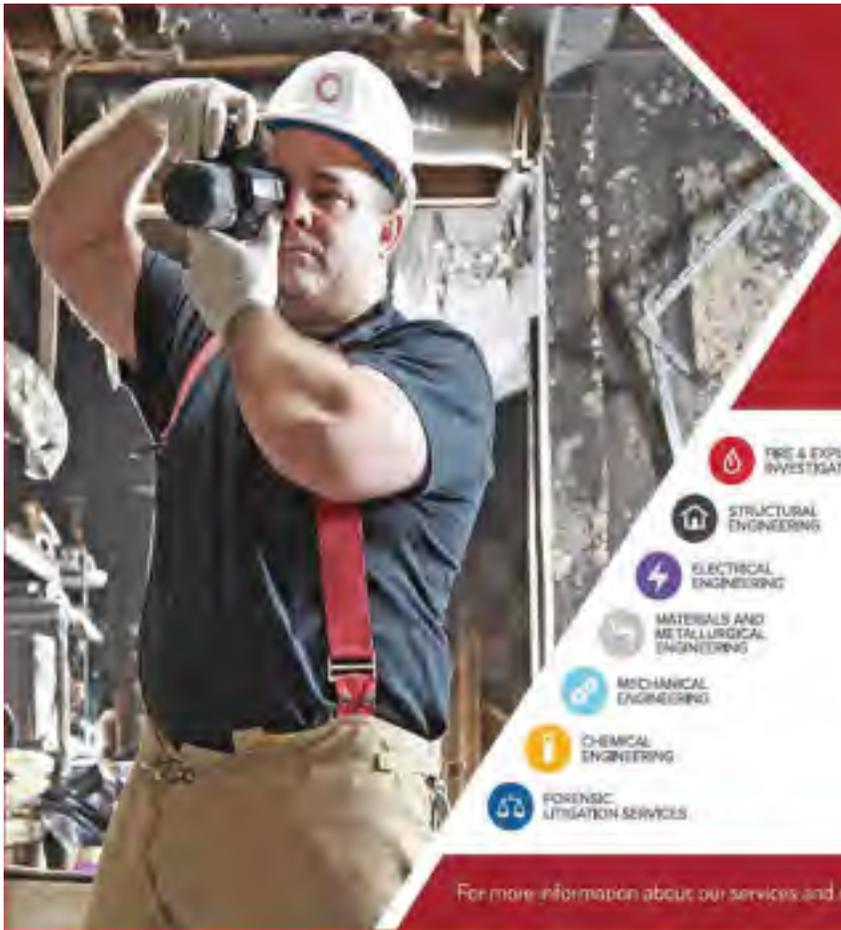
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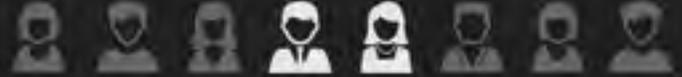
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