



## Welcome

Welcome to the inaugural issue of *The Law and You*. This newsletter has been created for you. It will give you information about the law and the role it plays in your day to day life. As you know, the law can be a real puzzle. We want to help you solve that puzzle and cut through the legalese with reader friendly articles. And to provide even more resources we have created a companion website at [www.lawandyou.org](http://www.lawandyou.org)

The focus of this inaugural newsletter is on two areas that have been making headlines of late. The first is the liability of social hosts for their guests. The second is living wills. There are a number of myths about both these topics. *Guests Who Drink and Drive* and *Who Will Make Your Decisions For You?* give you the facts you need to make informed choices in both these areas.

This is your newsletter and we want to know what legal topics interest you. So send us your comments, your questions and your ideas for future articles. We hope you enjoy *The Law & You* and that it becomes a valuable reference tool. ⚖️

Kimberly Walsh, B.A. LL.B.  
Editor

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## Who Will Make Decisions For You?

### What is a power of attorney for personal care?

A power of attorney for personal care is a written direction authorizing someone (the attorney) to be your substitute decision maker in the event you cannot make decisions about your health, medical treatment and personal care.

### Who can be an attorney for personal care?

With the exception of your paid health care workers, your attorney for personal care can be anybody over the age of 16, including your spouse, a relative or a trusted friend.

### What kind of decisions can your attorney for personal care make?

Your attorney can make all decisions related to your personal care and health. The type of decisions could range from what you should eat, to where you should live, to whether you should see a doctor.

### When will your attorney for personal care make decisions on your behalf?

Your attorney will make decisions only if you become incapable of making them for yourself. This will generally be determined by an evaluator, usually a social worker.

### What is a living will?

A living will is a directive that you may include in your power of attorney for personal care. Such a directive provides information and direction about the type of medical treatment that you do and do not want in the event you are unable to speak for yourself.

### What if you don't have a power of attorney for personal care?

If there is no power of attorney for personal care someone must apply to the court to be appointed your substitute decision maker. This is an expensive and time consuming process.

Although there will be instances where the public guardian and trustee will be asked to step in, the law is clear that this should be a last resort.

What if I do not live in Ontario?  
The above information deals specifically with the law in Ontario. However, the gist of the information is reasonably similar to what exists in other provinces. For information about the law in other provinces visit our website at [www.lawandyou.org](http://www.lawandyou.org). A lawyer can also answer your questions. ⚖️

**Bottom Line**

Don't leave your family in a lurch. Make a power of attorney for personal care while you are healthy and capable.



# Guests Who Drink & Drive

Over the last few decades, the public has developed a heightened awareness about the dangers of mixing alcohol with driving. More recently people have become concerned about their liability for guests who drink and drive. This issue was addressed by the Supreme Court of Canada earlier this year.<sup>1</sup>

## The Facts

Julie and Dwight decided to host a New Year's Eve party. Not wanting to spring for the booze, they made it BYOB. A number of guests attended the party, including Dwight's friend Des, who was known to be a heavy drinker. At midnight, Julie and Dwight served their guests a small glass of champagne to toast the New Year.

About 1:30 a.m. Des and his two friends decided to leave the party. Des assured Dwight that he was fine.

On the drive home, Des swerved into oncoming traffic and crashed head-on into a car carrying four teenagers. One of the teens was killed, one, Zoe, was left a paraplegic and the other two were seriously injured. At the time of the accident Des' blood alcohol was .225, almost three times the legal limit.

## The Lawsuit

Zoe sued Julie and Dwight. She claimed they were liable for the damages caused by Des' decision to drink and drive.

Both the Ontario Court of Justice and the Ontario Court of Appeal dismissed her case. Zoe appealed to the Supreme Court of Canada. The Supreme Court of Canada also concluded that the hosts, Julie and Dwight, were not liable for Zoe's injuries.

## Duty of Care

In our society, a general concept has developed whereby one has an obligation - a *duty of care* - not to injure one's "neighbour". A "neighbour", in this context, is any person that one should reasonably realize would be closely and directly affected by one's actions.

The Supreme Court of Canada had to decide whether Zoe was Julie and Dwight's "neighbour" and whether they owed her a duty of care. To make this determination, the high court had to consider whether there was a sufficiently direct link between the hosts and the users of the highway. In other words, from Julie and Dwight's perspective were the accident and Zoe's injuries reasonably foreseeable consequences of their decision to host a BYOB party?


The Supreme Court concluded that the necessary proximity had not been established. Since Julie and Dwight did not know that Des was too drunk to drive (there was no evidence that Des was showing signs of intoxication), neither the accident nor Zoe's injuries were reasonably foreseeable. But the Court went further, stating, "... where

*the conduct alleged against the defendant is a failure to act, foreseeability alone may not establish a duty of care.*"

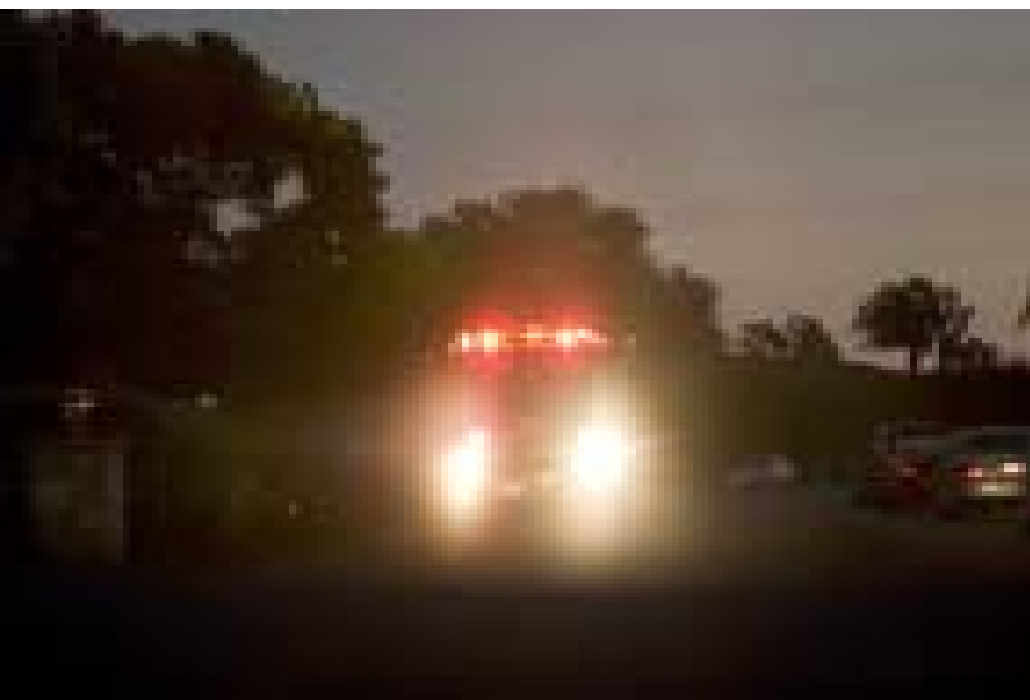
The Court also noted that, "Although there is no doubt that an omission may be negligent, as a general principle, the common law is a jealous guardian of individual autonomy. Duties to take positive action in the face of risk or danger are not free-standing. Generally, the mere fact that a person faces danger, or has become a danger to others, does not itself impose any kind of duty on those in a position to become involved."

In essence, the law recognizes that individuals are autonomous beings and although that autonomy is not absolutely protected, it should be respected. Therefore, Des remained responsible for his conduct and it was not Julie or Dwight's responsibility to watch out for him. Unlike a commercial establishment, neither the government nor the public expect a private social host to monitor their guests' intake of alcohol or to prevent intoxicated guests from driving.

## Final Thoughts

While this decision is reasonably definitive that a social host is not liable for a guest who drinks and drives, the Court did not close the door entirely on the issue. The Court stated, "It might be argued that a host who continues to serve alcohol to a visibly inebriated person knowing that he or she will be driving home has become implicated in the creation or enhancement of a risk sufficient to give rise to a prima facie duty of care to third parties, . . ." 

<sup>1</sup>[Childs v. Desormeaux \[2006\] 1 SCR 18](#)



## Bottom Line

As a general rule, if one of your guests drinks and drives you will not be responsible if that guest injures another.



The Law & Your Family



The Law & Your Property



The Law & Your Business



The Law & Your Estate



### What's in the November/December Issue

#### 'Tis the Season

The holiday season is around the corner, so this is a good time to talk about the law of gifts. [This article is available to subscribers only.](#)

#### Buyer's Rights

Read our buyers' rights primer before you begin your holiday shopping. [This article is available to subscribers only.](#)

#### Where There is a Will There is a Way

Start 2007 out right, resolve to make/update your will. [This article is available to subscribers only.](#)

#### Good One

A jury brought in a verdict of not guilty explaining, "It was an act of God under very suspicious circumstances."  
*-Milton Berle*

#### In the Next Issue

Slip & Fall: It's that Time of Year!

After the Separation: Access for Grandparents

### In the News

Ontario government to introduce legislation eliminating expiry dates for store gift cards.

[Click here for more](#)

Ontario government introduces new seat belt legislation.

[Click here for more](#)

### Newsletter Links

Powers of Attorney for Personal Care Across Canada

Childs v. Desormeaux

Identity Theft

Lawyers Without Borders

Provincial lawyer referral services

## More on lawandyou.org



### Law Around the World

There are many parts of the world where the legal systems are inadequate to say the least. It is important we be aware of this.



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Discover the World Wide Web's endless source of legal links and information.



### Featured Article

Occupier's Liability. Find out your rights if you hurt yourself on another's property.

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## Some of our favourite lawyer stories



### The Street Lawyer by John Grisham

Moved by a crisis of conscience, lawyer Michael Brock seeks out the gravel-throated, streetwise legal aid counselor Mordecai Green. Green shows him the ropes, and Brock soon becomes part of the scenery he used to look down on from his plush 14th-floor office. [Purchase](#)



### Undue Influence by Steve Martini

A vicious custody battle escalates into a murder trial in this gripping courtroom drama, Martini's third to be narrated by defense attorney Paul Madriani. [Purchase](#)

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# The Last Word

## Protect Yourself Against Identity Theft

- When asked to provide personal information ask how it will be used, why it is needed and how it will be safeguarded.
- Avoid solicitations disguised as promotions or surveys and offering instant prizes. These may have been designed solely for the purpose of obtaining your personal details.
- Shred personal financial information, including pre-approved credit card applications.

For additional information and tips to protect yourself and for additional information about Identity theft visit our website at [www.lawandyou.org](http://www.lawandyou.org) ⚖️

## We want to hear from you!

Do you have comments questions or topics you would like to see in an upcoming issue? If so contact us.

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*The Law & You* offers general comments on legal matters of concern to business and individuals. The articles **are not intended to provide legal advice or opinions and readers should seek professional legal advice on the particular legal issues which concern them.**

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## The Law Around the World

### Children Inheritance Research Project

You are no doubt aware of the HIV/AIDS epidemic sweeping through much of Africa. This terrible disease is leaving millions of children orphaned. But what you probably did not know is that many children are also losing their family's land. The reason for this injustice is that a parent's will cannot be executed while a child is a minor.



Lawyers Without Borders, in conjunction with Africare, is spearheading the *Children Inheritance Research Project*. This project is aimed at providing pro bono legal training and assistance to [Rwanda](#), [Tanzania](#), [Uganda](#) and [Mozambique](#) to rebuild legal systems for the enforcement of wills and other inheritance contracts.

To learn more visit [www.lawyerswithoutborders.org](http://www.lawyerswithoutborders.org) or [www.africare.org](http://www.africare.org) ⚖️

## Reader Question

### How do I find a lawyer?

If you require the services of a lawyer, there are several ways to find one.

#### Yellow Pages

Most lawyers and law firms advertise in the Yellow Pages and they often indicate the areas of law they practise in.

#### Lawyer Referral Services

Most of the provincial law societies operate a lawyer referral service. The service will provide you with one or more names of lawyers located near you. Often you will be able to consult with a lawyer in your area for 30 minutes for a nominal fee. For links to the provincial lawyer referral services visit [www.lawandyou.org](http://www.lawandyou.org)

#### Family, Friends & Colleagues

Perhaps the best way to find a lawyer is to ask a family member, a friend or a colleagues for a referral. ⚖️

If you have a legal question  
e-mail it to: [readerquestions@lawandyou.org](mailto:readerquestions@lawandyou.org)