

Tragedy

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> In our system of justice, the personal losses arising from unfortunate events lie where they fall unless there is a legal basis for transferring responsibility for them to another person. — Justice Lauwers, *Greenhalgh v. Douro-Dummer (Township)*, 2009 CanLII 71014.

Let us set the stage. In 1998, the Township of Douro-Dummer, a rural municipality in Ontario, consisted of about 6,500 souls. The township included farmland, marginal land, and wilderness. Two-thirds of the Township's 265 kilometres of roads were gravel, including Rusaw Lane. Rusaw Lane, about 1.4 kilometres long, terminated in a cul-de-sac or a turnaround. There were 55 dead-end roads in Douro-Dummer, 26 of which were signed with a single "No Exit" sign and a dead end sign. Three had only a checkerboard sign. The remaining 26 dead-end roads, including Rusaw Lane, were unsigned. The municipality's practice was to place a sign if there was a "hazard," described as a lake, a cliff, or a dropoff.

On January 14, 2000, Jessica Greenhalgh was 18 years old; her passenger, Robyn LaDuke, was 20 years old. That evening, they had been out socializing and drinking with friends and made a quick visit to the local drug dealer, who was not at home. They decided to drive down Rusaw Lane for reasons that were unclear. Jessica's car got stuck on a rock as they were trying to turn around after realizing the road was a dead end. Robyn's cell phone's battery died. Both had been on that road before (a witness testified they had been stuck in much the same way on that road previously). The two decided to walk back the way that they drove in. It was dark. There was no moon. The temperature was minus 20 degrees Celsius. Robyn had on a hat, coat, mitts and boots; Jessica was dressed in a T-shirt, sweater, vest and boots, but had no hat, mitts, or gloves. The car was equipped with an emergency kit, blankets and spare clothing. The two soon got lost. Jessica broke through some ice and ended up in water that was thigh-high. She extricated herself from the water but in the process lost her boots and her socks, and continued walking in bare feet.

They were found the next morning and taken to hospital. Jessica suffered particularly bad frostbite injuries: both legs were eventually amputated about mid-calf, and she also lost parts of four fingers on each hand. Robyn lost her big toes and parts of other toes.

Jessica and her parents sued the Township, claiming that it negligently, and in breach of its statutory duty to keep the road in a state of repair, failed to erect two "No Exit" signs at the intersection of Rusaw Lane and a county road, and a checkerboard sign to signal the end of Rusaw Lane. The defendant municipality's position was that the plaintiff knew the road was a dead-end and ought to have known that she was driving off Rusaw Lane onto a private lane but did not because she was intoxicated and/or high on drugs, and would probably not have heeded any signs posted at the entrance to the road.

The defendants' evidence at trial concerned the practice of "back road tours" that involved exploring along back roads, just driving around to find a secluded place to hang out. The trial court accepted that on January 14, 2000, the "likelihood [was] that [Jessica and Robyn] were on a form of back road tour." According to witnesses who found the car, the car had two cooler bottles sitting empty on top of the car. Inside the car were "six to eight" empty beer bottles and a 1.5 L wine bottle with some wine in it. The car "smelled strongly of alcohol." The trial judge, however, concluded that alcohol intake did not play a critical role in the events of the evening. The judge did, ultimately, find that the plaintiffs failed to show a causal relationship between the absence of the "No Exit" and checkerboard signs on Rusaw Lane and the injuries suffered by Jessica. The Township of Douro-Dummer was, therefore, not liable. *Greenhalgh v. Douro-Dummer (Township)*, 2009 CanLII 71014 (Ont. S.C. J. Dec. 17, 2009). (The separate ruling on costs is reported at *Jessica Greenhalgh, et al. v. The Corporation of the Township of Douro-Dummer*, 2011 ONSC 2064.)

The case was appealed to the Ontario Court of Appeal: *Greenhalgh v. Douro-Dummer (Township)*, 2012 ONCA 299 (Ont. C.A. May 08, 2012). That court affirmed and dismissed the appeal. The trial judge had made "a clear finding that there were no 'conditions upon or adjacent to the highway that [were] potentially dangerous to the road users' at the end of, or immediately beyond the end, of Rusaw Lane that would not have been apparent to a reasonable driver (whether or not experienced) and accordingly required an advance warning. There was ample evidence on the record to support this finding and we see no palpable or overriding error on the part of the trial judge in arriving at it." The trial judge also made a clear finding that Ms. Greenhalgh and Ms. LaDuke would have paid no heed to "No Exit" signs posted at the intersection of Rusaw Lane and the county road, or to a checkerboard sign at the end of Rusaw Lane. "They would have continued on their adventure in any event. Again, there was ample evidence on the record to support this inference." IMLA Canadian Department Chair, **David Boghosian**, represented the municipality in this case. **ML**