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## THE BIG PICTURE

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During a recent early morning ride I pondered the nature and purpose of our tort (civil wrong) system, the public's perception of lawyers and the legal system, and the social purpose underlying litigation. In short, "the big picture". Normally I am able to confine this legal brief to the facts of accidents involving cyclists and motor vehicles, and the application of the law to those facts. However, this time, and perhaps this time only, I ask for your indulgence while I sally forth into the very heart of what I do.

Most people derive a perception of law and lawyers from two sources. First, friends and family members who have had a legal "experience". Second, American and to a lesser extent Canadian and English television shows depicting the fictitious existence of plaintiffs, defendants, lawyers and judges. Were one to draw solely on these sources of information about the law, one might readily conclude that the legal system is completely out of control. Certainly, in light of celebrity lawyers and celebrity trials and morally vacuous decisions, which seem to be routine south of the border, I might even be inclined to agree that a terrifying future would be one in which everyone would be a lawyer for 15 minutes. However, whenever I hear concern approaching despair, I am always quick to remind people that we live in an English common law jurisdiction whose laws are rooted in 800 years of judicially considered human experience.

And if you were to ask any English common law student or lawyer what is the most famous case of all time, they would tell you, without hesitation, *Donoghue v. Stevenson*. In my respectful view, this case is like no other.

In 1928, May Donoghue, an impoverished woman of modest means but much determination, took a tram car ride from her home in Glasgow, to the ancient borough of Paisley, Scotland. She met a friend there to enjoy a refreshment at the Well Meadow Café. Her friend was never identified. There was romantic speculation that it was in fact her lover, despite the friend being referred to as "she" in subsequent pleadings relating to the case. After they took their seat her friend ordered for her ice cream and ginger beer. When May Donoghue was consuming this form of ice cream float she saw in the glass what she believed to be the



partly decomposed remains of a snail.

Because her friend had ordered the refreshment, May Donoghue had no contract with the café owner. Accordingly, at that time in legal history, May Donoghue had absolutely no remedy against anyone. There was no tort law to help her. She suffered an illness from consuming the decomposed snail, spent three days in the hospital, probably lost wages, and had no entitlement at law to any compensation. This is how the world used to be.

Naturally, there was tremendous interest at that time in developing the tort of negligence. Otherwise, the individual had no power against corporations or the state. Without the ability to seek compensation, and absent a crime (the failure on the part of a manufacturer or a café owner to discover a snail in a bottle of ginger beer is hardly criminal activity) the affected individual simply had no way to redress the wrong. It was against this background that the case was pushed, like a rocket bursting in the midnight sky, all the way to the House of Lords in London.

The fascinating aspect of the case is that it never went to Trial. The presence or absence of the snail in the ginger beer was never determined. The case was argued on the hypothetical; that is, if a snail were found in a bottle of ginger beer in 1928, would the affected consumer be legally entitled to any remedy?

In a remarkable landmark decision, Lord Atkin gave judgment for the Plaintiff, May Donoghue. In his judgment, he virtually created the law of negligence which today is responsible for literally billions of dollars exchanging hands. Lord Atkin formulated the neighbour principle based on the Christian parable “to do unto others as you would that they should do unto you”. In legal terms, one must avoid acts or omissions which one can foresee would injure one’s neighbour. Even though there was no physical proximity between May Donoghue and the manufacturer of the ginger beer, Lord Atkin held that the manufacturer ought to have had her in its mind, given that it was reasonably foreseeable its acts or omissions would harm her. This principle can be applied to any conceivable relationship between two parties in society.

At the time of *Donoghue v. Stevenson*, there were naturally significant concerns about the limits which might be placed on these principles and prevent endless litigation. The courts continue to struggle with these limits to the present day.

Like any system of ideas, those relating to the law of negligence are subject to abuse. But as a tool for addressing foreseeable harm, and providing compensation for the victim of that foreseeable harm, the neighbour principle is universally regarded as a beacon of hope without which the individual would be virtually powerless.



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So when you get on your bike today and set off into the wild blue yonder, take a moment to think about May Donoghue and her journey against adversity. Forget about lawyers, TV shows about lawyers, and the yippee yuppie portrayal of the legal profession, and reflect more on one of the true heroes of our law, a woman who died in virtual obscurity, but in whose name great Goliaths are held accountable by individuals throughout the common-law world.

Finally, any progress in the law relating to cycling is wholly dependent on a proper understanding of the common law duty of care based on reasonable foreseeability. The connection made seem mystifying until one fully appreciates the correlation between the increasing presence of cyclists on the roadway and the rising duty of care on the part of motorists and municipalities. May Donoghue's journey to the centre stage of legal history has a direct bearing on cyclists' rights and cyclists' remedies in the law of negligence.

For those interested in more information about *Donoghue v. Stevenson*, please go to [www.thepaisleysnail.com](http://www.thepaisleysnail.com), a website about a documentary I produced on the law of negligence which has been distributed to high schools and universities throughout the world. The success of this video has nothing to do with me and everything to do with the power of this story as written by a former justice from our Court of Appeal, Mr. Justice Martin Taylor.

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