



Reflections on the Paisley Snail

On a grey morning in 1991, Bruce Fraser, Q.C. paid me a visit in my office. I had just joined Richards Buell Sutton and as a young associate was eager to please a senior partner, particularly a member of the legendary UBC law class of 1962. Bruce told me that another member of that class, Mr. Justice Martin Taylor (as he then was) had returned from a legal conference called the Pilgrimage Paisley with a box of VHS tapes which he wanted to "splice together". The Pilgrimage to Paisley, Scotland was a journey in 1990 embarked upon by a number of legal visionaries throughout the commonwealth world whose purpose was to celebrate the 60th anniversary of May Donoghue's discovery of a snail in a bottle at the Wellmeadow Café.

I had told Bruce about my background as an amateur film maker soon after I joined the firm. Perhaps he took pity on me that I had exchanged a possible career in film for a career in law. Perhaps Bruce was just being Bruce, putting various pieces of the universal puzzle together in an effort to improve the lives of all of us. Regardless of his motivation, I was intrigued.

I also harbored an admiration for Mr. Justice Taylor ("Martin"). I had seen Martin in action in the Court of Appeal and was struck by his monstrous intellect and unusual humility. I hadn't often seen those two traits combined in one individual. He was one jurist who reminded me of why I had signed up to be a lawyer.

I recall bluffing my way through the first meeting with Martin and Bruce. I held myself out as someone who could edit the various VHS tapes into something worth watching. This was the carrot I would use to lure them towards my interest in a grander scheme. The story of



Donoghue v. Stevenson was by far and away the best thing I had learned in law school. May Donoghue's journey fired my imagination and the concepts of duty of care, foreseeability, and proximity seemed no less magical than the transmutation of base metals into noble ones. Needless to say, I was "in", even before gaining a full appreciation of Martin's mastery of the subject of *Donoghue v. Stevenson* and the common law of negligence.

The idea of splicing tapes together very quickly and naturally morphed into the idea of creating a docudrama about the most famous case of all time and showing it to the British Columbia legal community. Martin, the alchemist, needed very little persuasion. The budget would be small and raised with the assistance of law firms. The plan was to shoot the docudrama on my Sony 8 mm camera over the course of one week at various locations in Paisley and Glasgow. I would use Martin's speech that he gave at the Pilgrimage to Paisley and build a storyboard around it. I would match images with his remarkable language and intersperse interviews with locals and legal experts.

I suppose I was a late bloomer but the trip to Scotland was my first to Europe. I got off the plane in a state of complete disorientation and somehow made my way in a rental car on the wrong side of the street to Paisley City Hall to get a map so that I could get my bearings. I wanted to find the site of the Wellmeadow Café as a matter of first priority. I explained to a gentleman at City Hall that the Wellmeadow Café no longer existed but I understood it to be at the confluence of Wellmeadow Street and Lady Lane. He gave me directions but, of course, in my bleary state, I took a wrong turn and ended up at a pub whose name I have now forgotten. Let's call it the "Slaughtered Lamb".



When I arrived there I assailed the barkeep with my excitement, insisting this was the most historic site in all of legal history and he might well be standing in the very place where Francis Mangela prepared May Donoghue's ice cream and ginger beer. He patiently explained to me that I could not possibly be correct in my interpretation of the directions afforded by the City Hall clerk. This could not be the site of the Wellmeadow Café because the Slaughtered Lamb had been there since 1880. Our conversation had been overheard by a gentleman in the back named "Willie". Willie welcomed me to his table, no doubt recognizing I was new in town, and asked about the purpose of my visit. The table was covered with drinks. The whole scene screamed of the dark side of free masonry.

I soon learned more about Willie. His name was William MacArthur. He had been a transport logistics expert for the Scottish military before suffering a roadside accident which had cost him one eye. That was but one in a series of reversals which had led to a slow decline in his social position. He was nonetheless still holding court and, despite his appearance and circumstances, his compatriots appeared to hold him in considerably high regard. It was a fateful meeting but for which the video odyssey would never have been the same.

Willie knew every street in Paisley, Glasgow and Edinburgh and seemed to know everyone in Scotland. He was a living testament to the freemasonry power of networking, or what Willie described as a "society of secrets" (versus a secret society). Willie soon signed on as an ad hoc production manager and pursued May Donoghue's story as though it were a homicide investigation. He would call me day and night in my hotel room, explaining excitedly that he had "more information on the Donoghue case".



Willie's underworld aura was such that I expected Martin, as a sitting judge of our Court of Appeal, to maintain a respectable distance from him. But Martin recognized in Willie a passion for the subject of May Donoghue which, while perhaps lacking sophistication, could be a driving force. For his part, Willie understood, in an old world sort of way, the importance of judiciary and understood the privilege of being in the company of the High Court Justice. There was no doubt we were all on the same page when it came to a fascination of May Donoghue. I remember fondly the slightly awkward meetings between Willie, who like a homeless person wore winter clothing in the middle of summer, and Martin, the model of reserve and respectability. There was no judgment from his Lordship, only a purposeful and ultimately benevolent assessment of how this unlikely man could advance the telling of May's story.

My method of obtaining on camera interviews with locals about *Donoghue v. Stevenson* was simple. I would buy a large round of drinks, distribute for signature a basic form of release (before the drinks), and ask people to express their candid views as to what they would do if they found a snail in the bottle of ginger beer, or any other beverage. Immediately an argument would ensue, with one camp suggesting we eat escargots "in Paris" and another insisting that "if you find anything in the bottle you bloody well claim it and hope for the best." I will admit to a few setups. Perhaps I saw Mutual of Omaha's Wild Kingdom too much as a kid, a show whose popularity was based in part on unlikely confrontations between entirely different animals. I remember fondly one such set up. After explaining the story of *Donoghue v. Stevenson* to an older Scottish woman, I then asked her on camera if she had any insight into the origin of the term "slug", as in "could I have a slug of your drink?" She seized on the suggestion and thereafter provided a very eloquent explanation of why all of her friends used the word "slug"



and the word "sip" interchangeably, concluding with this remark: "maybe that's where it originated from - I'll have a slug of your ginger beer - we just don't know."

Martin and I returned from Scotland with many hours of good material in the can, so to speak. I hired a few of my actor friends to recreate the famous incident in a studio at Emily Carr College of Art and Design and intercut that with the interviews, Martin's remarkable narration sequences, and various imagery from Scotland. The result was "Who Is My Neighbor", a video whose target audience was lawyers at CLE courses. We edited Who Is My Neighbor at a Yaletown editing suite. That is where I met Michael Doherty, a young editor who developed an uncanny interest in *Donoghue v. Stevenson*, showing again that interest in this story could not be confined to the legal community.

The feedback from Who Is My Neighbor was good and Michael and I were encouraged to team up and return to Paisley with a real budget in order to make a television quality docudrama. The idea was to use some of the same gags but to produce a more mainstream product for public consumption and international distribution. To this end, we met with various film producers around town. At one such meeting Martin asked a veteran producer whether something without profanity, sex, or violence could sell. Eager to get the gig, the producer replied "oh we can add all of that in later." After a few of these meetings it became clear that we needed to produce the show ourselves. We turned to the Law Foundation for support.

The idea of providing funding for the video must have seemed novel to the Law Foundation at the time but fortunately, after some initial sputtering, the engine behind the video pushed hard enough for us to prevail, and a budget was born.



In 1993 we returned to Scotland, on a shoestring budget in television terms, but fortified by the idea that May Donoghue's remarkable journey was headed towards the silver screen. A camera crew was hired in London and Willie was put back on a payroll of Scotch and soda. The plan was to shoot a new video to professional standards on a television quality format called Betacam SP. The use of the larger camera gear was a double edge sword. On the one hand it improved our "street cred" and it was easier to gain access to certain establishments such as the Wig and Pen on Fleet Street in London for interviews. On the other hand, we lost the ability to capture the charm of candid pub talk owing to an increase in the time it took to set up the gear for a shoot. Some of the interviews from *Who Is My Neighbor*, such as the interview with Bill the blacksmith (who famously declared "I find it very hard to understand how you get a major case in law from a snail in the bottle of ginger beer, and that's the honest opinion of a blacksmith") needed to be restaged and lost their original authenticity, but these were regarded the irreducible risks costs of "going Hollywood".

Willie's vision expanded. He arranged interviews with Robert Barr of the famous A.G. Barr & Co. bottling company (est. 1904), a defendant in two cases decided prior to *Donoghue v. Stevenson* involving mice in ginger beer. Robert Barr had a Darth Vader like presence on camera and warned, on behalf of all defendants, of the dangers of allowing a remedy to plaintiffs who "tasted something funny". He granted the interview months before his death. Notwithstanding his declining health, he came up with some zingers like "there was no way, unless you changed your manufacturing methods, that you could avoid being sued by someone everyday who claimed to have found a mouse or a whole family of mice, all waving at you as they came out of the bottle." Willie even gained for us access to the Gartloch Mental Institute, a

frightening monolithic castle where May Donoghue spent the last years of her life, in total obscurity.

We knew no actors in Scotland. This was a problem. My sister happened to be living in Scotland then and she introduced us to her friend Susan Linklater. Susan had no resume, but looked the part, so she was hired on the spot. My sister played May Donoghue's mysterious friend and my brother-in-law played Francis Minghella, the owner of the Wellmeadow Café. Like May Donoghue's counsel Walter Leechman, they performed their roles for little or no reward other than the universal currency of free drinks. They understood that after the travel costs, location costs, camera crew costs and equipment costs, we had no budget, and like Francis Ford Coppola had gone on the hook personally to see this masterpiece through.

We returned from the first summer of shooting with a sense of triumph and everlasting life. Martin was thrilled with our reported success and anxious to get the narration sequences underway. He raised his game even higher, drawing on forces from his own mountain top to achieve a new level of storytelling preeminence.

We returned to Scotland refueled and ready to go. Willie's health wasn't stable. He had another year of excessive alcohol consumption under his belt and we would later learn that he was suffering from a life threatening brain tumor. His passion for the subject was alive and well, however, and we proceeded to get to work. Within a day of being in Glasgow we learned that Susan Linklater was no longer willing to play the role of May Donoghue. Apparently her wary boyfriend had convinced her that it was not in her "best interests". We never knew the reasons for the boyfriend's attempt to dissuade Susan from playing the role of a lifetime. We managed to convince her to meet us at the café where we would stage May Donoghue's famous



discovery of a gastropod. When she arrived there she looked put out and disenchanted, a perfect May Donoghue, I thought. She actually looked very poor and "not worth 5 pounds in all of the world." We managed to rouse some cheer in her and before long she had embraced again the hopeful persona of the law's greatest leading lady.

While we were able to keep the original cast together, we were challenged to finding someone suitable for the role of Lord Atkin. Willie came through again and used his freemason connections to contact Sean Connery, a famous Scottish son. After sitting on pins and needles, Mr. Connery's agent told me that, after some consideration (I sense there had been an argument), "Sean" was not available. As she put it "he....well, he can't do that". I still believe Sean wanted to play the role of Lord Atkin but his agent wouldn't let him. Willie had an answer. We would hire Sean's brother, Neil Connery, who played Sean's double in all of the Bond films.

We met Neil Connery in Edinburgh. Everything Willie said about Neil's likeness to Sean was true. He walked like him, talked and looked like him, so much so that wherever we went in Edinburgh onlookers gathered. I wondered how difficult it must be to be the twin of a famous actor. It didn't seem to bother Neil. He was an actor in his own right in Scotland. He played the role of Lord Atkin scintillating, delivering every line of the judgment with biblical authority.

Following our second summer's shoot in Scotland, in the ongoing effort to produce quality interviews, I had taken a rather long shot in the dark and had written Lord Denning to enquire about the possibility of his participating in an interview about *Donoghue v. Stevenson*. I understood that he had known Lord Atkin, at least that he was his contemporary, and for that reason might be intrigued by the project. I mailed a letter to Lord Denning's home in Witchurch, expecting no reply. I underestimated his Lordship's regard for members of the B.C. Bench and



Bar. Several weeks later I found in my correspondence folder a handwritten letter. When I first laid eyes on it I mistakenly thought it was yet another random request for legal advice. The letter not entirely legible and, even then, handwriting wasn't the norm. I skimmed the letter to the bottom. It was signed "Tom Denning". Below that appeared the words "Lord Denning" in brackets. The letter contained an invitation to visit Lord Denning at his home. The caveat that he was half deaf and blind.

Despite Lord Denning's professed limitations, not one was an impediment when we attended his home on Easter Sunday, 1995, for the last television quality interview he ever conducted. After descending his stairs with the assistance of a mechanical apparatus, he stood up before us and declared "you see those chairs you are sitting in - Prince Charles bought me those chairs when he was 21 years old". I understood that this was Lord Denning's way of saying he was 96 years old and was not there to listen to us, but for us to listen to him. We did so in awe, and recorded his interview with Martin, resulting in the inclusion in our video of an interview with a giant star and the production of another bonus video, "An Afternoon with Lord Denning."

When we returned to Vancouver we knew we had the goods for an entertaining docudrama: Martin's inimitable style and literary finesse, interviews with legal scholars in British Columbia including David Roberts Q.C., Peter Burns Q.C., Joe Smith Q.C, and legal luminaries from other jurisdictions including Alan Linden Q.C., Lord Macaulay of Bragan, Q.C., and Lord Denning himself, and lay interviews with countless locals. This was it. The only thing we didn't have was a title. It then occurred to me that the true hero of the story, second only in importance to May Donoghue and David Stevenson, was the snail. Its own slimy path must have been shaped by a life in Paisley, hence "The Paisley Snail". It was a no brainer.



The finished video soon gained its champions, notably Chris Harvey, Q.C. and Art Vertlieb, Q.C., two scrappy young lawyers, and Bruce Fraser Q.C., who had attended the Denning shoot and played a vitally supportive role all along. There were many others with whose help the video was introduced at a Commonwealth Law Conference in 1996 in Vancouver, playing there for the first time to an international audience. Despite a perfect rehearsal test, there were some sound glitches, but overall the video was embraced by its first test audience. It was later televised by various networks including our own Knowledge Network and BBC London and went on to be seen by audiences at various high schools and law schools throughout the world. Interestingly, in academic circles the term "the Paisley Snail" is now used interchangeably with *Donoghue v. Stevenson*, a testament to the power of the internet.

In 2012 another pilgrimage to Paisley occurred, this time called The Paisley Snail International Conference and hosted by the University of West of Scotland to mark the 80th anniversary of the Lord Atkin's judgment. It was fitting that Martin would lead the parade along Wellmeadow Street, preceded only by two pipers, towards to site of the legal world's most famous incident.

Until recently all as been quiet on the Paisley Snail front.

But ever restless about what he calls the "immortal journey", Martin has for some time been hatching a plan, now fully executed, to create a display case at the UBC law school which will include, in his words, "documents, artifacts, illustrations and legal literature accumulated over more than three decades on behalf of the UBC law class of 62." It is hoped the display case will serve to remind the young minds of the law school about the importance and magic of *Donoghue v. Stevenson*.



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Certainly the case has been a large part of my legal life. Although it may seem a long way off, the 100th anniversary of the law's most remarkable decision will be, must be, celebrated by today's law students. Its enduring ability to fire the imagination will never be lost, and it is that feature of the case which brings otherwise disparate individuals together in recognition of something much larger than themselves.