SUPREME COURT OF NOVA SCOTIA
Citation: *Grue v. McLellan,* 2018 NSSC 69

Date: 2018-03-23
Docket: Tru. No. 412326
Registry: Truro

Between:

Holly Elizabeth Grue

Plaintiff

v.

Ryan McLellan, Gregory McLaughlin and The Personal Insurance Company

Defendants

DECISION

Judge: The Honourable Justice Jeffrey R. Hunt

Heard: June 21, 22, 26, 27, 30, July 4, 27, 2017, in Truro, Nova Scotia

Final Submissions: August 13, 2017 and September 8, 2017

Counsel: Peggy Power, Solicitor for the Plaintiff
Stephen Johnston/Joshua Martin, Solicitors for the Defendant, Gregory McLaughlin
Christopher Madill/Tipper McEwan, Solicitors for The Personal Insurance Company
Myer Rabin, Solicitor for Ryan McLellan

By the Court:

Introduction

[1] Holly Grue is a brave and resilient young woman who suffered a terrible injury through no fault of her own. While walking home after a New Years Eve dance on the morning of January 1, 2012 she was struck by a vehicle driven by Ryan McLellan and owned by Greg McLaughlin. She suffered a life altering spinal injury which put her in a wheelchair.

[2] This decision will address issues of liability for the accident and the question of whether McLellan had legal consent to operate the McLaughlin vehicle. Certain issues of insurance coverage will flow from this determination.

[3] The parties agreed some months before trial to sever the issues of liability and quantum. Accordingly, the quantification of damages was not before the Court.

[4] When the Severance Order was made, the parties agreed to a series of questions relating to coverage and liability that were to be answered by the Court. These are reflected in the issues listed below.

Issues

1. Did Ryan McLellan negligently operate the Jeep thereby causing or contributing to the Plaintiff's injuries?
2. At the time of the collision, was Ryan McLellan operating the Jeep with the consent of the owner, Greg McLaughlin?
3. Did Greg McLaughlin negligently fail to secure the Jeep thereby causing or contributing to the Plaintiff's injuries?
4. What percentage of fault, if any, is attributable to Ryan McLellan and/or Greg McLaughlin?

Agreed Facts

[5] The following basic facts were formally stipulated by all parties:

1. There was an accident on January 1, 2012.
2. The accident happened when Ryan McLellan was driving a Jeep owned by Greg McLaughlin.
3. While Ryan McLellan was driving the Jeep on a public highway, it struck Holly Grue.
4. The accident injured Holly Grue.
5. Ms. Grue is now a paraplegic because of the accident.
6. Ms. Grue was not contributorily negligent.
7. It is not challenged that Ryan McLellan was convicted of criminal negligence causing bodily harm for the events of January 1, 2012.

Overview

[6] The collision occurred after a New Years Eve dance at the Economy Recreation Center in Economy, Nova Scotia. The dance started on December 31, 2011 and stretched into the early morning hours of January 1, 2012.

[7] Many of the participants had been consuming alcohol. Some acknowledged using marijuana as well. This led to issues of recollection and reliability of memory on the part of some witnesses.

[8] The circumstances of the accident were tragic. Almost without exception the participants in these events had known each other for much of their lives. Some had been very close in the past. McLellan grew up a few houses away from the McLaughlin family home. From the time he was a young boy the McLaughlin family appears to have taken Ryan McLellan under their wing. They saw him as something of a lost child who appeared to have a difficult or lonely home life. The McLaughlin family had young boys in the same age range as Ryan McLellan. When the boys were younger he became something of a fixture around the McLaughlin household, especially at meal times.

[9] As the years passed McLellan maintained connection with the McLaughlin family. When he was old enough to work, he occasionally made some money

working for businesses operated by members of the McLaughlin family. When an emotional Greg McLaughlin confronted Ryan McLellan a few hours after the accident of January 1, 2012, one of the things he said to him was "…you were like a brother to me". The accident and its aftermath obviously changed all that.

Liability of Ryan McLellan

[10] By the time of trial it was not contested that Ryan McLellan caused or contributed to the injuries suffered by Holly Grue. The core issue at the hearing pertained to whether McLellan had the consent of Greg McLaughlin to take the Jeep. This was the heart of the dispute before the Court.

Burden of Proof - Consent

[11] Section 248(3) of the ***Motor Vehicle Act***, R.S.N.S. 1986, c. 293, as amended, creates a statutory presumption that the operator of a motor vehicle is the "legal agent or servant" of the owner. In other words, there is a legal presumption that the driver of a vehicle is operating the vehicle with the consent of the owner.

[12] The relevant sections provide as follows:

> **Onus of proof of liability**
>
> 248(1) Where any injury, loss or damage is incurred or sustained by any person by reason of the presence of a motor vehicle upon a highway, the onus of proof:
>
> a) That such injury, loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner of the motor vehicle, or of the servant or agent of such owner acting in the course of his employment and within the scope of his authority as such servant or agent;
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> b) That such injury, loss or damage did not entirely or solely arise through the negligence or improper conduct of the operator of the motor vehicle, shall be upon the owner or operator of the motor vehicle.
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> …
>
> (3) A person operating a motor vehicle, other than the owner thereof, shall be deemed to be the servant and agent of the owner of the motor vehicle and to be operating the motor vehicle as such servant and agent acting in the course of his employment and within the scope of his authority as such servant and agent unless and until the contrary is established.
>
> …
>
> (5) Unless and until it is established that such person was not operating such motor vehicle as aforesaid, such person shall be deemed to be the servant and agent of the owner of the motor vehicle and to be operating the motor vehicle as such servant and agent acting in the course of his employment and within the scope of his authority as such servant and agent. *R.S., c. 293, 2. 248.*

[13] As an aside, I note this section has since been replaced by section 148C of the Insurance Act, R.S.N.S 1989, c. 231, as amended. Although the replacement language was contained in a 2011 statute, the amending provisions

were not proclaimed until April 1, 2013. Accordingly, the language in s. 248 of the ***Motor Vehicle Act*** is the relevant wording.

[14] In ***Morash v. Burke***, 2006 NSSC 364 the Supreme Court reviewed the legislation and caselaw and commented as follows:

> 67 Counsel for ING has cited three decisions of this court in which it was recognized that the presumptions created by the legislative provisions aforesaid place a considerable burden on the owner (or insurer thereof) to establish that the operator of the vehicle at the time of accident was driving it without the owner's consent. … As Justice Richard put it in *Powers* (at para. 11):
>
> > The law places a burden on the owner of a motor vehicle and presumes that the automobile is being driven with the consent of the owner unless there is sufficient evidence to the contrary to find, on a balance of probabilities, that there was no such consent.
>
> 68 Applying that legal principle to the case at bar, the burden hence falls on Mr. Thomas and Allstate to establish, on a preponderance of evidence, that the driver of the van, Charles Burke, did not have Mr. Thomas' consent to operate it.

[15] Accordingly, in the context of the present case, Greg McLaughlin bears the evidentiary burden of displacing the legal presumption that McLellan had consent. He must displace this burden on a balance of probabilities. The burden on this issue never shifts. See also: ***Bellafontaine v. Randall***, 2005 NSCC 189 and ***Newell v. Towns***, 2008 NSSC 174.

Weighing the Evidence

[16] This case requires the examination of testimony from a number of witnesses. The case of ***Baker-Warren v. Denault***, 2009 NSSC 50 provides what I find to be a very helpful overview of the considerations going into the assessment of witness testimony. I note that these comments were cited with approval by the Nova Scotia Court of Appeal in ***Hurst v. Gill***, 2011 NSCA 100:

> [19] With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:
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> a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: ***Re: Novak Estate***, 2008 NSSC 283;
>
> b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
>
> c) Did the witness have a motive to deceive;
>
> d) Did the witness have the ability to observe the factual matters about which he/she testified;
>
> e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
>
> f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: ***Faryna v. Chorney,*** [1952] 2 D.L.R 354;
>
> g) Was there an internal consistency and logical flow to the evidence;
>
> h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
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> i) Where appropriate, was the witness capable of making admission against interest, or was the witness self-serving?
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> [20] I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: ***R v. Norman*** (1993) 16

> O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. *in* ***Re: Novak Estate***, *supra*, at para 37:
>
> > There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See ***R. v. D.R.***, [1966] 2 S.C.R. 291 at 93 and ***R. v. J.H.*** *supra*).
>
> [21] Ultimately, I have considered the totality of the evidence in making credibility determinations. I have thoroughly reviewed the *viva voce* and documentary evidence in conjunction with the submissions of counsel, and the applicable legislation and case law.

[17] The Nova Scotia Court of Appeal in ***MacNeil v. Nova Scotia (Attorney General)***, 2000 NSCA 31 offered the following comments on the subject of evaluating witness testimony:

> [9] The judge, as the trier of fact, must sort through the whole of the evidence and decide which to accept and which to reject so as to piece together the more plausible view of the facts. Many considerations properly influence this decision, including the nature of any unreliability found in a witness's testimony, its relationship to the significant parts of the evidence, the likely explanation for the apparent unreliability and so forth. The trial judge may find that some apparent errors of a witness have little or no adverse impact on that witness's credibility. Equally, the judge may conclude that other apparent errors so completely erode the judge's confidence in the witness's evidence that it is given no weight.

Credibility versus Reliability

[18] Courts have identified there is a distinction between the veracity or truthfulness of the witness (credibility) and the ability of the witness to

accurately relate his or her evidence (the reliability). While a non-credible witness will not give reliable evidence, an apparently credible witness can offer unreliable testimony. It is important for the trier of fact to recognize that both credibility and reliability must be weighed when determining the truth and accuracy of evidence.

[19] In the case of ***R. v. C. (H.),*** 2009 ONCA 56, the Court commented on the difference between credibility and reliability. In that case, the appellant argued that the trial judge had relied exclusively on demeanour in finding the complainant credible without assessing the reliability of the complainant's evidence. Watt, J.A. stated as follows:

> [41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately
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> i. observe;
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> ii. recall; and
>
> iii. recount
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> events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence.

[20] Additionally, the Court will look for evidence that is corroborative of the witness. Corroboration is evidence that "strengthens or makes more certain the

matter which it corroborates": ***Haché v Lunenberg County District School Board***, 2004 NSCA 46 at para. 75.

[21] I have applied these considerations when considering the witness testimony in this case.

The Legal Test for Consent to Drive

[22] Before outlining the central evidence at trial I intend to address the law surrounding consent to drive. I am doing so at this stage in order to provide some context for the testimony and analysis to follow.

[23] Consent to drive may be express or implied. The burden is on the vehicle owner to displace the presumption of consent.

[24] The Personal argues that Greg McLaughlin can not displace the presumption of express or implied consent. Ryan McLellan asserts that he had express permission. In the alternative, it is argued that the circumstances may amount to implied consent. Depending on the facts of a case, consent may be implied where it is evident that had the driver asked, the owner would have given consent to drive as a matter of course.

[25] The Supreme Court of Nova Scotia has set out the legal test to be applied when considering issues of implied consent. In ***Bellefontaine v. Randall***, 2005 NSSC 189 the Court stated as follows:

> 8 The question to be asked is whether upon analysing all the surrounding circumstances objectively, a reasonable person observing the situation would conclude that Randall had the implied consent of Ross to drive the truck…the state of mind of the owner and driver are strong factors in determining the issue of implied consent.

[26] This reasoning was affirmed on appeal.

[27] In the case of ***Newell v. Towns***, 2008 NSSC 174, the Court reviewed a number of trial and appellate decisions with respect to the law of consent. The following direction was given by the Court:

> 121 Based on my review of these authorities it is my opinion that any claimed subjective belief by the driver and the owner are but two of the circumstances that ought to be considered by the trier of fact in deciding whether there was implied consent. The Court must examine all of the circumstances, including the individual characteristics of the owner in coming to a determination on the issue of implied consent.

[28] In the case of ***Berube v. Vanest***, 1991 Carswell Ont. 28 (ONSC), the driver (Vanest) was at a party with the owner (Chamberlain). Chamberlain had been drinking. He threw the keys to the vehicle towards two individuals including Mr. Vanest. Vanest caught the keys which had been intended for the other attendee. Mr. Chamberlain was aware that Vanest caught the keys but did not

demand that they be returned. Chamberlain had also invited Vanest to take the vehicle "for a spin" earlier in the evening.

[29] The Court found there was implied consent:

> 53 The question becomes one of whether the invitation extended to Vanest to take the car for a spin, earlier in the evening, coupled with the possession of the keys, was such to establish implied consent to Vanest to operate the vehicle.
>
> 54 Ms. Jones, on behalf of the Defendant, Chamberlain, argues that the facts do not support a finding of implied consent. In support of her position she relied on the decision of the British Columbia Court of Appeal in ***Besse v. Simpson*** (1985), 67 B.C.L.R. 122. In that case, driver Verrall, who was also known as "Crash", had taken the keys from the pant pocket of the owner Simpson while Simpson was sleeping. In the morning Simpson was aware that the car had been taken but did not phone the police until after the motor vehicle was in a serious accident.
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> 55 In my view, the facts of this case can be distinguished from the facts in ***Besse v. Simpson.*** The open invitation to take the car for a spin, along with the throwing of the keys, although intended for Hyndman, but caught by Vanest, was sufficient to establish an implied consent for Vanest to use the vehicle.
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> 56 When Chamberlain was aware, or should have been aware that Venest had caught the keys he should have taken steps to recover them, if he was concerned.
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> 57 Even upon the return of Hyndman and Vanest from the store, Chamberlain did not make a demand for the keys.
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> 58 It may have been as a result of Chamberlain's intoxication at that point or it may be from the fact that as he had indicated he would trust Vanest with the car. In any case, I find that Chamberlain has not satisfied the onus on him on a balance of probabilities. I find as a fact that at the time of the accident, Vanest was operating the motor vehicle with the implied consent of the owner, Chamberlain.

[30] Each case will inevitably turn on its own facts. There are, however, a consistent set of principles that emerge from the caselaw. These include the following:

1. The Court will weigh "whether upon analysing all the surrounding circumstances objectively, a reasonable person observing the situation

would conclude that the driver had the implied consent of the owner to drive the vehicle";

2. The manner in which the vehicle has been used in the past will be a relevant factor in determining the issue of implied consent. This will include a determination as to whether if the owner had permitted use in the past whether this may occur again;

3. A Court must examine all of the surrounding circumstances including the individual characteristics of the owner in coming to a determination on the issue of implied consent;

4. The general availability of keys will be a relevant factor but will not always be viewed as determinative;

5. The question of whether the leaving of keys in a vehicle can amount to implied consent is a complex one. A complete factual analysis is required but the leaving of keys in a vehicle together with some other action or inaction may be sufficient to give rise to a finding of implied consent.

Summary of Evidence

[31] It is not my intention to attempt to repeat all the testimony, which was extensive. I have, however, considered and weighed all the evidence and exhibits, even if each specific element is not recited in these reasons.

Ryan McLellan

[32] McLellan was the first witness called in the case. Like almost every other participant in the trial, McLellan grew up in and around the communities of Economy and Five Islands. He currently lives in Economy. At the time of the collision he was 25 years old

[33] McLellan indicated that the highest grade he achieved in school was grade 9. He acknowledged having been involved in a 2008 motor vehicle accident that left him with some degree of brain injury. Details of this injury were limited but other witnesses described the 2008 accident and its impact on him.

[34] He experienced learning challenges as a young person. In the course of his evidence his challenges were evident. He sometimes struggled to understand the questions put to him or the words used. He had difficulties expressing himself.

[35] After leaving school he began working in the woods as a labourer with his father. He has worked various general labour jobs since then. At the time of the collision he had not held a driver's license for a number of years.

[36] McLellan did not give extensive evidence in direct testimony. The bulk of his evidence came under questioning from the lawyers for The Personal and Greg McLaughlin.

[37] In his direct evidence he acknowledged drinking a significant amount of alcohol on December 31, 2012. In cross-examination he agreed to even more consumption. He started drinking in the afternoon and pretty much kept drinking, on and off, the balance of the day. This included perhaps 16 - 18 beer and at least one stiff rum drink.

[38] Prior to the dance he had been socializing with Gillian Davis and Mike Welton in the garage at the home he shared with his mother. They talked, drank and listened to music.

[39] He believes he ate some lunch around 12:00 noon. This turned out to be his only real meal of the day. His recollection was that the dance was to start around 9:00 p.m. He estimates he made the three minute walk to the Hall with Gillian Davis around 10:00 p.m.

[40] McLellan also consumed some marijuana before going to the Rec Center and shared at least one joint while there. He purchased some liquor tickets on arrival at the dance. He also acknowledges receiving a beer from another attendee.

[41] Much of the questioning of McLellan was taken up with issues of his interaction with Greg McLaughlin both prior to and at the dance. The history of

his relationship with the McLaughlin family, and specifically Greg and Geoff McLaughlin, was explored in some detail. He indicated he had grown up only five to seven houses away from the McLaughlin family. He knew Greg McLaughlin but was likely closer to McLaughlin's younger brother, Geoff.

[42] He was asked about his contact with Greg McLaughlin and his vehicles in the months prior to the collision with Holly Grue. He indicated that McLaughlin had participated in two demolition derbies hosted by McLellan in 2011. His organization of these events reflected his interest in off-roading. The events took place in a field near McLellan's home. It was also close to the Rec Hall. Greg McLaughlin brought "beater" vehicles to both these events hosted by McLellan. The two men had a shared interest in off-road vehicles and mechanics.

[43] McLellan testified that at the first demolition derby he hosted in 2011, he personally drove Greg McLaughlin's Chevy Venture van. At the second derby, he remembers driving Greg's vehicle off the flatbed and to a parking area.

[44] He was questioned about the Jeep TJ owned by McLaughlin. It was clear that he a prior interest in the Jeep. It was a "boy's toy" and McLellan had previously admired it.

[45] Both McLellan and McLaughlin agreed that the men discussed the Jeep at the New Years Dance.

[46] In his direct evidence, McLellan testified that he and McLaughlin talked about the Jeep and McLaughlin told him the keys were under the seat. He stated that McLaughlin "…told me to take it for a rip if I wanted to." He testified that this offer was made more than once during the course of the dance. It was not explored whether this offer was for use on the highway or off-road. There was evidence of an off-road network of trails in the community. These were accessible from the area of the Rec Hall. The Jeep was a suitable vehicle for these trails because of the oversized tire package and suspension on the vehicle.

[47] Unsurprisingly these alleged discussions about the Jeep were the subject of much questioning of McLellan by counsel for The Personal and Greg McLaughlin.

[48] There was evidence from McLellan as to the past history of off-roading which involved the two men. They had exchanged off-road vehicles in the past. McLellan described occasions where he and McLaughlin would exchange vehicles while in the "back field" or on back roads. He described the use of "beater" vehicles in the back field and dirt paths. He testified that McLaughlin

never had an issue with his using McLaughlin's beater vehicles. He believed this may have happened more than three times and as many as ten times.

[49] McLellan agreed in cross examination that any prior use of a Greg McLaughlin vehicle had been with express permission. He also agreed that none of the prior operation had been on a highway.

[50] McLellan readily agreed that he would need to have consent of Greg McLaughlin to take any of his vehicles. He said he wouldn't do so without permission because he wouldn't steal from Greg. He acknowledged pleading guilty to hurting Holly Grue but he would not plead guilty to stealing Greg McLaughlin's Jeep.

[51] McLellan agreed he did not have any sort of standing permission to use any vehicle owned by Greg McLaughlin. He acknowledged he would have needed actual permission before he would have taken one of Greg McLaughlin's vehicles.

[52] Ryan McLellan gave prior statements and discovery evidence. These were repeatedly raised and put to him. There is no question that he had gaps in his memory. He acknowledged as much. Nuances of words and meanings gave him a lot of trouble. He was easily led. When he became frustrated with

answering or understanding a question he exhibited a tendency to default to agreement with the questioner.

[53] I have carefully read and considered each suggested inconsistency between his prior statements and his trial testimony. I have reached a number of conclusions about the credibility and reliability of McLellan. These are set out below.

Mid-Trial Issue – "Friendly Cross-Examination"

[54] It is necessary to address an issue which arose during the cross examination of Ryan McLellan.

[55] Early in the cross-examination of McLellan by counsel for The Personal there was an objection by counsel representing Greg McLaughlin. It was argued that The Personal should not be allowed to engage in what would amount to friendly cross-examination of Ryan McLellan. They had a clear alignment of legal interest with McLellan on the consent to drive issue.

[56] The stage at which the objection was made was surprising as the Court had raised this potential issue at a Pre-Trial Conference held a number of weeks before trial. At that time, counsel for McLaughlin did not indicate any concern. The question posed by the Court at the Pre-Trial Conference was whether there

were issues of interest alignment between certain parties such that a question might arise as to the appropriateness of cross-examination between certain parties.

[57] Counsel for The Personal took the position that the existence of cross-claims between the various Defendants eliminated this issue as a concern. Counsel to McLaughlin did not disagree or otherwise engage on the point. No other party participating on the call expressed a view.

[58] The discussion was later summarized in a letter sent by counsel for The Personal to another counsel who had not participated in the conference:

> The Court raised whether there will be cross-examination or direct examination between parties aligned in interest. I indicated that as there are cross-claims between the Defendants this probably will not be an issue. The Court will circulate a formal memorandum next week and if you have any comments or wish to reconvene the Trial Readiness Conference, you should free to respond to the Court's summary.

[59] No party raised any concern at the time. Counsel for The Personal made no secret of the fact they intended to cross-examine McLellan. In a subsequent trial readiness conference this intention was reiterated. Once again no party objected. In argument on the objection counsel for Greg McLaughlin forthrightly acknowledged that the ramifications of this issue only became evident to them when they saw the cross-examination unfolding in real time.

[60] When the objection to the cross-examination was ultimately made, the Court dealt with the merits of the objection as well as issues of fairness created by the fact it could have been anticipated much earlier.

[61] In addressing the merits of the objection the Court noted that parties to a litigation, who are aligned in interest on various issues, may have limitations placed on rights of cross-examination.

[62] In ***Trizec Equities v. Ellis Don Management Services,*** [1996] A.J. No. 699 (ABQB) the Court wrote at para. 8:

> …In **Sopinka, Lederman and Bryant,** ***The Law of Evidence in Canada*** the learned authors addressed these points at p. 862 thusly:
>
> > In cases where there are co-defendants with similar interests who have pleaded separately and are represented by different counsel a trial judge has a discretion to refuse to allow counsel for one defendant to cross-examine a co-defendant's witnesses. If, however, the interests of the parties are not similar, separate counsel are usually allowed to cross-examine the co-defendant or that co-defendant's witnesses.

[63] In the ***Canadian Encyclopedia Digest*** – Evidence Section – para. 238 the authors wrote:

> In civil cases where there are multiple parties, however, the right of one party to cross-examine a witness called by another is not automatic. Restriction of this right usually occurs where multiple parties are effectively aligned in interest and have the same objectives in the case. If parties could cross-examine a friendly witness, they could use the much more forgiving rules of cross-examination to extract important points that may have been missed on direct, smooth over weaknesses and enhance the witnesses credibility. Cross-examination in non-adversarial circumstances is sometimes referred to as a "sweet heart cross-

examination", which is one that has a tendency to distort rather than enhance the truth finding function of the trial process.

[64] The case of ***Elder v. Rizzardo Brothers Holdings Ltd.***, 2016 ONSC 7235, is also very instructive on this subject and contains discussion relevant to the cross-claim issue raised by counsel to The Personal:

> 22 It is axiomatic that trials are, at their core, an exercise in finding the truth. For better or worse, our system of justice has settled upon the adversarial system as the method by which evidence is tendered and tested in an effort to arrive at the truth of a matter. Cross-examination is integral to the process. Indeed, at least one noted jurist has famously referred to it as "the greatest legal engine ever invented for the discovery of the truth": 5 Wigmore, Evidence § 1367, p. 32 (J. Chadbourn rev. 1974).
>
> 23 The adversarial system is dependent, of course, on its adversarial nature being legitimate and not divorced from reality. As Perell J. observed in ***Moore v. Bertuzzi***, at para. 89, "a reason for disclosure was that the court immediately needed to know the extent to which, if at all, the settlement agreement influenced the adversary system."
>
> 24 Cross-examination is designed to challenge, undermine, test, weaken and/or discredit evidence given in-chief. Cross-examination of opposing witnesses permits leading questions, at least in part, because the absence of presumptive bias removes concerns about ready acquiescence.
>
> 25 Cross-examination in non-adversarial circumstances may well have a tendency to distort, rather than enhance, the truth-finding function of the trial process. It would be both unfair and unhelpful to have a non-adverse counsel spoon-feeding answers to a willing witness.
>
> 26 When the rationale for asking leading questions in cross-examination is absent, the rule permitting such questioning is brought into question. In other words, where the witness is, in fact, favourable or biased towards the cross-examiner, the general rule permitting leading questions ceases to have rational support.
>
> 27 The court has an obligation to ensure that trials are conducted in a fair and efficient manner for all parties and, more generally, in the broader interests of the community. It has an inherent jurisdiction to control the trial process. Part of that jurisdiction includes the discretion to put limits on cross-examination: See *R. v. Clancey*, [1992] O.J. No. 3968 (Ont. Gen. Div.).[3]

> 28 In my view, the resolution of the crossclaim between the defendants all but put an end to their adversity. Frankly, even before the crossclaim was resolved, any adversity may have been more apparent than real. Both had an interest in establishing that Hank Williams was a competent winter maintenance contractor; that he had in place a reasonable regime of inspection and maintenance; and that he complied with the system on the date in question. Rizzardo Bros. had nothing to gain by suggesting that Hank Williams was negligent in any way. Moreover, Mr. Williams had nothing to gain by the suggestion that Rizzardo Bros. had hired an incompetent contractor, or that Rizzardo Bros. had somehow failed to sufficiently monitor his work.
>
> 29 In my view, the defendants had everything to gain by supporting one another's positions in the trial. The landscape was very much non-adversarial between them.
>
> 30 In the result, I prohibited each defence counsel from asking leading questions of witnesses called by the other defence counsel. The rationale for permitting leading questions was absent and, in my view, permitting leading questions would be unfair and would risk distorting the evidentiary record.
>
> 31 I allowed for two exceptions to the general prohibition against leading questions. The first was in relation to the scope of the contract between the defendants. There were some differences in their positions about the precise scope of the work to be done. The second was in relation to one particular aspect of the design of the parking lot — an evidentiary issue that had the potential to shift some portion of the liability towards Rizzardo Bros. and away from Hank Williams.

[65] The analysis in ***Elder v. Rizzardo*** is fully applicable in the present case. All the trial fairness concerns expressed in that case are also present here.

[66] The Court also considered a number of additional cases argued by the parties including:

> ***Wingold v. Sullivan*** (1980), 20 C.P.C. 76 (Ont. H.C.);
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> ***Canadian Natural Resources Ltd. v. Shockoar Ltd.***, 2016 Carswell Alta. 3 (Alta.C.A.);
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> ***Millar v. British Columbia Rapid Transit Co.***, [1926] B.C. No. 100;
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> ***Marchand v. Public General Hospital***, 2000 Carswell Ont. 4362 (Ont. C.A.);
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> ***Garner v. Bank of Nova Scotia***, 2014 NSSC 63;

Tibbetts v. Murphy, 2015 NSSC 280.

[67] Even before the cross-examination of McLellan began, it was apparent he had cognitive and communication difficulties. There was evidence he had a prior brain injury. He was easily led and seemed to have a tendency towards suggestibility. As cross-examination by The Personal unfolded the concerns became evident. This prompted the objection.

[68] After weighing the various factors, the Court was concerned that allowing a friendly cross-examination of a brain injured party on issues where the parties were aligned in interest would tend to distort the fact-finding process. The Court was satisfied that The Personal had many examination tools at its disposal including, where necessary, past statements and discovery evidence.

[69] On the central issue of consent, the interests of Ryan McLellan and The Personal were too closely aligned to safely allow a "sweetheart cross-examination". The Court concluded that the use of cross-examination in these circumstances would have tended to distort, rather than aid, the fact-finding process.

[70] The Personal was given the right to cross examine on issues where a divergence of interest could be demonstrated.

[71] The Court ultimately upheld the objection and did opt to limit the cross-examination rights of The Personal. It was recognized however that the timing of the objection had a negative impact on the conduct of the hearing. This could have been avoided. To address issues of fairness, The Personal was given additional time to revise and reorganize its examination of McLellan.

Shannon Breen

[72] Shannon Breen was a first responder who was called to the scene of the accident. She had not been at the dance that evening and had not been drinking. Ms. Breen was 32 years old in 2011 and was employed as a Forest Technician Assistant for the Department of Natural Resources.

[73] At the time she was in a relationship with Geoff McLaughlin, the brother of Greg McLaughlin. By the time of trial they were no longer a couple. Their breakup was described as civil.

[74] Shannon Breen and Geoff McLaughlin were at their home on New Years Eve when they received a phone call notifying them of the accident. They went to the scene together. Her description of what they found there was vivid. She describes a foggy, low visibility scene with the smell of alcohol in the air as people came down to the scene from the dance. She saw both Greg

McLaughlin and his wife Jennifer at the scene. Breen describes hearing Greg McLaughlin asking where Ryan McLellan was and where his Jeep was. He wanted to go looking for Ryan McLellan and the vehicle. She heard Jennifer McLaughlin say that the Jeep was nothing but trouble.

[75] Shannon Breen's attention quickly turned to assisting with the critically injured Holly Grue. Breen testified that later she became concerned about he safety of Ryan McLellan. Emotions were high and some members of the community were making comments that in her mind suggested the risk of some vigilante action against Ryan McLellan. She had Ryan McLellan's cell number and used it to text him the next morning. He replied. She concluded that he was scared. After an exchange of texts a meeting was arranged which took place in a field by Ryan McLellan's home. She was accompanied by Geoff McLaughlin and another brother, Garnet McLaughlin.

[76] Breen described the meeting and the aftermath. The group of four went back to Breen's home. She testified there was brief discussion while she gave him coffee and he attempted to warm up after having apparently spent the night in the woods. Breen testified that Ryan McLellan told her Greg McLaughlin said he could take the Jeep. This comment was made while the two were in the living room of the home.

[77] Breen spoke to Ryan McLellan about the fact he needed to surrender to the RCMP. Her evidence was that he seemed to accept this fact. He slept for awhile on the couch in her living room before being taken by Geoff McLaughlin to the Bible Hill RCMP detachment where he turned himself in.

William Corbett

[78] William Corbett was called during the case of the Defendant, Ryan McLellan. He was a friend of McLellan's who attended the dance with him. Corbett ended up in the Jeep that night on the drive that ultimately ended in the tragic collision with Holly Grue. His recollection of that sequence is a blur at best.

[79] William Corbett was then 20 years old. He, too, grew up in the community of Five Islands and continues to live in the area. At the time of trial he was a labourer and continued to reside in the community. He has struggled with addiction issues and just prior to the trial he had participated in a rehabilitation program. His history of substance abuse has impacted his memory in general.

[80] His consumption of alcohol on the night, and into the morning, in question was extremely heavy. He reported consuming 16 ounces of vodka while at Ryan McLellan's prior to the dance and six doubles of vodka while at the event,

although some of these may have spilled. Even for someone with a history of heavy consumption of alcohol, this would be a substantial intake.

[81] Corbett himself agreed that his memory of the night is fragmented and somewhat unclear. He acknowledged that his intoxication was such that he was "very drunk" and was having trouble even holding a drink in his hand. His independent recollection by the time of his trial evidence was foggy.

[82] In limited direct examination he was asked about his recollection of any discussion or interaction he may have observed between McLellan and McLaughlin at the dance:

> Q: Okay. What occasion did you recall?
> A: They were talking at the bar.
> Q: Okay.
> A: At the dance that night.
> Q: And do you recall what was said?
> A: Vaguely talked about his vehicle, his Jeep.
> Q: Do you recall any specific discussion?
> A: Just talked about the performance of it, and stuff like that.
> Q: Do you recall what Greg may have said?
> A: Umm. He said the keys were in the dash…or in the [inaudible] and test 'er out…something in those lines.

[83] Under questioning on behalf of The Personal certain portions of a statement he had given to an insurance adjuster between three and four weeks after the

accident were put to McLellan. Although this was in cross-examination, there are dangers of this being misused as a prior consistent statement. For this reason any treatment of the statement will be limited by these concerns.

[84] Corbett was cross examined very effectively by counsel for Greg McLaughlin. His evidence was, frankly, very hard to pin down on the issue of what exactly he may have heard and when he heard it. Discovery and other statements were put to him in impeachment and attempted impeachment. When confronted with potentially contradictory testimony he attempted to explain this, citing confusion or faults in his memory. It does have to be said that Corbett did appear to be easily confused and turned around in his evidence.

[85] Ultimately, he would acquiesce and agree with the suggestions of cross examining counsel even where this meant adopting evidence seemingly contradictory to another position he was taking.

[86] The testimony of Corbett must be treated with the highest degree of caution. The state of his sobriety alone would demand this. Later in these reasons I will offer some additional comments on the role of his evidence.

Gillian Davis

[87] Gillian Davis was called as a witness during the case of the Defendant, McLellan. Her evidence was important and recognized as such by all parties.

[88] Davis has a diploma in Medical Office Administration and works for the Nova Scotia Health Authority. In the past, she has been a volunteer firefighter and Medical First Responder with the Economy Fire Brigade.

[89] She grew up in the community of Five Islands. She has known the individuals involved in this matter for most of her life. She still resides in the community. She previously shared a residence with Ryan McLellan for a short time and had a brief intimate relationship. Her relationship with Ryan McLellan went from very close to virtually non-existent for the five years that followed the injury to Holly Grue. She did encounter and speak with Ryan McLellan a few weeks before the trial.

[90] The relationship history between Davis and McLellan means that the Court needs to carefully weigh her evidence and assess whether these factors have impacted her testimony or recollection.

[91] Gillian Davis describes herself as a friend of Greg McLaughlin. She has known him for many years. She believes they respect each other. They have maintained a cordial relationship and have not had a dispute over this case.

[92] On New Years Eve 2011 Gillian Davis purchased a 12 case of beer for herself. She took this to Ryan McLellan's house where she planned to socialize before the dance. She estimates she drank five or six beer between noon and her departure for the dance around 10:20 p.m. She also acknowledges smoking three or four joints of marijuana which were shared between herself and Ryan McLellan.

[93] The amount of alcohol consumed by her at the dance was a matter of some controversy. She testified that she ordered three singles in large glasses. She said two of the three singles were knocked over at some point which meant she consumed only a portion of those. On cross-examination, she was challenged with her discovery evidence in which she referenced consuming doubles that night. She maintained her recollection that she was ordering singles that evening. She was intoxicated but did not consider herself badly inebriated.

[94] Davis gave evidence as to her recollection of events at the dance.

[95] A key component of Gillian Davis' evidence pertained to her memory of an encounter between herself and Greg McLaughlin as the dance was wrapping up. She estimated this to be around 1:00 AM. The bar had been closed and the room lights had been turned up. She was outside having a cigarette when she saw McLaughlin walking back into the building. She testified as follows:

> A: I had…was standing where he was walking, so he was walking towards me and I had…he was saying something about his Jeep being gone. And I said, what happened? And he said, Ewok…meaning Ryan McLellan, had taken my Jeep and I asked him how he got the keys…like what happened? And he said…I said, did you give him the keys and he said, no. And I said, well then how did he…how did he get them? And he said, they were…he told him they were on the floor on the driver side and he could take it for a rip.

After this brief encounter, Gregory McLaughlin continued past her and into the Rec Center.

[96] Following this encounter she reported her impression as one of shock. She would not have allowed Ryan McLellan to drive her vehicle and she believed this would be a sentiment shared across the community, especially when McLellan had been drinking. She testified to having a clear memory of surprise at what Greg McLaughlin had said to her.

[97] Approximately two minutes after this encounter, Gillian Davis saw McLaughlin come running out of the Centre with Jason Fleming, a member of

the local volunteer fire department. Over Flemming's fire department radio she could hear reference to a vehicle/pedestrian accident. This was the first indication she had that a collision had occurred.

[98] Gillian Davis went on to describe the rush to the scene of the accident, her observations of Holly's injuries, and the scene in general.

[99] On cross-examination she was challenged with her prior accounts of the encounter with Greg McLaughlin. The issue was revisited on re-direct. Her prior statements and discovery transcript were reviewed.

[100] I have carefully reviewed the testimony of Gillian Davis and the instances where her evidence was challenged. My conclusions are set out below.

Greg McLaughlin

[101] Greg McLaughlin was the first witness called in his own case. He was 35 years old at the time of the accident. He is married to Jennifer McLaughlin. He is a red seal plumber.

[102] More than 20 years prior to this hearing he was convicted of knowingly making a false statement under oath, contrary to section 134 of the Criminal

Code. McLaughlin testified that he couldn't recall that infraction or what it related to.

[103] Also introduced into evidence and acknowledged was his record for various infractions of the ***Motor Vehicle Act.*** These ranged from dated to more current:

April 13, 1997	- driving without a licence or insurance (s. 287(2))
September 15, 1999	- disobeying traffic sign or signal (s. 83(2))
October 4, 1999	- driving in excess of 50 km/h in a residential area (s.102)
June 2, 2000	- operating on a highway without licence plates (s. 37(a))
February 1, 2005	- driving in excess of posted limit (s. 106A(b))
June 26, 2007	- proceeding through stop sign (s. 133(1))
November 12, 2008	- using a cell device while driving (s. 100D(1))
July 13, 2010	- using a cell device while driving (s. 100D(1))
June 7, 2011	- disobeying a traffic sign/signal (s. 83(2))
November 1, 2013	- driving in excess of posted limit (s. 106A(b))
December 19, 2013	- using a cell device while driving (s. 100D(1))
March 27, 2015	- using a cell device while driving (s. 100D(1))

[104] The use that these convictions can be put to are quite limited. It was argued that it demonstrated a certain degree of careless disregard when it came to the use of vehicles. I do not over read the importance of these infractions in the context of this case.

[105] In cross-examination McLaughlin also acknowledged that after consuming alcohol to the point of intoxication he will still operate his motor vehicle. It

was argued this was relevant as it spoke to the impact of alcohol on his judgment:

Q: Now, just generally, you drink alcohol at the dances you go to, correct?

A: Yes.

Q: And driving home drunk is always a possibility at these dances for you, correct?

A: Yes.

Q: And whether you drive home drunk depends on things like what kind of mood you are in, correct?

A: Yes.

Q: How far you have to go, correct?

A: Yes.

Q: And whether the police are around, correct?

A: Yes.

Q: Sorry, was that a yes?

A: Yes.

Q: And if the police are around, you can take the 4-wheeler trails home if you have the right type of vehicle, correct?

A: Yes.

Q: And avoid the police, correct?

A: Yes.

Q: So you don't get caught drinking and driving, correct?

A: Correct.

Q: Now you drink and drive all the time, correct?

A: Yes…zero tolerance…so it's…yes, I do.

Q: And the only thing that stops you from drinking and driving is when you are so drunk that you can't function. Isn't that right?

A: Yes.

Q: Now, the night of the dance, New Years 2011, if people were going back to your house afterwards, you would just hit the woods, correct?

A: Yes.
Q: And take the 4-wheeler trails home, correct?
A: Correct."

[106] A number of witnesses spoke to their observations of McLaughlin's alcohol consumption on the night of the dance. McLaughlin's own recollection was that he consumed approximately 12 beer beginning around 8:00 p.m. and continuing through the evening. Others offered their subjective characterizations of his level of intoxication. It is clear that he had a "…good buzz on…" (in the words of Gillian Davis) but he wasn't showing any gross signs of intoxication or notable problems with balance or speech, at least in comparison to other attendees.

[107] McLaughlin and his wife had hosted a group of friends at their home prior to the dance. This was estimated to have begun around 8 or 9:00 PM and extended till the couple headed to the Recreation Hall to begin their shift selling liquor tickets around 10:30 p.m.

[108] Greg McLaughlin drove to the Rec Center in his green 1997 Jeep TJ. He had put some beer in the Jeep as he departed for the dance. He couldn't say exactly how many. He acknowledged the Jeep was going to be his means of getting home after the dance even if he had had been drinking. He had the

option of taking the Jeep on the local off-road trails and making his way home without the chance of encountering possible police check points.

[109] On arrival at the Rec Center parking lot he parked the Jeep near the main entrance, pulled the keys out of the ignition and dropped the keys to the floor in the area of the drivers side mat. He left the Jeep unlocked and went into the dance. He acknowledged having other options for the keys including putting them in his pants pocket or jacket. The option of giving them to his wife was raised.

[110] Once inside, McLaughlin and his spouse did their 45 minute shift selling drink tickets. They purchased some drink tickets themselves and socialized. He also acknowledged getting some of the beers from the Jeep throughout the evening.

[111] During the course of the dance Greg McLaughlin and Ryan McLellan encountered each other a number of times. McLaughlin acknowledged several casual discussions which took place at or near the bar. He believed that McLellan asked him about the Jeep and the two men discussed how it was working. They engaged in some “tech talk” including discussion about the

Jeep's specifications, tires and lift, among other subjects. Ryan McLellan had an interest in the Jeep that pre-dated the dance.

[112] There was extensive questioning of Greg McLaughlin on the issue of his past willingness to allow others to drive his vehicles. He was questioned on the past use of the Jeep in particular. It was clear that from time to time he had allowed others to drive the Jeep. It is clear that he viewed the Jeep as something of an off-road vehicle and a toy. There was evidence of past use consistent with this view. He agreed that he took the Jeep that night so it could be used on the off-road trails if he needed to get home that way.

[113] McLaughlin acknowledged the Jeep was a subject of discussion at the dance. This was not only with Ryan McLellan but with others as well. He acknowledged telling McLellan that the Jeep was a fun play thing and that it was working well. He acknowledged under questioning that as far back as the second "smash up derby" he knew Ryan was interested in operating the Jeep. Others who he believed to be consuming alcohol also seemed to have an interest in the vehicle. Nothing he heard or discussed that night led him to consider retrieving the keys or otherwise securing the Jeep.

[114] McLaughlin's evidence was that at no time did he give Ryan McLennan permission to take the Jeep. This was strongly challenged on cross examination. Portions of his discovery evidence were put to him. It was suggested to him that his answers were equivocal and carried the suggestion that he had subsequently convinced himself he would never give permission as opposed to being sure:

> Q: Now sir, I'm going to refer you to [discovery transcript]…page 294, line 20. Okay?
>
> A: Yes.
>
> Q: Okay.
>
> Q: Okay. "And then he said it was working okay and that the keys were on the floor on the drivers side and that they keys are in it. Give 'er'." Okay? So he goes on to say it was his understanding that he had your permission…
>
> A: No.
>
> Q: …to go for a spin. That's what he says in here, okay?
>
> A: Okay.
>
> Q: And I want to show you the basis for that and why he felt that way. And so I say to you, now that you've had a chance to look at it, I mean….
>
> A: Yeah, I've read it before…
>
> Q: Yeah. And as a matter of fact you don't deny all of what Ryan says there except one part?
>
> A: Yeah.
>
> Q: Didn't you say to him "You can go give'er"?
>
> A: No, I would not say that.
>
> Q: Well, you would not say that?
>
> A: I did not say that.
>
> Q: You have no memory of saying it.

A: No, I do not. And…and then going through all this for these years…or year and a half, going…of course you double…you think about what, the night and all that, and you…I just gotta go back and say no, Greg, you'd never do this. Why would you ever?"

[115] After having this discovery excerpt put to him, Counsel for The Personal questioned McLaughlin as follows:

Q: And those…are your inner thoughts, correct?

A: Yes.

Q: You go over this night quite a lot in your mind, fair?

A: Yes.

Q: And of course you double guess yourself, correct?

A: It says right there.

Q: And of course you double guess yourself?

A: Yes.

Q: You think about that night and all that happened, correct?

A: Yes.

Q: And you say to yourself, "No Greg, you'd never do this", correct?

A: Correct.

Q: You're telling yourself that you'd never have said that to Ryan, correct?

A: Correct.

Q: And you say to yourself, "No Greg…why would you ever?", correct?

A: Correct.

Q: Your thought there is "Why would I ever give this vehicle to Ryan?", correct?

A: Yes.

Q: So you are convincing and reassuring yourself that you never would have done this, correct?

A: Yes.

Q: As you have testified that's because you don't have a memory of saying it, correct?

A: Yes, I did not say it.

Q: You don't have the memory of saying it, correct?

A: That's correct."

[116] At one point in the evening Greg McLaughlin and a friend who was at the dance, Mike Rushton, agreed to switch vehicles at the end of the evening. McLaughlin appears to have asked to switch with Rushton as he intended to have some people over after the dance and may have needed more passenger room for the drive home.

[117] McLaughlin was questioned extensively about this exchange. He said he was standing in a group around the bar when this occurred. As part of the back and forth Rushton took the keys to his vehicle, a Nissan Frontier, from his pocket and gave them to McLaughlin. McLaughlin testified that in turn he told, or "shouted" to Rushton the whereabouts of the Jeep keys. His explanation was that the noise in the Hall required him to raise his voice. He testified that only subsequently did he realize that Ryan McLellan was standing behind him. He was cross examined as to whether he had given varying accounts of where this discussion had taken place and where McLellan and others were in relation to the discussion.

[118] About 45 minutes after this exchange with Mike Rushton, McLaughlin went back to Rushton and returned the keys to the Frontier saying he didn't want to swap vehicles after all. At trial he explained this was because he had been drinking and didn't like the idea of taking Rushton's vehicle. On cross examination, he acknowledged this was at least partly because he wanted to have the option of driving his Jeep home on the trails, thus avoiding the highway and potential police checkpoints.

[119] He agreed he wouldn't have minded if Rushton had driven the Jeep in the 45 minutes interval. He also acknowledged that while in his possession he had safeguarded the keys to Rushton's vehicle. They had remained in his pocket throughout.

[120] McLaughlin was questioned about the point when he learned that Ryan McLennan had taken the Jeep. His recollection was this would have been after midnight. Mike Rushton approached him in the Hall to say he had seen the Jeep leaving with Ryan driving it. The following exchange occurred in his direct evidence:

> Q: And what was your response?
>
> A: At the time I, being New Years Eve, and I said 'Well okay, don't worry about Ryan. The cops will get him, ha ha ha'. And without…anyways…without knowing what was going

> on. If he was, if it was really happening or they just started it up or, I don't know. I just went outside right after that."

[121] McLaughlin testified he did go outside and saw the Jeep coming into the parking lot from the highway. His evidence was that he raised his arms in a questioning gesture. He stated that no one else was outside in the parking lot when this encounter occurred. As he approached the Jeep it pulled away from him and went back towards and onto the highway. He testified on direct that he spoke to no one outside.

[122] It was after his return into the Hall that Jason Flemming, one of the first responders present, initially received the call about a vehicle/pedestrian collision.

[123] He accompanied Flemming to the scene. And from there eventually confronted Ryan McLellan at McLellan's home. McLaughlin was accompanied by his father who witnessed this exchange. He agreed that he was extremely emotional and angry. He forcibly entered the house. He located McLellan and accused him of hitting Holly Grue and stealing the Jeep. McLellan lied about hitting Grue and disagreed that he has stolen the Jeep. In his own evidence McLellan explained that he was scared of being assaulted.

This led him to lie about the collision. He disagreed that he had stolen the Jeep, maintaining that he had permission to take it for a rip.

[124] My conclusions with respect to the evidence of Greg McLaughlin are summarized below.

Michael Rushton

[125] Michael Rushton was called during the case of the Defendant, Greg McLaughlin. He was 61 at the time of the accident and is retired. He attended the New Years Eve dance. During the evening he consumed less than one beer and consequently enjoyed better recollection of the events than some attendees.

[126] Rushton testified that he has known McLaughlin since McLaughlin was a child. He knew of Ryan McLellan but not well. On his way to the New Years Eve dance he stopped by Greg McLaughlin's home for a visit. He did not drink there but socialized for a few minutes.

[127] Rushton was questioned on his interaction at the dance with any of the parties. He described a discussion with Greg McLaughlin later in the evening in which McLaughlin approached him and asked if he could borrow Rushton's vehicle after the dance as he wanted a bigger vehicle for transporting a few

more people to his home. He understood there was to be an after party at McLaughlin's home following the dance.

[128] Rushton said that he was fine with this. He was going to take Greg McLaughlin's Jeep in exchange. He described taking the vehicle keys from his pocket and giving them to McLaughlin. In response, he believes that McLaughlin told him that the keys to the Jeep were under the driver's floor mat.

[129] Rushton testified that after he handed the keys to Greg McLaughlin and as soon as the men were finished speaking he turned and found Ryan McLellan:

> A:…standing right there behind me, and I mean right behind me.

[130] There were a series of questions directed at establishing how noisy the hall was at the time of this exchange. Mr. Rushton testified that he did not believe the music was playing at the time of the exchange. He did not believe he struggled to hear or be heard in the conversation.

[131] Mike Rushton went on to testify that shortly before he left the dance for the evening (he estimates this to be just before midnight) Greg McLaughlin came up to him to say that he had reconsidered and was not going to take Rushton's vehicle. The explanation given by McLaughlin was that he had a few drinks and he did not want to take Rushton's vehicle. Rushton reiterated his

willingness to swap vehicles in any event but McLaughlin declined and returned the keys to Rushton's vehicle.

[132] Rushton went on to testify that later, after the dance finished, he headed outside with the intention of going to his vehicle and home. He says that Ryan McLellan was behind him exiting the hall when he heard McLellan say that he was going to take the Jeep for a drive.

[133] Rushton reiterated that he really did not know Ryan McLellan and the comment made by him did not initially mean much to him as:

> A: …unless it was Greg, nobody else knew where the keys were as far as I knew.

This was an interesting comment in that it suggested Rushton did not automatically assume McLellan had been physically close enough to his prior discussion with McLaughlin to have overheard the comments about the location of the keys. If this were the case it would lead to the question of how otherwise McLellan knew where the keys were to found.

[134] Rushton went on to testify that he entered his own vehicle and started it. When he next looked to the Jeep, he saw Ryan McLellan start it and drive away. It pulled away hard once it got to the highway.

[135] On seeing this Rushton testified he went back inside, found McLaughlin and told him that Ryan had taken the Jeep. Greg McLaughlin replied that he wasn't going to worry about it because:

> A: …the cops are on their way down, they'll get him.

Rushton testified that he reiterated to Greg McLaughlin that he wasn't kidding and that "Ewok" had taken the Jeep. He was asked whether he felt that Greg McLaughlin was upset. He testified that he thought he was but a person can't tell if McLaughlin is upset or not until they know him better. In cross-examination Mr. Rushton agreed that Gregory McLaughlin's voice was calm when he said:

> …don't worry about it Mike.

[136] I found Michael Rushton to be a credible witness. I believe he was giving his account to the best of his ability as he recalled the events.

Robin Davis

[137] Robin Davis was 34 at the time of the accident. She was then, and now, a resident of Economy. She was a volunteer firefighter and first responder and on the night of the dance was the volunteer bartender. Her alcohol consumption was limited to one mixed drink. Like many of the witnesses she was familiar with all the parties and had known them for many years.

[138] In direct questioning Ms. Davis testified that she served Greg McLaughlin between eight and ten Budweisers as well as some mixed drinks which she believed were for his wife, Jennifer McLaughlin. She did not see McLaughlin actually consume the Budweisers. She also did not observe him to be visibly intoxicated.

[139] When her bartending duties wrapped up she left the Rec Center area in her vehicle. She testified as to the poor visibility and driving conditions caused by fog and haze. Her description of the weather was consistent with all the witnesses who addressed the issue.

[140] As she began the drive she observed Holly Grue walking away from the Rec Center area on the shoulder of the highway. She could see her because of the brightly coloured coat Grue was wearing. As she continued to drive away she encountered Greg McLaughlin's Jeep coming toward her on the wrong side of the highway. She had to pull off the traveled portion of the road to avoid a collision.

[141] Robin Davis did not realize it at the time but it was almost immediately following this encounter that the Jeep struck Holly Grue.

Jason Flemming

[142] Jason Flemming is a first responder with the community fire department. He was at the Rec Centre that night. His estimate is that close to 1:00 a.m. he received a page on his fire department pager/radio indicating that a motor vehicle-pedestrian accident had occurred. He said that Greg McLaughlin was still in the hall at that time. He evidence was that he grabbed McLaughlin and quickly explained what little he knew. The two men headed out of the Hall with the intention of going to the scene. The two men were alone in Flemming's vehicle for a very short time.

[143] Under questioning he said he would not describe Greg McLaughlin as angry or upset. He felt there was nothing about how he was acting that would be out of the ordinary for the circumstance. He did not recall McLaughlin saying anything about the Jeep being stolen. He does not believe the subject of the Jeep or Ryan McLellan came up after he received the page or as the two men drove to the scene.

[144] He does not believe there was discussion of the Jeep being taken without permission. In his view the two of them were focused on getting to the scene of the collision.

[145] Flemming's evidence was clearly narrow in scope. Without doubt he was giving the Court his best recollection of events as he recalled them.

Other Witnesses

[146] William McLaughlin is the father of Greg McLaughlin. He is a retired iron worker. He offered some limited evidence on the encounter between Greg McLaughlin and Ryan McLellan in the hours after the collision. Greg's spouse Jennifer McLaughlin was also called as were his brother Geoff McLaughlin and insurance adjuster Eric Rhese. They each offered evidence on specific issues.

Additional Conclusions and Findings

[147] It has been commented by many courts that the process of weighing evidence and reaching determinations of credibility and reliability can be complex.

[148] I have weighed the evidence and have specifically reviewed the criteria set out in the case law discussed earlier in this decision. I set out some central findings below:

Ryan McLellan

- Ryan McLellan was heavily intoxicated during the events in question.

- If he claimed to have good recall on issues of timing and detail this would not be credible or reliable.

- I accept that even someone with less than a full recall of details can still remember core elements of importance.

- His answers had an internal consistency on the consent issue. He knew he had made terrible choices and he was not shy about facing those mistakes. He did not appear to be raising the consent issue as an excuse or as an attempt to minimize the consequences of his actions.

- I conclude that McLellan was accurate when he related the history of having used Greg McLaughlin's off-road vehicles in the past.

- McLellan maintained from immediately after the collision that McLaughlin invited him to "take the Jeep for a rip". This however can not, in and of itself, be used to boost his credibility.

- McLellan does not bear ill will to McLaughlin. He feels bad that his hitting Holly Grue has created a bad situation for Greg McLaughlin. He feels guilty that McLaughlin could have negative consequences from an adverse outcome to this hearing.

- McLellan believes that he did have Greg's permission to take the Jeep that night. Greg McLaughlin may have believed that any driving was going to take place "off-road" or on the back field. This issue was not fully explored and makes no material difference because any consent in these circumstances is denied and any consent to an intoxicated driver in these circumstances could not be reasonably limited.

- The reliability of Ryan McLellan's evidence must be treated with caution because of the level of his intoxication. He genuinely however does believe that he had consent to take the Jeep. The state of the other surrounding evidence has to be considered.

William Corbett

- He was severely intoxicated during the events in question.

- He did maintain his position that he heard McLaughlin make the offer to McLellan to take the Jeep. However, his recollection has to be treated with a significant degree of caution.

- His manner of given evidence was difficult to follow as he tended to be highly suggestable. It became difficult to separate what he independently

recalled from what he may have been told or heard from some other source.

- Where events are not supported by other testimony or evidence beyond Mr. Corbett alone it is unsafe to rely on his powers of memory or recall alone.
- If any party was required to depend solely on the evidence of William Corbett to carry an evidentiary burden this would pose a real challenge.

Gillian Davis

- I find Gillian Davis' account at trial to be credible and reliable. I believe she was attempting to give a true account of what she remembers. I recognize that she was overly confident in her recollection of whether she was drinking singles or doubles at the dance. This has led me to cautiously assess all of her assertions.
- Her recollection was attacked as having altered over time. I do not conclude this was the case in any material respect on the core issue of the exchange with McLaughlin.

- A witnesses' demeanour in giving evidence has to be treated very cautiously. But it must still mean something. She gave every indication of attempting to give truthful evidence.

- Her core testimony was fundamentally unshaken by vigorous questioning.

- I accept the accuracy of her trial evidence with respect to her discussion with Greg McLaughlin outside the Rec Hall.

- I also conclude that her testimony accords with the other evidence as I find it. I believe that Greg McLaughlin was prepared to allow Ryan McLellan to take a rip in his Jeep. In McLaughlin's mind this may have been restricted to operation on one of the off-road trails. But this was not specifically addressed.

- Gillian Davis was surprised that Greg McLaughlin would allow Ryan McLellan to use the Jeep. This is an impression that has stayed with her. I believe she did form this impression after her encounter with McLaughlin outside the Rec Center. This strong impression made an impact on her and has stayed with her even more than the exact words or phrasing used by McLaughlin.

- I find that her past associations or relationships with the individuals involved in this matter have not coloured her effort to give a true account. In many ways it would have been easier for her to align with the version of events given by Greg McLaughlin. He was and is a respected member of the community and Ryan McLellan was and is essentially an outcast. She has not done that.

- Her evidence was not affected by her encounter with Ryan McLellan a few weeks prior to the hearing.

- With respect to the reliability of her recollection, the Court has to weigh the fact she was consuming intoxicating substances. In this she was in common with many other attendees of the dance. I accept she was inaccurate in the recollection of her alcohol consumption. She had no particular reason to be keeping track. Inaccuracy would not be surprising. This does not lead me to doubt her on the central points in contention. I do not conclude she was so impaired that her recollection was rendered unreliable.

- I have weighed each instance where it was suggested that Davis gave inconsistent or ambiguous evidence, or where others had different

recollections of events. I accept her evidence where it contrasts with the evidence of Greg McLaughlin.

Greg McLaughlin

- Like many of the people involved in these events he was intoxicated that evening. While he was not grossly intoxicated, I find that his judgment would have been impaired given what he had consumed. I fully accept that he did not exhibit strong outward signs of being heavily drunk.

- McLaughlin agreed that he spoke with McLellan at the dance more than once at the dance. They spoke more than once about the Jeep. He had these discussions knowing that McLellan wanted to try out the vehicle.

- I find that he did say to McLellan words to the effect that McLellan could take the Jeep for a rip. To him this may have implied that any use would be limited to the off-road trails. This would have been consistent with their past mutual interest and involvement. He also shared where the keys could be found. I believe McLellan's evidence on this.

- McLellan was impaired. Any perceived limitation on the use would be completely unreasonable in these circumstances.

- McLaughlin had allowed Ryan McLellan to previously use off-road vehicles owned by him. This use had never extended to highway use.

- McLaughlin intended to use the Jeep after the dance to travel to his own home via the off-road paths.

- He saw the Jeep as a cross between a highway vehicle and an off-road beater. This thinking, I find, impacted his judgment over its use and was a factor in his willingness to allow an intoxicated McLellan to use the Jeep.

- I prefer and accept the evidence of Gillian Davis with respect to the encounter between her and McLaughlin outside the Rec Hall. I conclude they did speak and he did make the comments as related by Davis with respect to McLellan and the Jeep.

- McLaughlin is extremely remorseful about the injury to Holly Grue. He has weighed and re-weighed the events of that evening and has reassured himself that he would never have given permission to Ryan McLellan to take the Jeep on the highway.

[149] Given these conclusions it is evident that Greg McLaughlin can not succeed in displacing the burden on him to demonstrate a lack of consent. This is a

burden that does not shift from him. If the evidence was evenly balanced on the issue he would still fail because of the statutory presumption. In the circumstances, I find that the evidence is not equally balanced. He has failed to demonstrate a lack of consent on a balance of probabilities.

Failure to Secure Vehicle/Keys

[150] I have concluded that Greg McLaughlin has not displaced the legal burden on him to demonstrate a lack of consent.

[151] Notwithstanding this finding, I will address the alternative argument that even if McLaughlin had succeeded in carrying his burden on the consent issue he incurred liability by the negligent manner in which he failed to secure his vehicle. This is a separate and distinct issue from the question of consent.

[152] The central elements of this analysis are as follows:

- There can be a duty to secure vehicles in circumstances where impaired persons may have access to the vehicle and/or an interest in taking or operating the vehicle.

- If a vehicle and keys are together and not secured there is a foreseeable risk it may be taken or operated by an unauthorized person.

- Where an impaired person takes and operates a vehicle, an accident or injury is entirely foreseeable.

[153] This case does not require a sweeping finding that all owners have a legal duty to lock and secure every vehicle no matter the circumstances. While there may be good reasons for doing so this issue is well outside the scope of this case.

[154] The facts here are notable. I am referring now to the facts advanced by Greg McLaughlin. He testified that he had loudly spoken in the dance about the Jeep being open and where the keys were located. He testified that others were in the area when he made these remarks. His evidence was that only later did he learn that McLellan was actually right behind him when this occurred.

[155] He knew Ryan McLellan had a long standing interest in the Jeep, as did others at the dance. He knew McLellan was intoxicated. He knew McLellan had operated his off-road or beater vehicles in the past, although never on the highway.

[156] In cross examination McLaughlin was asked whether people at the dance were admiring the Jeep and he agreed they were. He was asked whether

attendees were smoking and drinking alcohol around the Jeep. He acknowledged this was the case as well.

[157] This matter poses the question of whether an owner of a vehicle owes a duty to third parties to secure the keys to their vehicle in circumstances where impaired persons may reasonably be anticipated to be present.

[158] In the case of ***Kalogeropoulos v. City of Ottawa***, 1996 CarswellOnt 3827, the Defendant left a truck parked on a down town street after midnight. The keys were left in the ignition and the engine was running. In its decision the Court concluded that even if the keys had been left on the dashboard with the vehicle off, this would have been sufficient to constitute negligence in the circumstances. At para. 37 and 38 the Court stated as follows:

> 37 I find on the balance of probabilities that on the morning in question Moore left his truck standing in an accessible location on Coburg Street at its intersection with Rideau Street with the engine running, the doors unlocked and the key in the ignition. As such, it would have been an inviting target for an individual looking for transportation at the time and being incapable of exercising good judgment by reason of the consumption of alcohol or otherwise.
>
> 38 While I find it likely that Moore's truck was left running on the street with the keys in the ignition, it may be that not a great deal turns on that finding. On his own evidence, Moore left his truck standing unattended on the roadway with the doors unlocked and the keys in the cubbyhole of the dash, visible to an individual looking into the truck. Those circumstances, too, would be an invitation to any individual looking for transportation on the morning in question.

[159] Although the facts are different, the remarks in ***Stavast v. Ludwar***, 1974 CarswellBC 165 are still instructive. The Court was dealing with a case where a

vehicle had been damaged after an unknown person acting without consent took the vehicle for an unauthorized drive. The vehicle in question had been parked in front of a liquor selling establishment for a short period of time. The engine was running, the doors unlocked and the keys in the ignition.

[160] The Court held the Defendant liable in negligence stating as follows at paras 13 through 14:

> 13 I am not satisfied that liability results from every breach of s.182 of the ***Motor Vehicle Act*** which is followed by theft and property damage. It appears to me that one must examine Mr. Ludwar, Jr.'s, conduct in breaching the section in light of the circumstances prevailing at the time.
>
> 14 Obviously, s.182 was enacted with a view to reducing the opportunities for the theft of motor vehicles. An unattended vehicle left temporarily on a little travelled country road with its motor running is unlikely to provide many opportunities for theft. A vehicle so left unattended on a public street is, of course, in graver danger of being stolen. It is rather difficult to conceive of a risker place to leave a motor vehicle with its engine running then at night on a street ten feet away from the door of a beer parlour.

[161] In the more recent case of ***Johnston v. Litigation Guardian of Day***, 2013 ABQB 512 an injury occurred where an intoxicated passenger in a taxi cab took the cab for an unauthorized drive when the driver stopped at a store and exited the cab to purchase something for the passenger. The passenger was known by the driver to be an individual who was habitually drunk or under the influence of intoxicating substances.

[162] The evidence was that the cab driver usually turned the cab off and took the keys with the driver whenever they would exit the vehicle. In this occasion, the vehicle was turned off but the keys were left in the vehicle. A few moments after exiting the taxi the driver heard the cab turn on. The driver turned to see the passenger in the passenger seat with the engine now running. The cab driver did not immediately exit the store. The passenger drove off causing damage to the Plaintiff.

[163] The trial judge held that the driver was negligent, reasoning that were it not for the driver leaving the keys in the vehicle, the passenger could not have set the vehicle in motion.

[164] In the case of ***Cairns v. General Accident Assurance Company***, 1992 Carswell Ont 2403, the Plaintiff was a pedestrian who was hit in a cross walk. The vehicle in question had been stolen from a vehicle dealership that left the keys to the vehicle inside the cab. The evidence was that the keys had been stolen by some young people who took the jeep and caused injury to the Plaintiff. The dealership was held to have been negligent for having left the keys in the cab. The Judge stated in part:

> 14 …I find that McDowell was negligent first of all in leaving the keys unattended in a number of cars for what appeared to be lengthy periods of time.

[165] There are a number of cases which find that owners of vehicles do not owe a general duty of care to third parties injured by a stolen vehicle. These include ***Aldus v. Belair***, 1992 CarswellOnt. 39; ***Spagnolo v. Margesson's Sports Limited***, 1983 CarswellOnt. 1261; ***Attorney General of Canada v. LaFlame***, 1982 CarswellBC 3141; ***Campiou Estate v. Gladue***, 2002 ABQB. 1037.

[166] All cases ultimately turn on their own facts. These cases largely involve vehicles left unsecured in some fashion in private driveways. The present case involves a vehicle being left unsecured in an area where it was well known that inebriated individuals would be frequenting.

[167] The evidence at the hearing included testimony from various witnesses about their practice of securing keys at events such as this dance. In general, attendees appeared to have a practice of securing their vehicles and keys. Gillian Davis for instance testified that she does not leave her keys in her car at dances. She noted that people consume alcohol and "…you never know, cars get stolen all the time." Once again, the use of this sort of anecdotal evidence is limited but views like this were the prevailing opinion as expressed by witnesses.

[168] More material may be the comments of Greg McLaughlin himself who was questioned about his practice with keys in the period prior to the accident. He stated that it was common practice for him leave the keys to his vehicles on the floor with the doors unlocked.

[169] When he was asked whether his practice varied if he took the vehicle to a dance, he said it would depend:

> Q: Now nothing changed when you went to a dance, correct?
>
> A: Depends on where the dance was but for most yeah…depends on where the dance was or you know, yes, nothing changed.
>
> Q: Sorry?
>
> A: Sometimes I would have them in my pocket. Sometimes they'd be in the vehicle. Depends on the dance.

[170] Section 248(1)(a) of the ***Motor Vehicle Act*** states as follows:

> 248(1) Where any injury, loss or damage is incurred or sustained by any person by reason of the presence of a motor vehicle upon a highway, the onus of proof
>
> (a) That such injury, loss or damage, did not entirely or solely arise through the negligence or improper conduct of the owner of the motor vehicle, or of the servant or agent of such owner acting in the course of his employment and within the scope of his authority as such servant or agent;
>
> … shall be upon the owner or operator of the motor vehicle.

[171] At the time of the accident s.253(2) stated as follows:

> 253(2) Notwithstanding anything in this Act, no motor vehicle or the owner thereof or any surety or sureties for such owner shall be liable for any injury, loss or damage caused by the negligent operation of a motor vehicle if it is proven to the satisfaction of the Court that at the time such injury, loss, or damage was caused such motor vehicle was operated by, or under the control, or in the charge of a person who had stolen such motor vehicle.

[172] It is argued on behalf of The Personal that s.253(2) immunizes an owner only from claims that a vehicle was negligently operated. It excuses an owner from vicarious liability for the negligence of a thief who was operating the vehicle. It does not excuse the owner's negligence. So for example, if the owner committed some other act of negligence, and that negligence causes or contributes to the accident then the owner could still be liable for their actions. The Personal argues that the same reasoning applies in cases where an owner negligently fails to secure vehicle keys.

[173] This appears to be the conclusion reached by Chief Justice Cowan in ***Hollett v. Coca Cola Limited***, 1980 CarswellNS 73. This case dealt with the theft of a vehicle from a bottling plant. The truck in question was left in the parking lot of the plant. The keys were in it. The truck was stolen by a teenager who entered the site through a hole in the fence. The Court weighed whether s.227 of the ***Nova Scotia Motor Vehicle Act*** (which is identical in wording to the s.253(2)) was a defence to the Plaintiff's action in negligence against the vehicle owner.

[174] The Court concluded that this section only immunizes an owner from claims for negligent operation. Chief Justice Cowan stated as follows:

> 14 In my opinion, s.227(2) is intended to relieve the owner of the vehicle from responsibility where the injury, loss or damage was caused by the negligent operation of a motor vehicle and that is the only effective cause of the injury, loss or damage. If the Plaintiff can establish that the owner of the vehicle was negligent, and that such negligence caused, in whole or in part, the injury, loss or damage complained of, s.227(2) does not, in my opinion, afford a defence to the claims of the Plaintiffs who have suffered injury, loss and damage.

[175] In the current case I have concluded that McLaughlin has failed to carry the burden of demonstrating a lack of consent. Even had he succeeded I believe that the operation of s.253(2) as determined in the ***Hollett*** case would not have provided McLaughlin with a full answer to the claims of the Plaintiff.

[176] McLaughlin choose to leave this vehicle unsecured for the entirety of the evening in these circumstances where it was reasonably foreseeable the vehicle could be taken and operated by an impaired person causing harm to others.

[177] I am satisfied that case law establishes that owners of vehicle have a duty of care to secure keys or the vehicle in circumstances where impaired persons are known to be present and could gain possession of the keys and vehicle. This is underlined where the vehicle is known to be of interest to particular intoxicated persons.

[178] It is known that impaired persons exhibit poor judgment and drunk driving is extremely hazardous. Injury to members of the public is foreseeable.

[179] In this case the actions of McLaughlin in carelessly leaving the keys in the vehicle, announcing this publicly and in all the circumstances as outlined, created an unreasonable risk of harm in these circumstances. The consequences were foreseeable.

[180] His actions in these particular circumstances constituted negligence.

Apportionment of Liability

[181] The final question to be addressed involves the apportionment of liability as between the defendants McLellan and McLaughlin. The weighing of respective degrees of fault between defendants can be a challenging task. The ***Contributory Negligence Act***, RSNS 1989, c. 95 has provided a mechanism in s. 3(1) for the equal division of liability where the circumstances do not allow for the establishment of different degrees of fault.

[182] I find that the facts in this case are such that there is no need to resort to this provision.

[183] While the actions of Greg McLaughlin have been found to fall below a reasonable standard, they pale in comparison to the actions of Ryan McLellan. The greatest degree of the responsibility by far continues to rest with McLellan despite the failures exhibited by McLaughlin.

[184] An analogous situation may be found in “social host” cases where Courts are faced with apportioning fault between a negligent host and the responsible drunken driver.

[185] In the frequently cited case of ***Dryden (Litigation Guardian of) v. Campbell Estate,*** (2001), 11 M.V.R. (4th) 247 (Ont. S.C.J.) at para. 215, it is said that in such cases "…the lion's share of culpability, both morally and legally, should attach to the drinking driver". I find that the same considerations are clearly applicable here.

[186] The case of ***McIntyre v. Griggs***, 2006 CarswellOnt 6815 contains a useful discussion on the issue of apportionment in these circumstances. The Court also provides an overview of liability division in a number of cases including:

Menow v. Honsberger, [1974] S.C.R. 239 (S.C.C.)
(patron 70%; tavern 30%)
Hague v. Billings, 1993 CarswellOnt 32 (GenDiv)
(driver 85%; tavern 15%)

Sambell v. Hudago Enterprises Ltd., [1990] O.J. No. 2494 (GenDiv)
(driver 71.5%; tavern 28.5%)
Francescucci v. Gilker, [1996] O.J. No. 474 (Ont. C.A.)
(driver 22%; tavern 78%).

[187] Every case will turn on its own facts. The social host cases are not presented as a perfect analogy to the current situation but they do provide some context and useful analysis.

[188] In my view a proper division must reflect the fact that McLellan is by far the most responsible party both morally and legally. The lions share of responsibility rightly rests with him.

[189] Accordingly, I conclude that Ryan McLellan must bear 85% of the liability with 15% being apportioned against Gregory McLaughlin.

Costs

[190] In the event the parties are unable to reach agreement on the issue of costs the Court will accept written submissions within 45 days.

Summary

1. Did Ryan McLellan negligently operate the Jeep thereby causing or contributing to the Plaintiff's injuries?

   Answer : Yes

2. At the time of the collision, was Ryan McLellan operating the Jeep with the consent of the owner, Gregory McLaughlin?

   Answer: Yes

3. Did Gregory McLaughlin negligently fail to secure the Jeep thereby causing or contributing to the Plaintiff's injuries?

   Answer: Yes

4. What percentage of fault, if any, is attributable to Ryan McLellan and/or Gregory McLaughlin?

Answer:	Ryan McLellan	- 85%
	Greg McLaughlin	- 15%