

# Claim Case Study Dump Roads

## ***Auffrey v. New Brunswick***

### **Facts**

The plaintiff was injured when leaving a dump on a provincial road. The Jeep the plaintiff was driving collided with a rusty cable that was stretched across a public road leading to and from the dump owned and operated by the Province. The man was leaving at dusk after having entered in the daylight. The cable was about one-half to three-quarters of an inch thick. It was secured to one post while a hook was placed on the other so that the cable could be strung up, hooked and padlocked thus barring access to the dump road. A red cloth about twelve inches in diameter was tied to the cable and a small sign with the words “dump closed after dark” was also erected by the Department of Highways. The plaintiff suffered significant injuries including brain injury, fractured ribs and a collapsed left lung.

At trial the Province was found liable for the plaintiff's injuries. The Supreme Court of New Brunswick set aside the trial judgment and dismissed the man's claim for damages. The issue then went to the Supreme Court of Canada (SCC).

### **Issue**

Did the cable constitute a hidden danger? Was the provincial Crown under a duty to warn users of the road of hidden dangers?

### **Findings**

The SCC agreed with the trial judge that the cable across the road was a dangerous obstruction that created a trap. The sign indicating that the dump would be closed after dark gave no notice that the road would be closed or that the cable would be across the road. The court believed that there should have been adequate warning for this concealed danger. The rusty cable with the small rag tied

to it would be very difficult, if not impossible, to detect at night by someone in their car. The court concluded that the Province, like any other occupier of land permitting its use by the public, was under a duty to at least warn users against hidden dangers.

The court further agreed with the trial judge's comments that “it is reasonable to conclude that the highway authorities caused this obstruction to be erected. Furthermore, there appears to me to be no doubt that the highway department maintained and inspected this ‘dump road’. They were responsible for its safety. It was a road used by the public. They knew that this obstruction was up every night and should have been given adequate warning of this hidden peril by lighting the area or placing reflectors or other proper warning”.

### **The Court's Ruling**

The appeal was allowed with costs. The plaintiff was awarded \$51,351.45.

### **Lessons Learned**

It is important to ensure that people are safe while on your premises and while using your roadways. Adequate warning needs to be given of any hazards that could constitute a concealed danger. Consider the users of the roadway. Will they be able to see the signage in dusk or dark conditions? Will they be able to see anything obstructing the roadway within a reasonable time to stop safely?

Always follow recommended guidelines for signage and reflectivity.

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