

NEWS

Swerving to save an animal can have negligence fallout

There is not much more darling a sight than that of a mother duck followed by its brood of cute and fuzzy ducklings, waddling clumsily along. This is, of course, in sharp contrast to an adult goose with a fully functional food processing system that chooses to hang out at a place where my children like to run around bare foot. I've done a little research on the goose thing. It's illegal to even think about causing harm to a Canada goose. OK, that's a slight exaggeration and one that if



ACHIEVING JUSTICE
Paul Hergott

true would have me behind bars for a very long time. But back to the darling ducks...sometimes they waddle their cuteness into harm's way. Its our fault, of course. If we would have left their ponds alone the ducks could safely waddle their way through

their uncluttered little duck lives. But no, our sprawling communities have taken up more and more duck habitat. During springtime, those cute little creatures can find themselves in very serious danger, particularly when their waddling path takes them across a street or a highway. It is a time of year when we pay extra close attention to the road, to avoid the tragedy of running them over. Imagine the horror! My wife covers her eyes and cringes when a

gopher or squirrel darts out in front of our car and it just about makes her sick if we feel and hear that tell-tale "thump thump." She looks at me like I'm the devil when I don't slam on the brakes or swerve. Imagine her reaction if any of those cute, fuzzy little ducklings ended up under one of our tires. They're not the most spatially aware creatures. They won't immediately disperse if you get close with your vehicle. You have to sit there and wait for them to finish their casual waddling across the road before continuing on. At least with your vehicle sitting there a less

concerned motorist won't come along and mow them down. These would have been Emma's thoughts on a nice, relaxed Sunday in the Summer, 2010. Emma, a young driver, stopped her vehicle on Highway 30, south of Montreal, to tend to a family of ducks. Emma is in trial this week, hoping that a jury will not convict her of two counts of criminal negligence causing death and dangerous driving causing the deaths of a father, Roy, and his 16 year old daughter, Jessie. Jessie was on the back of Roy's motorcycle. They were following a car in the fast lane, when the car they were follow-

ing swerved at the last minute to avoid smashing into the back of Emma's stopped car. Roy and Jessie didn't have a chance. I found two British Columbia court judgments that are on point. Chief Justice Wilson in a case decided in 1969 had this to say: "The desire to save an animal's life is natural and admirable but, of course, it cannot excuse all acts done in pursuance of it. If the choice is between an animal and human safety then, I should think, there is no real choice and the animal must suffer." In a later decision of our Court of Appeal, the highest court in this province, a three justice panel

approved the following statement of Justice Hinds: "That he did not want to hurt the dog was both decent and understandable but, as a matter of law, he did not owe a duty to the dog—he owed a duty to his passengers. "In the circumstances, his instinctive reaction of veering off the roadway to avoid striking the dog was negligent." Not only "negligent," but in Emma's case the jury might find that putting the safety of an animal above the safety of other human beings sharing the roadway is "criminally negligent." Paul Hergott is a lawyer at Hergott Law in West Kelowna. paul@hlaw.ca

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Columnist says farewell to loyal readers

After 13 years of contributing bi-weekly financial and consumer columns to the Capital News, the time has come for me to say adieu.



FISCAL FITNESS
Doreen Smith

I have truly enjoyed my time spent on research on investment trends and timely topics, presenting to readers my common sense theme, and the positive response from my clients and the readers of the Capital News. Writing a column involves hours spent researching and preparing each column along with the mandated regulatory approval from my head office before it is sent to print. I have been fortunate to have met so many wonderful people during this time. Being an advocate for both the financial industry and the consumer has allowed me to focus on both sides of the industry. I have learned so much from my readers. Investing is a complex and confusing industry for many people. Many investors lose money by jumping in and out of the market. "Buy high and sell low" is common sense, however, during market ups and downs common sense is often not followed.

Before you sell or purchase investments, you should follow the advice or at least ask for a second opinion of a certified financial planner. It is confusing for investors as they struggle to understand the multitude of options available to choose from. There are many types of investments with constant marketing from the investment industry and also commentary from journalists to confuse investors. What does the investment consumer do? Some investors become paralysed by fear and do nothing. Some investors buy on a market high and sell on a market low when pessimism is maximized. It helps to understand what type of investor you are. Are you an investor who listens to the news and is convinced the sky is falling when markets decline or are you a steady as you go investor not easily swayed by the media? I encourage all people to work with a certified financial planner with a CFP designation, which means your advisor has taken years of courses and has written multiple exams to gain the industry designa-

tion. There are also annual mandatory educational requirements required to keep the CFP designation. There are many advisors without a financial designation who pass one exam and sell investment and insurance products. What type of advisor do you want to offer you investment advice? I encourage people to find an advisor who they can talk to and ask questions of. A CFP has the expertise to discuss your retirement, estate and tax planning questions in regards to your investments. A bank or credit union or independent financial advisor receives compensation on the assets held under management. Since all advisors are paid from client assets, you should maximize your relationship with a trusted CFP to benefit from the additional professional advice. If you are not receiving professional advice, it relates to being sold a product without any additional benefit. Thank you to all the people who have read my column. Many Capital News readers have cut out my newspaper columns and brought them to my office for discussion. I will remain in the investment industry and I will continue to enjoy my career choice and helping people. dsmith@capri.ca

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