

THE GLOBE AND MAIL

Jury awards dentist's family \$3.1-million in bar death case

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JUSTICE REPORTER

An Ontario jury has awarded \$3.1-million to the family of a dentist who suffered fatal head injuries in July, 2004, after being knocked to the ground during a melee outside a strip-club.

"I was ecstatic," said Susan Dumencu, widow of David Dumencu - who died after being caught up in a wild altercation involving several other patrons who had spilled out of Orillia's Atherley Arms Tavern.

"Dave was a great guy and it was just a horrible thing to have happen to him," Ms. Dumencu said. "They were negligent, and a little bit of justice has gone on here.

"You can't just throw a bunch of people in a bar and give them as much alcohol as they want and then put them out in a parking lot."

Dr. Dumencu had been celebrating with friends after an annual golfing trip. The plaintiffs maintained that, as he stood outside the tavern waiting for his friends to join him, a fight spilled out into the parking lot.

Moments later, Dr. Dumencu - who had twice the legal alcohol limit in his blood at the time - was knocked down. He was briefly conscious, but died within hours.

Barbara MacFarlane, a lawyer for Ms. Dumencu and her sons Prescott, Benjamin and Wesley, told the jury that the tavern refused to call an ambulance for Dr. Dumencu. She said that they closed the bar and turned off the lights as Dr. Dumencu lay outside in a pool of blood, being tended to by his friends.

Ms. MacFarlane accused the tavern of selling Dr. Dumencu too much alcohol that night, and failing to adequately supervise its staff or train them on how to deal with dangerous situations.

In response, the defendants claimed that Dr. Dumencu drank too much alcohol and then acted belligerently in the parking lot toward other patrons, provoking the altercation that led to his death.

Ms. MacFarlane, a lawyer with the Toronto firm of Torkin Manes LLP, said in an interview that the award serves a warning to bars and taverns that their responsibilities to patrons go beyond regulating the consumption of those who are likely to drink and drive.

"Bar owners must now be aware that they have obligations to patrons to see that they are safe, including training bar staff and bouncers to deal appropriately with disruptive patrons both inside and outside the bar," Ms. MacFarlane said.

In a separate criminal trial held earlier, the bouncer - Adam Holland - was acquitted of manslaughter in Dr. Dumencu's death.

The jury apportioned liability 35 per cent to the establishment; 15 per cent to the bouncer, Adam Holland; 35 per cent to bar owner Lea Hellerman; and 15 per cent to Dr. Dumencu.
