

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2015-07-08  
FILE: 9571/MVIA  
CASE NAME: 9571 v. Registrar of Motor Vehicles

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Appeal under section 50.2 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, from an impoundment pursuant to section 55.1(3) of the Act

Appellant

Appellant

-and-

Registrar of Motor Vehicles

Respondent

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### REASONS FOR DECISION AND ORDER

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**ADJUDICATOR:** Harinder S. Gahir, Vice-Chair

**APPEARANCES:**

**For the Appellant:** Self-represented

**For the Respondent:** Julia Scordia, Agent

Heard by teleconference: June 9, 2015

## REASONS FOR DECISION AND ORDER

A teleconference hearing was held on June 9, 2015, to consider the Appellant's appeal pursuant to section 50.2 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (the "Act").

After hearing the evidence and submissions, and pursuant to section 50.2(5) of the Act, the Tribunal ordered the Registrar of Motor Vehicles (the "Registrar") to release the motor vehicle on June 11, 2015, with reasons to follow.

These are the reasons for the Tribunal's Order.

### BACKGROUND

A motor vehicle was impounded pursuant to section 55.1 of the Act and the impoundment was appealed by the owner. The owner, motor vehicle and date of appeal in this matter are as follows:

|                 |                               |
|-----------------|-------------------------------|
| Owner:          | The Appellant                 |
| Motor Vehicle:  | 2005 Chev Equ (the "vehicle") |
| Date of Appeal: | May 22, 2015                  |

### ISSUES

As set out in the Appellant's Notice of Appeal (Exhibit #2), the Appellant appeals on the basis that the loss of the vehicle will result in exceptional hardship, as provided in section 50.2(3)(d) of the Act.

Should the Tribunal order the Registrar to release the motor vehicle on the basis that the impoundment will result in exceptional hardship?

Further, though not specifically stated in the Notice of Appeal, but raised through the evidence, the Tribunal will consider the issue of whether the motor vehicle was stolen at the time it was detained in order to be impounded, as provided in section 50.2(3)(a) of the Act.

Should the Tribunal order the Registrar to release the motor vehicle on the basis that the motor vehicle was stolen at the time the vehicle was detained in order to be impounded?

## FACTS

### Evidence for the Appellant

A summary of the Appellant's evidence follows.

The Appellant testified that on the day of the impoundment, he was at work and that his son (the "suspended driver") took the spare set of keys that were stored at the Appellant's home, and drove the car from the Appellant's work, without the Appellant's knowledge. At the end of his shift, around 8.00 p.m., the Appellant noted his car was missing. He called his home and his son told him that he took the car. At that point, the Appellant was unaware that his son's licence was suspended. Upon the Appellant's arrival at home, the police officer, who had stopped the suspended driver, came to the Appellant's home for further investigation and impounded the car. It was only at this time that the Appellant came to know that his son had a suspended driver's licence.

The Appellant testified that the impoundment of the vehicle was causing exceptional hardship on his daily routine; especially affecting his work commute, which has become difficult. The Appellant sometimes takes a cab, walks, or sometimes his other son drives him to work. He does not have an alternate vehicle and his financial situation does not allow him to rent a vehicle. The Appellant feels that taking public transportation is not an option as it is time consuming. He has not missed work or medical appointments due to the impoundment of the vehicle.

### Evidence for the Registrar

The Registrar tendered the following documents:

1. A copy of the Ministry of Transportation records indicating that, among other things, the impounded motor vehicle is registered in the name of the Appellant as owner;
2. A copy of the notice prepared by the officer who detained the impounded motor vehicle indicating, among other things, that the vehicle at the time it was detained was being driven by the person convicted of the offence under the *Criminal Code* of Canada outlined in point 4 below;
3. A copy of the notice forwarded to the Registrar regarding the impoundment;
4. A copy of the Ministry of Transportation records indicating that the driver at the time of impoundment had been convicted under the *Criminal Code* of Canada pursuant to which the driver's licence of the driver was then under suspension until June 4, 2015.

## LAW

Section 55.1 of the Act provides that a motor vehicle may be detained and impounded, and section 50.2 provides the motor vehicle owner's right of appeal to the Tribunal. The Tribunal on the appeal may, pursuant to subsection 50.2(5) of the Act, confirm the impoundment or order the Registrar to release the motor vehicle. Pursuant to subsection 50.2(8), the decision of the Tribunal is final and binding.

Subsection 55.1(3) of the Act states:

- (3) A motor vehicle detained under subsection (1) shall be impounded as follows:
1. For 45 days, if there has not been any previous impoundment under this section, within a prescribed period, with respect to any motor vehicle then owned by the owner of the vehicle currently being impounded.
  2. For 90 days, if there has been one previous impoundment under this section, within a prescribed period, with respect to any motor vehicle then owned by the owner of the vehicle currently being impounded.
  3. For 180 days, if there have been two or more previous impoundments under this section, within a prescribed period, with respect to any motor vehicle then owned by the owner of the vehicle currently being impounded.

O. Reg. 631/98 provides that the prescribed period, referred to above, is two years.

The owner may appeal the impoundment on only four specific grounds set out in subsection 50.2(3):

- (3) The only grounds on which an owner may appeal under subsection (1) and the only grounds on which the Tribunal may order the Registrar to release the motor vehicle are,
- (a) that the motor vehicle that is impounded was stolen at the time it was detained in order to be impounded;
  - (b) that the driver's licence of the driver of the motor vehicle at the time it was detained in order to be impounded was not then under suspension;
  - (c) that the owner of the motor vehicle exercised due diligence in attempting to determine that the driver's licence of the driver of the motor vehicle at the time it was detained in order to be impounded was not then under suspension; or
  - (d) that the impoundment will result in exceptional hardship.

The Appellant here appeals on the basis of sections 50.2(3)(a) and (d).

Issue Should the Tribunal order the Registrar to release the motor vehicle on the basis that the motor vehicle was stolen at the time in respect of which the vehicle was detained in order to be impounded?

The meaning of "stolen" is not defined in the Act.

The Shorter Oxford English Dictionary, 3<sup>rd</sup> ed., provides the definition of “stolen” as follows:

**Stolen:** 1. Obtained by theft. 2. Accomplished or enjoyed by stealth; secret. 3. of time: obtained by contrivance

**Theft:** 1. The action of a thief; the felonious taking away of the personal goods of another; larceny 2. That which is or has been stolen; the proceeds of thieving.

The *Criminal Code of Canada* (the "Code"), R.S.C. 1985, c. C-46, provides guidance.

Section 1 of the Code states:

“steal” means to commit theft...

Section 322(1) of the Code states:

- 322.(1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or the use of another person, anything, whether animate or inanimate, with intent,
- (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
  - (b) to pledge or deposit it as security;
  - (c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or
  - (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.
- (2) A person commits theft when, with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.
- (3) A taking or conversion of anything may be fraudulent notwithstanding that it is effected without secrecy or attempt at concealment.
- (4) For the purposes of this Act, the question whether anything that is converted is taken for the purpose of conversion, or whether it is, at the time it is converted, in the lawful possession of the person who converts it is not material.
- (5) For the purposes of this section, a person who has a wild living creature in captivity shall be deemed to have a special property or interest in it while it is in captivity and after it has escaped from captivity.

The Divisional Court held in *Marshall v. Ontario (Registrar of Motor Vehicles)* [2002] O.J. No. 745 that the Tribunal should not limit the meaning of “stolen” only to an intention to take the vehicle permanently. The Court held that the term “stolen” could also apply to an intention to take the vehicle temporarily. The Court reviewed the circumstances of that case and stated:

In our opinion a vehicle is 'stolen' in this context when it is taken without the owner's consent and when the perpetrator intends to deprive the owner of it, whether permanently or temporarily.

**Issue** Should the Tribunal order the Registrar to release the motor vehicle on the basis that the impoundment will result in exceptional hardship?

The Shorter Oxford English Dictionary, 3<sup>rd</sup> ed., defines "exceptional hardship" as follows:

**Exceptional:** Of the nature of or forming an exception; unusual.

**Hardship:** 1. The quality of being hard to bear; hardness; severity. 2. Hardness of fate or circumstance; severe toil or suffering; extreme privation.

Also, where the owner appeals on the ground of exceptional hardship, subsection 50.2(4) provides:

(4) Clause (3) (d) does not apply if there was a previous impoundment under section 55.1 with respect to any motor vehicle then owned by the same owner.

Section 10 of O. Reg. 631/98 provides the criteria to be considered and those not to be considered in determining the appeal under this section. First, the Tribunal must consider whether no alternative exists for the impounded vehicle and if there is no alternative, then whether the impoundment will result in a threat to the health or safety of any person ordinarily transported by the motor vehicle or a threat to public health and safety or to the environment or property of a community in whose service the vehicle is ordinarily used.

The section also provides that the Tribunal may not, except in certain circumstances, consider:

- financial or economic loss to any person,
- loss of employment or employment opportunity to any person, or
- loss of education or training.

These factors may be considered only if the owner demonstrates all of the following:

- there is no alternative to the vehicle available,
- the loss will be immediate, significant and lasting,
- the impact will be on a person ordinarily transported by the vehicle, and
- the impact of the loss will be on someone other than the suspended driver, and will not be the result of a loss by the suspended driver of the type described above.

The regulation states that the Tribunal cannot consider inconvenience to any person as being exceptional hardship.

All elements of the grounds of appeal must be proven on the balance of probabilities by the owner of the vehicle.

## **APPLICATION OF LAW TO FACTS**

The Appellant testified that the impoundment of his vehicle is causing him exceptional hardship as there is no other vehicle available to him and commuting to work has been difficult as the Appellant's workplace is about a twenty minute walk from his home. He further testified that he cannot afford renting a vehicle, and public transportation is not an option for him, as he feels, it is time consuming.

Dealing first with the ground of appeal under section 50.2(3) (d) of the Act, the Tribunal finds that the Appellant's circumstances do not meet the definition of exceptional hardship within the meaning of section 10 of O. Reg. 631/98. The Appellant did not miss work or any medical appointments since the impoundment of his vehicle. The Tribunal finds that there are alternatives to the impounded vehicle available to him, though he may consider them inconvenient. He has walked to work, public transportation is available and his other son has assisted. In these circumstances, the Regulation does not permit the Tribunal to consider 'exceptional hardship' as a ground of appeal.

Therefore, the Tribunal denies the Appellant's appeal under the ground of exceptional hardship.

### **Analysis under section 50.2(3)(a) of the Act.**

The Appellant, during his testimony, explained that on the day of the impoundment, he was at work. His son, who is the suspended driver, went to the Appellant's place of work and took the vehicle using a second set of keys, without the knowledge or consent of the Appellant. In response to a question from the Tribunal, the Appellant testified that his son lives with Appellant's brother and that he is not intimately involved with his son's life. He further testified that he was not aware of his son's driver licence suspension until the incident of the impoundment. The Tribunal accepts the evidence of the Appellant on this point. The Registrar did not present any evidence to contradict the testimony of the Appellant. However, the Registrar's Agent submitted that the Appellant did not press charges against his son and therefore, the grounds under section 50.2(3)(a) should not be available to the Appellant. The Tribunal is of the view that pressing charges is not a requirement to prove the ground of stolen. There has been a long line of Tribunal cases, as well as the *Marshall* decision from Divisional Court, that do not support the Ministry's position regarding the need for the owner to press charges. The Tribunal must weigh the evidence in each case to determine whether the ground of 'stolen' has been established on the facts. One fact for consideration may be the laying of charges.

Based on the evidence before it, the Tribunal finds that the Appellant was not aware that the vehicle was taken and driven by the suspended driver on the day of impoundment. There was no evidence that the suspended driver had taken the vehicle previously. Nor is there evidence of acquiescence or implied consent. Due to the foregoing, and on a balance of probabilities the Tribunal finds that the vehicle was stolen in accordance with subsection 50.2(3)(a) of the Act.

## **DECISION**

After considering the evidence, pursuant to the authority vested in the Tribunal under section 50.2(5) of the Act, the Tribunal ordered the Registrar to release the motor vehicle.

LICENCE APPEAL TRIBUNAL

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Harinder S. Gahir, Vice-Chair

*Released: July 8, 2015*