

**Licence  
Appeal  
Tribunal**

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**Tribunal  
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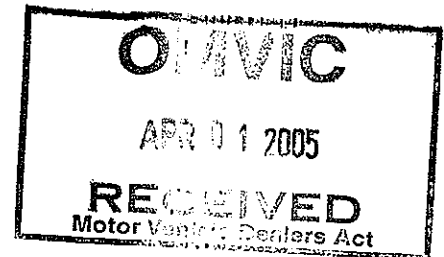
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March 30, 2005

**MEMORANDUM**



**Re: Ray and Tracy Lamont v.  
Board of Trustees, Ontario Motor Vehicle Dealers Compensation Fund**

Enclosed herewith please find a copy of Reasons for Decision and Order of the Licence Appeal Tribunal with respect to this matter.

**DISTRIBUTION LIST:**

Ray and Tracy Lamont, Applicants  
Aviva Harari, Counsel representing the Board of Trustees, Ontario Motor Vehicle  
Dealers Compensation Fund



2650-MVDA-CLAIM

APPEAL FROM A DECISION OF THE BOARD OF  
TRUSTEES OF THE ONTARIO MOTOR VEHICLE  
DEALERS COMPENSATION FUND

TO DISALLOW A CLAIM

TRIBUNAL: ELIZABETH BENNETT-MARTIN, Presiding Member

APPEARANCES: APPLICANTS

AVIVA HARARI, Counsel, representing the Board of  
Trustees, Ontario Motor Vehicle Dealers Compensation  
Fund

DATE OF HEARING: February 4, 2005

Toronto

**REASONS FOR DECISION AND ORDER**

**BACKGROUND:**

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") from a decision letter of the Board of Trustees, Ontario Motor Vehicle Dealers Compensation Fund (the "Respondent" or "Board of Trustees") dated October 1, 2004, being Exhibit 1. The Respondent refused the Applicants' claim on the following basis:

It was the Board's decision to deny your claim for the following reasons. The Board is concerned about the veracity of the claim. In their opinion, this was not an arm's length transaction, as <Applicant's name deleted> was employed by the dealership as a mechanic at the time of the trade in the motor vehicle and did not disclose this information to the Board on the affidavit or the letter to the Fund dated June 30, 2004. The second reason being, that the vehicle was not accidented and repaired, as the bill of sale indicates, but rather it was a straight steal and has a different model year. Given the nature of <Applicant's name deleted>'s responsibilities at the dealership, this ought to have been apparent to him in his capacity of a mechanic.<sup>1</sup>

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<sup>1</sup> Names and items of Identifying information have been deleted in accordance with the requirements of the *Freedom of Information and Protection of Privacy Act*.

**ISSUE:**

Should the Tribunal confirm the determination of the Board or set aside the determination of the Board and allow in whole or in part the Applicants' claim for compensation under section 12(3) of the Terms of Compensation Fund Schedule of Regulation 801 under the *Motor Vehicle Dealers Act*?

Three witnesses gave sworn evidence. The Applicant. On behalf of the Respondents, Detective Constable James Robert Sheppard and Detective Constable Richard Gray Harwood, and Laura Halbert, Manager of the Motor Vehicle Compensation Fund.

**APPLICANT'S EVIDENCE:**

**Testimony of the Applicant:**

The Applicant testified that he was denied his claim because he did not disclose his employment with Southwestern Equipment. He stated that the claim forms that were completed by his lawyer did not ask about his employment. If this information was pertinent, he states his lawyer would have included the information on the claim form.

He went on to state that the Board of Trustees believed that the Applicant should have known the vehicle was stolen because it was not an "accident repair". The Applicant testified that you cannot tell by looking at the vehicle if it is an accident repair. He would have had to call General Motors to find out if the vehicle was stolen, and he would not have had this authority.

The Applicant purchased the vehicle for \$30,000.00 (taxes included). He thought this was a good deal for an accident repair vehicle because it cost him \$42,000.00 for the vehicle after financing. The same vehicle new would have cost him \$39,600.00. His vehicle (a 2001 Chevrolet Suburban) was a rebuilt truck and therefore was worth less than a new vehicle.

The Applicant testified that he worked as a heavy truck mechanic at a separate facility from the dealership. The Applicant did not work in the part of the dealership where they rebuilt vehicles and sold them.

***Cross Examination***

On cross-examination the Applicant testified that he is 33 years old. He used to repair heavy trucks but is no longer a mechanic anymore for the dealership, Southwestern Equipment. He was never a licensed mechanic. He was self-taught and learned by trial and error. He started repairing tractors 9 years ago when Southwestern Equipment opened. He was previously a carpenter. He worked for Southwestern Equipment for seven years repairing tractors. He left Southwestern Equipment two years ago. During his time at Southwestern Equipment he was involved at all times in the repair of heavy equipment. He did not perform oil changes or repairs to his own vehicles. In 2001, he managed 9 to 10 employees. He was located in a different building for the repair of tractors. The dealership is on a piece of land which ranges in size from 5 to 6 acres.

The buildings are about 200 yards apart. He acknowledged that for work reasons, he would go from one building to another.

The Applicant noticed the vehicle (the 2001 Chevrolet Suburban) he subsequently purchased in the front yard of the dealership. A week later he saw that it was up for sale. He looked at it and brought his wife down to see it. They had been looking for 1 to 2 years for a vehicle. He went to other dealerships and they were asking \$41,000.00 for this same vehicle (2001 Chevrolet Suburban). He thought that the price (\$30,000.00) for his Suburban was a fair deal for a rebuilt vehicle. He knew it was a rebuilt vehicle because the serial number had the letters "RBT". He did not investigate the "RBT". He asked his boss for a good running truck and did not ask anything else. He did not put the vehicle up on a hoist to inspect it. He did not ask his co-workers/mechanics about the vehicle. His boss told him that the vehicle had had a smashed front end, but it looked nice. He did not ask his mechanic friend to look at anything other than asking about the vehicle. A few days later, when the paperwork was completed, he asked his boss whether the vehicle was stolen because he had suspicions.

The Applicant maintained in cross examination that he did not ask his boss anything else about the vehicle other than that it was a good running truck. Counsel for the Board of Trustees then put a transcript to the Applicant of a taped interview dated October 17, 2004 with Mike Pulles, the Applicant's former boss and former owner of Southwestern Equipment who was charged with criminal offences in relation to the operations of the dealership. This transcript contains the information that Mr. Pulles imparted to the officers in respect of the Applicant. Counsel for the Board of Trustees states that the Applicant asked him if the vehicle was stolen. At page 3 of the interview, Exhibit 3, Tab 4, Mr. Pulles states, "The Applicant knew what he was buying". In response, the Applicant stated that he asked him if it was a good truck.

Exhibit 3, Tab 11, contains a statement of the Applicant dated January 24, 2004. In this transcript, at page 2, the Applicant was asked the following questions and gave the following responses:

- Q. *Did you question Mike Pulles about the Suburban being stolen?*
- A. *Yup, I asked him if it was all right and he said yes.*
- Q. *Was that the extent of the conversation?*
- A. *Yup. Then I talked to Bob Ward about the financing and all the paperwork I had to do. Bob Ward did all the paperwork for anything that Southwestern sold.*
- Q. *Why would you ask your boss, Mike Pulles if the Chev Suburban was stolen?*
- A. *Because I had suspicions. I'd seen piles of truck parts, like fenders, doors, springs, suspension parts, engine parts like air compressors, air filter boxes, fan blades etc. I would see these parts outside the*

*body shop in the morning when I came to work and they weren't there at night when I left. I normally worked from 8:00AM to 5 or 6 at night.*

Q. *Why was it suspicious that these truck parts would be outside the body shop?*

A. *Just because they weren't delivered during the day and they were left outside during the night. I would not leave those parts outside overnight because somebody might steal them. The body shop was a separate building from the repair shop completely.*

Q. *Did you think Mike Pulles was involved in a major way with rebuilding stolen vehicles?*

A. *Not in a major way. I thought that maybe he was getting some stolen parts from somewhere but I just stayed in the service shop and did my job.*

The Applicant admitted that he had suspicions that things were going on at the dealership that were not legitimate, that he relied upon information provided by Mike Pulles, and that he did not take any independent steps to verify the veracity of that information.

The Applicant was subsequently questioned with respect to the bill of sale for the vehicle, and in particular, the trade in of his Bonneville vehicle. The Applicant testified that his Bonneville vehicle was not traded in, and that it was sold in a separate deal to a third party. The Applicant's evidence is that he was given \$10,000.00 for the sale of this vehicle. Counsel for the Board of Trustees then brought The Applicant's wife's statement to his attention, which is located at Tab 10 of Exhibit 3. The Applicant's wife in her interview dated January 24, 2004, stated as follows:

Q. *What were the purchase details?*

A. *We paid approximately \$35,000.00, I think we got \$10,000.00 for the Bonneville, I'd have to look at the paperwork. We financed it through the Walker Financial, Bob Ward took care of it, it was through the Bank of Montreal.*

Q. *How long ago did you purchase the vehicle?*

A. *Approximately 2 years ago in the fall, about October I think.*

Q. *Did you know the Suburban was stolen?*

A. *No.*

The Applicant was then questioned about the bill of sale, and specifically, that it did not reflect the \$10,000.00 paid for the Bonneville, and therefore, was not a true reflection of the transaction with respect to the Suburban. The Applicant responded that this was

not correct. They owed money on the Bonneville. The Bonneville was sold to a third party, and when they received the money for the Bonneville, the Bonneville was paid off. Counsel then suggested to the Applicant that the bill of sale for the Suburban did not include the trade of the Bonneville, and therefore, they received \$10,000.00 in their pockets? This was denied, and the Applicant responded that he did not know that he was required to bring the paperwork for the sale of the Bonneville. He maintains that the Bonneville was sold to a third party, and therefore, this is why it was not reflected on the bill of sale.

## **RESPONDENT'S EVIDENCE**

### **Testimony of Detective Constable James Robert Sheppard:**

Detective Constable Sheppard has worked for the OPP for just under 35 years. He is part of the Provincial Auto Theft (PAT) Team, and was involved in investigating Southwestern Equipment and Mike Pulles.

Detective Constable Sheppard's Interview Report is contained at Exhibit 3, Tab 6 in relation to the Southwestern Equipment investigation. He was present when the Applicants' vehicle (the 2001 Chevrolet Suburban) was seized from the Applicants' residence because it was a stolen vehicle.

Detective Constable Sheppard testified that he stated the following in his interview report at page 2:

We walked out to the vehicle and while standing there I asked <Applicant's name deleted> if he knew that it was stolen. He replied no, but he'd heard things in the last while and he had his suspicions. I asked if when he was the service manager there if he knew that stolen vehicles were going through there. He said not really but he had his suspicions to that effect.

Detective Constable Sheppard then confirmed that he interviewed the Applicant's wife and that his interview report is located at Exhibit 3, Tab 10.

He testified that the Applicant's wife reviewed her statement, and that the two signatures that appear on the handwritten statement are the Applicant's wife's and his. He went on to state that the Applicant's wife was given an opportunity to correct errors, and that there were no errors, and the statement accurately reflects the Applicant's wife's statement.

When Detective Constable Sheppard was asked about the trade in of the Applicants' vehicle, he stated that the Applicant's wife said "she believed the Bonneville was traded, but she'd have to look at the paperwork". Detective Constable Sheppard was not cross examined by the Applicant's wife.

**Testimony of Detective Constable Richard Gray Harwood:**

Detective Constable Harwood testified that he has been working with the OPP since October 15, 1990. He is also a member of the PAT team. He was assigned to "Project Forest", which was the Southwestern Equipment Investigation, and is therefore familiar with the Southwestern Equipment Investigation.

He met the Applicant for the first time today. He testified that a Chevrolet Suburban vehicle was seized from the Applicant because it was stolen.

Detective Constable Harwood testified that the Officer Interview Report of Detective Kirk Sayles is located at Exhibit 3, Tab 5. Detective Sayles made a determination that the subject Applicants' Suburban vehicle was stolen from Quebec on September 1, 2001. The legitimate vehicle number was VIN 3GNFK16T6YG193250. This same vehicle was registered as one that had been rebuilt on the 20<sup>th</sup> day of September 2001 to Southwestern Equipment Inc. There was a false Vehicle Identification Number (VIN) on the Suburban vehicle at seizure.

Detective Constable Harwood testified that Detective Sayles stated that the Applicants' Suburban was a complete vehicle and had not been rebuilt or altered. The vehicle had been "re-vined" to disguise the vehicle and to give it a new identity. It was a stolen vehicle that had been put on the database.

Detective Constable Harwood identified the police report from the Quebec Provincial Police located at Exhibit 3, Tab 9. Although the report is in French, it notes vehicle I.D. 3GNFK16T6VG193250 was stolen between August 24 and 31, 2001 from the Best Western in Dorval, and is the same vehicle located at the Applicants'.

Detective Constable Harwood then went on to testify about the information contained in the transcript of the Taped Interview with Mike Pulles located at Exhibit 3, Tab 4, Page 3. Detective Constable Harwood confirmed that Pulles indicated that Ray knew what he was buying, that it was a "complete" meaning not a "rebuilt". Detective Constable Harwood stated that he thought the Applicants paid a fair bit of money for the vehicle so he was surprised. Pulles said the vehicle new was \$60,000 or \$50,000. The first registered owner was the Applicant's wife, and it had not been registered to Southwestern Equipment. The Applicant's wife was the sole owner.

Detective Constable Harwood testified that he reviewed the Statement of the Applicant located at Exhibit 3, Tab 11. He then went on to provide information contained in his Officer Statement Report located at Exhibit 3, Tab 8, Page 4, in relation to the essential elements of the interview with the Applicant as set out on page 4 of his report.

Detective Constable Harwood testified that the Applicant had an inference that there might have been stolen parts.

### ***Cross Examination by the Applicant***

The Applicant cross-examined Constable Hardwood with respect to the Officer Interview Report of Kirk Sayles. He specifically asked Detective Constable Harwood how he would identify a secret VIN number used by the police in their investigation of stolen vehicles. This question was objected to on the basis that secret VIN numbers should not be identified given their importance to ongoing stolen vehicle investigations.

The Applicant then asked Detective Constable Harwood how was he to know that a vehicle was stolen when he looked at the vehicle. Detective Constable Harwood stated that unless the Applicant was schooled in locating secret VIN numbers and stolen vehicles he would not know.

Detective Constable Harwood was then asked if the vehicle was inspected on a hoist would he know if it was stolen? Detective Constable Harwood stated that he did not actually inspect vehicles so he would not know how to determine if a vehicle was stolen.

Detective Constable Harwood testified that rebuilt trucks would cost less because they are not as sound.

### ***Re-Direct Examination***

In re-direct, Detective Constable Harwood confirmed that in the case of a re-vin, the RBT VIN would be found on the front dash and this could be viewed by a non-expert. There is nothing stopping a person from writing down a VIN and making inquiries.

### **Testimony of Laura Halbert, Manager of Ontario Motor Vehicle Dealers Compensation Fund:**

Ms. Laura Halbert is the Manager of Ontario Motor Vehicle Dealers Compensation Fund. Prior to this position, she was the Director, Compliance OMVIC.

Ms. Halbert testified that the Ontario Motor Vehicle Dealers Compensation Fund was established in 1986. All dealers make a one time contribution to the fund.

She confirmed that the quantity of the Applicants' claim is not at issue.

Ms. Halbert testified that claims are reviewed at board meetings of the Compensation Fund six times per year.

The Applicants' claim was denied for the following reasons which is set out in the denial letter located at Exhibit 3, Tab 1:

1. The Board was concerned regarding the veracity of the claim because the Applicant did not indicate his relationship with Southwestern Equipment; and
2. One inquiry of the Applicant was how he knew the truck was for sale? Ms. Halbert stated the application (located at Exhibit 3, Tab 2, Page 7) indicated that the Applicants found the best price at Southwestern Equipment, but that it did not indicate that the Applicant worked there.

Ms. Halbert went on to testify that RBT VIN numbers are assigned to vehicles that have been in serious accidents because of the trauma to the vehicle. She then stated that the Board denied, not because the Applicant did not know the secret VIN, but because he had an RBT VIN, and therefore he knew it had been in an accident, but there were no signs of trauma to the vehicle. She testified that a purchaser would want to know about the extent of damage to the vehicle, especially if it was for his family. She went on to state that she questions "because the Applicant worked at the dealership, how much willfull blindness was involved."

### ***Cross Examination of Ms. Halbert by the Applicant***

The Applicant asked Ms. Halbert why his wife was not asked about her employment. Ms. Halbert stated that the affidavit contained at Exhibit 3, Tab 3, Page 5, is the first information that is received. The affidavit states that he is to provide "full details of transaction, including description of vehicle(s), nature of contract and where the vehicle currently is. Include all relevant names and dates". She went on to say with respect to where the Applicant worked, "that if he worked at KFC it would not be relevant, but because he worked at Southwestern Equipment, there were credibility issues". She then went on to testify that when the question was asked how he knew the vehicle was for sale, his wife did not say that the Applicant worked at Southwestern Equipment, and therefore, this was misleading by omission, given that she said that she shopped around.

## **THE LAW**

Section 12. (3) of Regulation 801 to the *Motor Vehicle Dealers Act* states in part:

12. (3) A customer may make a claim against the Fund where the customer gives written notice of the claim to the Registrar within two years of the participant's refusal or failure to pay, even if the motor vehicle dealer with respect to whom the claim is being made ceased to be a participant after the refusal or failure to pay, and where the claim meets one of the following requirements:

...

1. The participant has been convicted of an offence under the *Criminal Code* (Canada) involving fraud, theft or false pretences in connection with a transaction out of which the claim arose and the claim is for a liquidated amount and the customer makes an application that is supported by evidence of the conviction and of the correctness of the liquidated amount.

...

Section 12(10) of the Schedule states:

12. (10) Despite subsections (1), (2), (3) and (6) and subsection 15 (3) of this Schedule, there shall not be paid out of the Fund,

(a) more than \$15,000, exclusive of costs, to each claimant in respect of each transaction, in respect of a claim or claims against any one participant;

- (b) any amount for interest, including interest on a judgment or on costs.

**Section 15(3) of the Schedule states:**

15. (3) Where a claimant requires a hearing before the Tribunal under subsection (1), the Tribunal shall appoint a time for and hold the hearing and, after affording the claimant an opportunity to be heard, may confirm the determination of the Board or may set aside the determination of the Board with respect to all or any part of a claim and direct the Trustee to pay the amount determined by the Tribunal.

**APPLICATION OF THE LAW TO THE FACTS:**

The issue to be decided in this appeal is whether or not the decision of the Board of Trustees of the Motor Vehicles Dealers Compensation Fund dated October 1, 2004 should be confirmed or denied in respect of their decision to deny the Applicants' claim against Southwestern Equipment Ltd. in the amount of \$15,000.00. There is no issue as to the amount of the claim. Southwestern Equipment is no longer active or operating and the owners/principals were charged with criminal offences in connection with their operation of Southwestern Equipment Ltd.

On behalf of the Compensation Fund, Counsel submits that although the Applicant may not have known that the vehicle he purchased was stolen, he was wilfully blind to this fact because he had resources available to him to investigate whether or not the vehicle was stolen. As such, she submits that based upon the facts of this case, the Applicants should not be paid from the Compensation Fund.

The Applicant maintains that he did not know that the vehicle at issue, the 2001 Chevrolet Suburban, was stolen. The Applicant's wife in her statement to the police stated she did not know the vehicle was stolen. The Applicant admits that he had some suspicions about the operations of the Southwestern dealership, but that he did not suspect that there were stolen vehicles going through the dealership. He gave evidence that he thought they may have been dealing in stolen parts.

The evidence of Detective Constable Harwood is that the Applicant would not know a stolen vehicle unless he was schooled in locating secret VIN numbers and stolen vehicles. In the Tribunal's view, this evidence is important, given that it directly contradicts the inference by the Trustee's Counsel that if the Applicant investigated the vehicle by both asking questions and having the vehicle inspected on a hoist, that he should have known that the 2001 Chevrolet Suburban he was purchasing was a stolen vehicle. In her view, the Applicant took no steps whatsoever to satisfy himself that this was not a stolen vehicle notwithstanding that he had some suspicions about the operations of the dealership.

It is the Applicant's evidence that he did not know that the vehicle was stolen. Based upon the evidence of Detective Constable Harwood, the Applicant would not have had the means to determine whether or not the vehicle was stolen. In the Tribunal's view, this evidence of the Applicant, which is uncontradicted, should be favoured over the evidence of Mr. Pulles that the Applicant knew what he was buying, and that it was "complete". Other than this statement by Mr. Pulles, who was criminally charged in

respect of his operations of the dealership, there is no other evidence to indicate that the Applicant knew that he was purchasing a stolen vehicle. As well, it is the Tribunal's view that the evidence as presented by the Respondent does not support the argument that the Applicant was "wilfully blind" to the fact the vehicle was stolen. In fact, Detective Constable Harwood admitted that he was surprised by the price that the Applicants had paid for the Suburban as he thought it was a fair bit of money for a stolen vehicle. The Applicants thought it was a fair price for a "rebuilt" vehicle, which would have cost less than a new vehicle. It is also the Tribunal's view that the evidence surrounding the sale of the Bonneville is not helpful to the determination of the issue before the Tribunal. The Applicant's wife, in her statement, said that she would have to "look at the paperwork" in respect of the \$10,000.00 received in respect of the Bonneville. The suggestion by the Respondent that the Applicants were attempting to pocket money in respect of the Bonneville is also not supported by the evidence. If this evidence was being used to support the Respondent's position, a request could have been made to the Applicants for the production of the documents related to the sale of the Bonneville. The Applicant testified that the Bonneville was sold to a third party and there is no evidence to contradict his testimony in this regard.

Accordingly, it is the Tribunal's view based upon all the evidence presented at the hearing of this matter, as outlined above, that the Board's decision to deny the Applicants' claim for compensation be set aside and that the Applicant's claim for compensation under section 12(3) of the Compensation Fund Schedule of Regulation 801 under the *Motor Vehicle Dealers Act*, be granted in full.

#### **DECISION:**

Accordingly, under the authority vested in it under section 15(3) of Regulation 801 under the *Motor Vehicle Dealers Act*, the Tribunal directs the Board of Trustees of the Motor Vehicle Dealers Compensation Fund to pay the Applicants' claim in the amount of \$15,000.00.

**LICENCE APPEAL TRIBUNAL**

  
Elizabeth Bennett-Martin, Member

Released: March 30, 2005

File: 2650.mvda.claim

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.