



JUSTICE

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February 2, 2011

**MacLachlan McNab Hembroff LLP**  
Barristers & Solicitors  
(Via Courthouse Solicitor's Mail)  
Lethbridge, Alberta

Attention: **Thomas B. MacLachlan**

Dear Sir:

**JAMES DAVID HILL**  
- and -  
**THE QUEEN IN RIGHT OF ALBERTA**  
as Represented By **THE REGISTRAR OF MOTOR VEHICLE SERVICES**  
**QUEEN'S BENCH ACTION NUMBER 1006 00221**

Please find enclosed for your information, the Memorandum of Judgment of the Honourable Mr. Justice P. M. Clark, given on February 2, 2011, for the above-noted action.

A hard copy of this Judgment has been forwarded to you.

Yours truly,

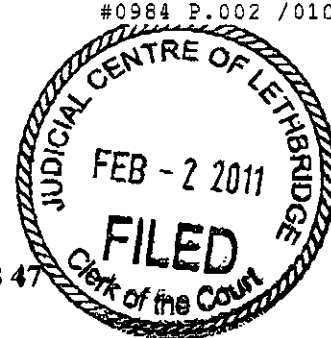
L. Brown  
Trial Coordinator

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Enc.

# Court of Queen's Bench of Alberta

Citation: Hill v. Alberta (Registrar of Motor Vehicle Services), 2011 ABQB 47



Date:

Docket: 1006 00221

Registry: Lethbridge/Macleod

Between:

**James David Hill**

Appellant

- and -

**The Queen In Right of Alberta  
as represented by the Registrar of Motor Vehicle Services**

Respondent

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**Reasons for Judgment  
of the  
Honourable Mr. Justice P.M. Clark**

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## Introduction

[1] The Applicant, James David Hill, seeks judicial review of the Registrar of Motor Vehicle Services' decision refusing to register Mr. Hill's T-Rex vehicle as a motorcycle.

## Background

[2] The T-Rex is a reverse trike vehicle produced in Quebec since 1992 by Campagna Motors Corporation. The Company was started by Daniel Campagna, a mechanic for the late F-1 World Champion Gilles Villeneuve.

[3] The T-Rex has been registerable in Quebec for many years. From 1992-2006 it was capable of registration as a Custom Build Motorcycle. In 2006, Transport Canada created safety norms for the new Three Wheel Vehicle classification, using the T-Rex as its benchmark. It

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therefore complies with all of Transport Canada Motor Vehicle Safety Standards and was granted a New Vehicle Information Statement and the National Safety Mark Certification.

[4] The T-Rex is now capable of registration in Quebec as a motorcycle. The province also recognizes that the T-Rex more closely resembles a passenger car and has amended its law to allow motorists to operate it with an ordinary passenger vehicle licence as well.

[5] The T-Rex shares many characteristics with passenger vehicles. It has a steering wheel with collapsible steering column, a steel roll-cage, a low center of gravity, a long wheelbase, a wide stance, disc brakes on all wheels, and three-point seat belts. The only obvious difference between it and a common sports car is that it has only one rear wheel.

[6] The T-Rex clearly challenges traditional classification. It is registerable as a motorcycle in Quebec; a three-wheeled passenger car in British Columbia; as a passenger car in Saskatchewan; and as a motorcycle in New Brunswick and Nova Scotia. In Ontario it is considered a passenger car but not capable of registration. In Manitoba, Prince Edward Island and Yukon it is not capable of registration. In the United States the T-Rex meets the safety requirements of a motorcycle of the US Department of Transportation and the US National Highway Traffic Safety Administration.

[7] In Alberta the T-Rex is capable of falling within the definition of a motorcycle in the *Traffic Safety Act*, R.S.A. 2000, c. T-6, s. 1(1)(w):

“motor cycle” means a motor vehicle, other than a moped, that is mounted on 2 or 3 wheels and includes those motor vehicles known in the automotive trade as motor cycles and scooters.

[8] Even so, the Registrar has discretion under s. 59(2) of the *Operator Licensing and Vehicle Control Regulation*, Alta. Reg. 320/2002 (the OLVCR) to refuse registration for “a 3 or 4 wheeled vehicle the Registrar considers would present a hazard to other highway users because of its novel size or operating characteristics”. That was precisely the decision made by the Registrar that Mr. Hill asks this Court to set aside.

## Facts

[9] In 2006, Mr. Hill purchased his T-Rex from a dealer in Quebec and then successfully registered it in Alberta for two years.

[10] In May 2008 the Registrar sent a letter to Mr. Hill indicating that his registration was issued in error and that it would not be renewed beyond June 2008. The Registrar advised that the T-Rex was now classified as a miniature vehicle pursuant to s. 59 of the OLVCR and was not registerable as its use on Alberta roadways could present a hazard to the occupants or other highway users because of its novel size and operating characteristics.

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[11] Mr. Hill sought judicial review on the basis that the Registrar did not provide him with the opportunity to make submissions. In response, the Registrar voluntarily rescinded its original decision, deciding to hold a new hearing allowing Mr. Hill's participation. Despite this, the original decision came before Justice Jeffery for judicial review. Justice Jeffery's Order dealt only with the status of Mr. Hill's registration in the period between the first and second hearings. Stating at page 3-4:

To be absolutely clear, the Registrar is in the midst of undertaking a reconsideration of the register-ability of T-Rexes pursuant to section 59. He will have before him a much fuller record than I have and my decision in no way fetters his discretion at the time he makes his decision at the conclusion of that reconsideration. (*James David Hill v. the Queen In Right of Alberta as represented by the Registrar of Motor Vehicle Services* (29 September, 2009), Lethbridge/Macleod (Q.B.))

[12] The Registrar's second decision, released on October 22, 2009, refuses registration on the basis that the T-Rex would "present a hazard to other highway users because of its novel size or operating characteristics": s. 59(2) of the OLVCR.

### **The Registrar's Reasons**

[13] The Registrar found that the T-Rex could only be considered a miniature vehicle by reference to s. 59(2) of the OLVCR. Which reads:

In this section, "miniature vehicle" means a go cart, a 3 or 4-wheeled vehicle of less than standard size, a golf cart, *a 3 or 4-wheeled vehicle that the Registrar considers would present a hazard to other highway users because of its novel size or operating characteristics* or a vehicle referred to in subsection (3) or (4).  
(emphasis added)

[14] Sections 59(3) and 59(4) are not relevant.

[15] The Registrar referred to the Oxford English Dictionary definition of "novel", finding it including the "unusual and atypical": Registrar's reasons para. 3.5.1.

[16] He then stated that, "[i]n terms of the T-Rex size, I am of the opinion that it is strikingly new, and for the majority of drivers in the province, of a kind not seen before": Registrar's reasons para. 3.5.3. In particular, he held that it was strikingly new in seat height and overall height.

[17] The overall height of the T-Rex is 1067mm. While there are traditional motorcycles with seat heights as low as 650mm, the Registrar held that there is a key difference in that riders straddle traditional motorcycles such that the total height of the vehicle is increased by the height of the rider. The T-Rex's seat height is only 180mm, which he held to be far lower than traditional motorcycles and as such ought to be considered a 'novel size'.

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[18] The Registrar also found that the T-Rex has 'novel' operating characteristics. He held that:

...the T-Rex has a steering wheel, and gas and brake pedals. Passengers in a T-Rex do not sit astride. These operating characteristics are novel among motor cycles. (Registrar's reasons at para. 3.6.2)

And:

...because of the seating arrangement, the addition of seat belts, the high centre mounted equipment, and the rear bodywork, I am of the opinion that the range of vision for the operator (in terms of the arcs to the rear, driver and passenger side) would be severely restricted when compared to other motor cycles. I say this knowing that the T-Rex is in compliance with CMVSS 111 with respect to mirrors. (Registrar's reasons at para. 3.6.4.)

[19] The Registrar held that the novel size and operating characteristics "presents a hazard to other highway users": Registrar's reasons para. 3.7.1. Firstly, he held that the low overall height of the vehicle makes it difficult to see by other motorists, particularly so in close traffic where the T-Rex would be obscured by other vehicles. Likewise, he held that "even when the T-Rex is not obscured by other traffic its novel size makes it significantly more likely to be missed by drivers performing mirror, shoulder, or other checks, who likely would not be expecting the presence of such a low vehicle": Registrar's reasons para. 3.7.6. Secondly, he held that "the T-Rex's low seat impairs the ability of the T-Rex driver to see other highway users.": Registrar's reasons para. 3.7.8. Thirdly, he held that the T-Rex would be registered as a motorcycle even though it has more in common with a passenger car. Explaining that:

The result is that a T-Rex driver needs a motor cycle licence to drive a T-Rex, but not a passenger car licence. Motor cycle driver training and examination, however, involves completely different seating, steering, acceleration and braking equipment. In other words, if the T-Rex could be registered as a motor vehicle, a driver with a motor cycle licence could drive it having never driven or been tested on a vehicle with operating characteristics resembling the T-Rex's. (Registrar's reasons para. 3.7.10)

Fourthly, he held that the T-Rex's novel operating characteristics present difficulties in servicing and repair, citing that Mr. Hill's own mechanic is not able to do a front alignment on it. Finally, he held that the T-Rex is a "novel, unusual, attention catching vehicle. As such, it is likely to present a distraction to other highway users. Distracted driving is a significant hazard": Registrar's reasons para. 3.7.13.

[20] For these reasons the Registrar concluded that the T-Rex is a miniature vehicle not capable of registration.

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## Issues

[21] The issues are:

1. What is the standard of review?
2. Applying the standard of review did the Registrar err in concluding that the T-Rex was incapable of registration on the basis that it is a miniature vehicle pursuant to s. 59 of the OLVCR?

## Analysis

### *Standard of Review*

[22] The test for determining the standard of review of administrative decisions was enunciated by the Supreme Court of Canada in the *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 and then further detailed in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339.

[23] In *Dunsmuir* the 'pragmatic and functional analysis' from *Pushpanathan* was renamed to the 'standard of review analysis': *Dunsmuir* at para. 63.

[24] The standard of review analysis was summarized in *Dunsmuir* at paras. 62 and 64:

In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review...The analysis must be contextual. As mentioned above, it is dependent on the application of a number of relevant factors, including: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal.

[25] It is not necessary to conduct a complete standard of review analysis in every case: *Dunsmuir* at paras. 57 and 62; *Khosa* at para. 54. As detailed above, the Court can adopt a previously determined standard where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question": *Dunsmuir* at para. 62.

[26] Even when the Court cannot rely on previous jurisprudence it is not always necessary to conduct a complete analysis because "[i]n many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness

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standard in a specific case": *Dunsmuir* at para. 64. Justice Binnie in *Khosa* at para. 54 cautioned against individually analyzing and balancing each factor in the analysis:

Factors should not be taken as items on a check list of criteria that need to be individually analysed, categorized and balanced in each case to determine whether deference is appropriate or not. What is required is an overall evaluation.

[27] In the present case, the appropriate standard of review can be determined by considering the nature of the question at issue and the level of discretion the legislature has given the Registrar.

[28] The question is one of mixed fact and law. Under s. 59 of the OLVCR, the Registrar must not register a miniature vehicle. The section goes on to list a number of ways that a vehicle will be considered miniature, including s.59(2). It is impossible to make a determination under s.59 without reference to the facts of a particular case, in this case because of the detailed characteristics of the size and operation of the T-Rex. Deference is required where the issue is one of mixed fact and law.

[29] The question before the Registrar required that he exercise his discretion. Section 59(2) states that a miniature vehicle is one that "*the Registrar considers would present a hazard to other highway users* because of its novel size or operating characteristics" (emphasis added). The section is clearly drafted to give the Registrar discretion to make a determination as to whether a vehicle is miniature on the basis of novel size or operating characteristics.

[30] This is exactly the type of question that the Court in *Dunsmuir* at para. 53 was describing when it stated:

Where the question is one of fact, discretion or policy, deference will usually apply automatically (*Mossop*, at pp. 599-600; *Dr. Q*, at para. 29; *Suresh*, at paras. 29-30). We believe that the same standard must apply to the review of questions where the legal and factual issues are intertwined with and cannot be readily separated.

Considering the nature of the law and the discretion given to the Registrar, the standard of review is one of reasonableness.

#### *Applying the standard of reasonableness*

[31] The standard of reasonableness dictates that a Court must not simply replace the previous decision with its own. Instead, as the Court stated in *Dunsmuir* at para. 47:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible,

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reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[32] In like manner, the Alberta Court of Appeal in *Finning v. International Association of Machinists and Aerospace Workers, Local Lodge No. 99*, 2009 ABCA 55, 448 A.R. 209 at para. 37 (see also *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, 144 D.L.R. (4th) 1 at para. 56) stated that:

The determination of reasonableness does not require that all reasons stand up to an examination. A decision is not unreasonable if there is one reason that can stand up to a somewhat probing examination.

[33] If any one reason given by the Registrar reasonably justifies the outcome in respect to the facts and law, the decision must stand.

[34] The Registrar began by classifying the T-Rex as a motorcycle since it falls within the definition: Registrar's reasons para. 2.5.12. As stated above, the definition includes motor vehicles with three wheels.

[35] The Registrar recognized that the drafters of the legislation likely did not contemplate a T-Rex type vehicle when drafting the definition. The T-Rex hardly resembles a traditional motorcycle. However, the Registrar's classification of the T-Rex is an acceptable classification given the characteristics of the T-Rex and the requirements of the *Traffic Safety Act*.

[36] The Registrar considered that Quebec's approach of classifying the T-Rex as a hybrid vehicle, a cross between a motorcycle and a passenger car, is "probably the same result one would get if one asked a 'reasonable person' the three questions - 'is this a motorcycle?' (No), 'is this a passenger car?' (No), 'what is it?' (Something in between)": Registrar's reasons para. 2.4.7 (It is important to note that Quebec, after having conducted the only documented Canadian road test of the T-Rex, chose to classify it as a motorcycle yet only require motorists to hold a passenger licence to operate it).

[37] The Registrar held that the T-Rex has a novel size because its seat height is considerably lower than traditional motorcycles, even without the height of the rider. Since the T-Rex more closely resembles a sports car, it is not reasonable to only compare it to traditional motorcycles. Instead, the Registrar ought to have considered whether the T-Rex has a novel size by comparison to other registrable passenger vehicles, including two seater sports cars.

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[38] This information was before the Registrar. A report was prepared by Alberta's Ministry of Transportation stating that the overall height of the T-Rex is 1067mm. For the purposes of comparison, a registerable Lamborghini Murcielago has an overall height of 1135mm: The Registrar of Motor Vehicle Services' Return at p. 603. This makes the T-Rex roughly 2.5 inches shorter than the Lamborghini Murcielago. As a result, the Registrar's finding that the T-Rex is a novel size due to its height is not reasonable.

[39] The Registrar also found that the T-Rex has novel operating characteristics by comparing it to a traditional motorcycle. At para. 3.6.2. of his reasons he stated that:

...the T-Rex has a steering wheel, and gas and brake pedals. Passengers in a T-Rex do not sit astride. These operating characteristics are novel among motorcycles.

Brake pedals, a steering wheel, and a seat rather than a saddle are not novel operating characteristics. Every passenger car has these characteristics. Even if these characteristics made the T-Rex novel, they do not present a hazard to other highways users.

[40] The Registrar, at para. 3.6.4 of his reasons, also held that "...because of the seating arrangement, the addition of seat belts, the high centre mounted equipment, and the rear bodywork, I am of the opinion that the range of vision for the operator...would be severely restricted when compared to other motor cycles". Not only is this true of other passenger vehicles, it is unreasonable to suggest that a steel roll cage and seatbelts make a vehicle unsafe for Alberta's roadways.

[41] I find that the Registrar erred in unreasonably comparing the T-Rex only to a motorcycle in respect to its size and operating characteristics. It is therefore not necessary to determine whether it presents a hazard to other highways users. If the T-Rex is not a novel size and does not have novel operating characteristics, it is not a miniature vehicle under the OLVCR.

[42] If I am wrong, I find that the Registrar also unreasonably relied on a number of other factors to determine that the T-Rex is a hazard to other highway users. Firstly, the Registrar found that the T-Rex would be licenced as a motorcycle, and motorists would require a motorcycle licence rather than a passenger car licence to drive it, despite the fact that it operates like a passenger vehicle. Rather than refusing to register the vehicle on this basis, the Registrar ought to simply require that motorists wishing to drive a T-Rex hold both licences. This approach would be appropriate until the legislation can be amended to specifically deal with these types of vehicles. Secondly, the Registrar references an alleged difficulty for Mr. Hill to obtain servicing and repair of his T-Rex. Whether Mr. Hill does or does not have difficulty servicing his T-Rex is irrelevant as to whether it is a miniature vehicle. Finally, the Registrar states that the T-Rex's novel size and operating characteristics "combine together to present a novel, unusual, attention catching vehicle. As such, it is likely to present a distraction to other highway users. Distracted driving is a significant hazard": para. 3.7.13. Many vehicles on Alberta roadways are eye-catching, especially sports cars that are often purposely purchased for

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that very reason, and that has never been a reason to refuse to register these vehicles. In summary, none of these additional reasons can justify the conclusion reached by the registrar.

### **Conclusion**

[43] It is apparent that Alberta motor vehicle registration legislation is outdated. The merits of the T-Rex ought to be determined with reference to what it is, rather than with reference to an ill fitting outdated definition. The fact that the T-Rex defies traditional classification ought not to prevent Alberta motorists from obtaining a registration for the vehicle.

[44] The Registrar's decision to refuse registration of the T-Rex is set aside.

[45] The T-Rex is declared to be a motorcycle capable of registration in Alberta.

[46] The Registrar is directed to process Mr. Hill's request to register his T-Rex.

### **Costs**

[47] If the parties cannot agree on costs, they may speak to them within a reasonable period of time.

Heard on the 24<sup>th</sup> day of August, 2010.

Dated at Lethbridge/Macleod, Alberta this 25<sup>th</sup> day of January, 2011.



**P.M. Clark**  
**J.C.Q.B.A.**

### **Appearances:**

Thomas B. MacLachlan  
for the Appellant

Sean McDonough  
for the Respondent