

# St. John's man beats city hall in court after his dying father's gift was towed

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After the City of St. John's towed and scrapped his pickup truck five years ago, Gerry Ryan (right) and his lawyer William Hiscock — pictured this week at Hiscock's office — were successful earlier this month in appealing a small claims court decision.

## Disputed truck leads to scrap

To anyone passing by, it was just a damaged old pickup truck.

But for Gerry Ryan, it meant a lot more.

"It was a gift from my father," Ryan said, reaching for a box of tissues to wipe tears from his eyes.

Before Ryan's father died on Sept. 28, 2012, it was the 83-year-old's deathbed wish that Ryan have his cherished 1997 Ford Sport.

"He loved that little truck," Ryan said, his voice quivering. "It was like his child, his pride and joy. ... For him to leave it to me was just so special."

Ryan was considering fixing it up, and about a week after his father died, he parked it in a neighbouring private laneway, with his neighbour's permission.

Less than a week later, vandals set fire to it, but fortunately only caused minor damage to the cab, Ryan said.

He left it in the lane until he could get it fixed up and decide what he would do with it.

Not long after, he got a visit from a city employee inquiring about the truck, but Ryan informed him that before he made any decision about the truck, he wanted the police to complete their investigation into the arson.

Ryan was shocked and heartbroken when, a few days later, he came home from the supermarket to find the truck gone.

"I thought, what's going on here?" he said. "Where did it go?"

He immediately called the towing company — the name of which had been noted by a neighbour — and was told the truck had been towed at the request of the City of St. John's, claiming it was abandoned in a city laneway.

The next day, before Ryan could take any action, it was scrapped for parts.

"I couldn't believe it," he said. "For the city to come and just scrap it, you know?"

It was the beginning of what would be a gruelling five-year court battle for Ryan to have the city held accountable for taking and profiting from a truck that belonged to him.

He sued the city, claiming a loss of more than \$10,000. That included the value of the truck's engine, the specialized, five-speed synchronized 3.5-litre transmission, a new catalytic converter, four wheels and hubcaps, the latter of which Ryan said were collector's items at \$400 apiece.

"It just wasn't right what they did. It was my property," said Ryan, who had signed documents from his siblings and his father's spouse, along with the public trustee as administrator of his father's estate, all agreeing to him having the truck. "They had no legal right to even touch it."

After several appearances at small claims court in provincial court, where Ryan represented himself, his case was thrown out, with the judge concluding there was not enough evidence to conclude the truck was Ryan's property, as it had not been legally transferred to him. As a result, since his father was still the registered owner, under provisions of the Highway Traffic Act, the city did not have to compensate Ryan.

But Ryan refused to let it end there.

"I wasn't giving up," he said.

Determined to appeal the decision, Ryan hired lawyer William Hiscock to argue the case before Justice David Orsborn at Newfoundland Supreme Court.

At the Oct. 6 appeal hearing, city solicitor Raman Balakrishnan acknowledged that Ryan's father had, in fact, given him the truck as a gift, but instead, focused on the issue of compensation. Balakrishnan echoed the trial judge's conclusion that the city did not have to compensate Ryan because he was not the registered owner and it had not been legally transferred to him.

But Orsborn disagreed and stated that the Highway Traffic Act does not apply when determining ownership.

He said the trial judge rested on his conclusion that Ryan had failed to establish the truck was a gift.

"I am satisfied that the (trial) judge erred in not considering, on the basis of the evidence introduced, whether or not Ryan had acquired ownership of the truck — before the fire — based on the public trustee's ratification, with the consent of all beneficiaries — of Ryan's taking possession of the truck," Orsborn stated in his written decision.

"Had the judge considered this acquisition of ownership on the basis of common law principle applied to a partial distribution of the estate in an intestate, and then considered the inapplicability of the Highway Traffic Act ... The entitlement to claim compensation for conversion of property is based on a right of possession, not ownership."

He went on to say, "The city's intentional taking and scrapping of the truck destroyed permanently Ryan's superior right to possess the truck. He is entitled to compensation for the conversion of his property."

Orsborn opted not to make a decision on how much Ryan was owed. Instead, he said the issue must either be settled at small claims court or, preferably, resolved out of court through meaningful discussions.

Ryan and Hiscock were relieved by the decision, but said the city's actions were upsetting.

"They put me through a lot of grief," Ryan said, again getting emotional. "Five years is a long time."

When he regained his composure, he added, "The old saying is you can't fight city hall, but I'm happy I fought them and won."

Hiscock said it's ridiculous the case went this far.

"My issue with this from Day 1 was that there was no disagreement with the siblings, his father's spouse, the office of the public trustee — all agreed it was Mr. Ryan's truck. For the city to come back and destroy a man's truck and then come back and fight him for five years over a technicality ... is pretty rough justice.

"Mr. Ryan went through this whole process and did a phenomenal job representing himself against city solicitors. ... It was time for him to bring some heavy guns on this because it just seemed so shocking to me that this long afterwards, the city was still fighting this."

Hiscock said nobody will know what went on at the city behind the scenes in this case, but he hopes a lesson can be learned.

"A vehicle was taken and shouldn't have been, and rather than fighting Mr. Ryan in the court for five years, I think those resources would've been better used to investigate why the truck was taken, if this is a pattern and if they need to retrain their employees to ensure something like this doesn't happen to anybody else."

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