SUPREME COURT OF NOVA SCOTIA
Citation: *Innocente v. Attorney General of Canada*, 2021 NSSC 8

Date: 20210211
Docket: Hfx. No. 311509
Registry: Halifax

Between:

Daniel Innocente

Plaintiff

v.

Attorney General of Canada

Defendant

Decision	
Judge:	The Honourable Justice Robert W. Wright
Heard:	December 7-10, 2020 in Halifax, Nova Scotia
Written Decision:	February 11, 2021
Counsel:	Plaintiff - self-represented Counsel for the Defendant – Sarah Drodge

Wright, J.

INTRODUCTION

[1] This is a civil action by the plaintiff Daniel Innocente claiming damages against the Attorney General of Canada for the deterioration in value of various personal property assets as a result of their prolonged storage without proper care, pursuant to a series of four search and seizure warrants obtained by the RCMP.

[2] These warrants were issued by the Supreme Court of Nova Scotia under the authority of s.462.32 of the Criminal Code based on police suspicion that these assets were obtained by the plaintiff from the proceeds of crime, upon proof of which they could be forfeited to the Crown.

[3] The warrants were issued on June 24, 1996 and executed shortly thereafter (contemporaneously with a restraint order against the plaintiff's residential property which is no longer in issue in this case). The seizure of the assets was carried out by the RCMP who then turned them over to the Seized Property Management Directorate ("SPMD") which is a division of Public Works Canada. SPMD thereupon became responsible for the custody and management of the seized assets while they remained in its possession and control.

[4] The personal property assets with which we are concerned in this action are listed as follows:

a. 1993 Coachman Catalina travel trailer;
b. 1987 Harley Davidson motorcycle under restoration;
c. 1990 Ford Thunderbird;
d. 1955 Chevrolet Bel-Air;
e. 1994 Kawaski ATV;
f. 1995 Suzuki 160 ATV;
g. 1995 Yamaha 80 motorcycle; and
h. a collection of approximately 84 household antiques.

[5] By order of this court issued on November 27, 1998 all but six of the collection of antiques were returned to the plaintiff. The apparent purpose of this was to enable the plaintiff to generate an income from the resumption of the antiques business he had formerly operated, so as to be able to retain a defence lawyer. All the rest of the seized assets remained in storage until a further order for their release was issued by this court on August 19, 2004 after the proceeds of crime charges were stayed. In the result, all these other assets remained in the possession and control of SPMD in various storage facilities for a period in excess of eight years. The plaintiff asserts that many of these assets were returned to him in a dilapidated state which lead to the commencement of this action in 2009.

PROCEDURAL HISTORY

[6] Dating back to 1996, there is a long and convoluted history to this litigation. For the sake of expedience, and at the risk of some repetition, I reproduce here a brief summary from the decision of Nova Scotia Court of Appeal in **Innocente v. Canada (Attorney General)** [2012] N.S.J. No. 187 at paras. 3-8:

> In June 1996, Mr. Innocente was charged with several drug and weapons charges under the former *Narcotic Control Act*, R.S.C. 1985, c. N-1 and the *Criminal Code*. In May 1997, Mr. Innocente was charged with possession of proceeds of crime (trafficking) and possession of a narcotic for the purpose of trafficking contrary to those statutes.
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> On June 24, 1996 the Attorney General of Canada obtained from the Supreme Court of Nova Scotia a search warrant and a restraint order under ss. 462.32 and 462.33 of the *Criminal Code*. The restraint order prohibited Mr. Innocente from dealing with his residential property at 47 Granite Cove Drive, Five Island Lake, Nova Scotia. The Attorney General undertook to comply with any court order for damages to Mr. Innocente from the execution of the restraint order.
>
> Mr. Innocente was convicted that he conspired to commit the indictable offence of trafficking in *cannabis resin* contrary to s. 4(1) of the *Narcotics Control Act*, and thereby committed an offence contrary to s. 465(1) of the *Criminal Code*. In 1999 he was sentenced to seven years incarceration.
>
> In October 2000, on a ***Rowbotham***, application … Provincial Court Judge Digby ordered that the other charges be stayed unless the federal Crown committed to guarantee $80,000 toward Mr. Innocente's defence costs. The Crown did not give the guarantee. So those charges were stayed. The Attorney General applied to quash the stay. In October 2002, by an unreported decision, Justice Richard of the Supreme Court of Nova Scotia dismissed that application. The Attorney General appealed and on February 4, 2004, the Court of Appeal dismissed the appeal (2004 NSCA 18).
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> In August 2004, the Attorney General applied for and received a court order that revoked the restraint order of June 24, 1996 and released what remained of Mr. Innocente's property.
>
> After Mr. Innocente served his sentence, he sued the Attorney General for damages. Mr. Innocente pleaded that he was forced to sell his residence at a loss, and that his personal property was returned "in a dilapidated state".

[7] The Court of Appeal on that occasion dealt with the plaintiff's appeal of a second successful summary judgment motion on the pleadings brought by the defendant. The court allowed the plaintiff's appeal in part to give him a third

chance, as a self-represented litigant, at filing a Statement of Claim that complied with the Civil Procedure Rules. More specifically, the plaintiff was granted leave to further amend his Statement of Claim to (1) identify the items of his personal property that he alleges were damaged or lost while in the care of the Crown and (2) give the particulars of the damage or loss involving those items.

[8] Prior to this, the plaintiff had failed to plead these requisite particulars in the first two iterations of his Statement of Claim, which lead to two successive summary judgment motions being made by the defendant. The details of these motions are further chronicled in the decision of the Court of Appeal at paras. 9-12 which I need not reproduce here, but will simply incorporate by reference.

[9] As the saga continued, the plaintiff then filed a second amended Statement of Claim on May 4, 2012 which contained the requisite particulars pertaining to the alleged damage to specific items of the plaintiff's personal property. However, this iteration of the Statement of Claim continued to plead many of the allegations that had been struck out earlier by the Court of Appeal, including claims pertaining to the plaintiff's real property and the diminishment of his net worth. This induced an abuse of process motion by the defendant which was granted by this court with the plaintiff being ordered to remove the non-compliant paragraphs.

[10] Subsequently, the plaintiff filed a compliant third amended Statement of Claim on September 10, 2012 upon which this litigation has proceeded. Along the way, the plaintiff has made a number of further motions for disclosure and discovery of specified witnesses, all of which have been unsuccessful. In the last of these, the plaintiff appeared before the Court of Appeal seeking an extension of time to file an appeal and in the course of his submissions, tried once again to expand the scope of his claim. In a decision reported as **Innocente v. Canada (Attorney General)** 2017 NSCA 95, the Court of Appeal affirmed that "The scope of Mr. Innocente's claim has already been clearly defined by the courts. It is limited to an action for damages in relation to personal property that was held by Seized Property Management Directorate".

[11] Accordingly, this case then came on for trial on December 7-10, 2020 before me within those parameters.

ISSUES

[12] The issues now to be decided by this court have been aptly framed by counsel for the defendant in her pre-trial brief as follows:

> a. Is the defendant liable to the plaintiff for damage to his personal property while in the Crown's care?
>
> b. If so, what is the extent of the plaintiff's damages?

APPLICABLE LEGAL PRINCIPLES

[13] The court must first determine the proper legal framework for the analysis and assessment of the plaintiff's claim. To that end, counsel for the defendant has referred the court to the relevant provisions of the Criminal Code, the *Seized Property Management Act*, S.C. 1993, c.37 and the common law principles of bailment.

[14] Firstly, s.462.32(4) of the Criminal Code requires every person who executes a special warrant to take reasonable care to ensure that the seized property is preserved so that it may be dealt with in accordance with the law. Subsection 462.32(6) later provides a directive that "Before issuing a warrant under this section, a judge shall require the Attorney General to give such undertakings as the judge considers appropriate with respect to the payment of damages or costs, or both, in relation to the issuance and execution of the warrant".

[15] In compliance with that requirement, all of the special warrants in the present case contain the following undertaking:

> AND UPON the Attorney General of Canada undertaking, through his designated counsel, to comply with any order that a court of competent jurisdiction may make as to damages and/or costs sustained by Daniel Joseph INNOCENTE in relation to the issuance and execution of this Warrant.

[16] To be read in conjunction with these Criminal Code provisions are the relevant sections of the *Seized Property Management Act*. Section 3 of that *Act* authorizes the Minister of Public Works and Government Services to manage property seized or restrained under any Act of Parliament (which would include the s.462.32 special warrants in this case). Section 4(1) goes on to provide that on taking possession or control thereof, the Minister shall be responsible for the custody and management of all property that is seized under such a warrant. It is readily apparent that these ministerial powers are exercised through the operations of SPMD.

[17] Beyond these statutory provisions, counsel for the defendant acknowledges that the issuance of the special warrants that were executed in this case likely created an involuntary bailment relationship between the parties, where Mr. Innocente as an accused person was obliged to transfer his property to the custody and possession of the Crown without relinquishing ownership. It is well established at common law that in bailment cases, the onus of proof is upon the bailee to show that any loss or damage which occurs during the bailee's safeguarding of property did not result from neglect to use the require degree of care and diligence (see, for example, **Longley v. Mitchell Fur Co.** (1983), 45 N.B.R. (2d) 78 (CA) at para. 5). In other words, once the owner is able to show

that his property was damaged while in the custody and possession of the bailee, the onus falls upon the bailee to disprove negligence.

[18] In light of these common law principles, and there being no guidance otherwise in the statutory provisions earlier referred to, the defendant concedes that it bears the onus in the present circumstances of showing that any damage to the plaintiff's property did not result from its failure to exercise reasonable care. That onus arises, however, only after the plaintiff first bears the onus of showing that his property (i.e., property that he owns or has a legal interest in) was damaged while in the Crown's custody and possession. It is only after that initial threshold is passed that the onus shifts to the defendant to prove that it exercised reasonable care over the plaintiff's property while in its care.

[19] I interject here that there are virtually no case precedents to be found in like circumstances of this case where property seized by the Crown under proceeds of crime legislation has ended up being returned to the owner(s) in a damaged condition (with no forfeiture having occurred). Perhaps previous such cases have been settled or cases not reported. In any event, I accept the foregoing legal framework advanced by counsel for the defendant as the appropriate one to be applied in the determination of the plaintiff's claims in this case.

[20] It should be added that the plaintiff cannot recover damages arising from the fact of the seizure itself of his various assets, of which he was highly critical in his submissions at trial. As previously noted, the seizure of those assets were authorized by court order obtained by the defendant and their validity cannot now be questioned.

[21] It should also be noted that the plaintiff is not entitled to recover damages for the normal depreciation of his personal property that would have occurred with the passage of time. Rather, the plaintiff must establish his claim for damages based on the Crown's duty to exercise reasonable care over his assets while they were in its custody and possession.

POSITIONS OF THE PARTIES

[22] The plaintiff claims that he is, or was at the time, the actual owner of all the assets earlier listed in para 4 of this decision, even though the vehicles were all registered in the names of other persons (details of which will follow). The plaintiff says that it was he who actually paid for the acquisition of these vehicles that were seized from him and that it is therefore he who should be compensated for the damage which they sustained while in the Crown's care.

[23] I will address each of these claims sequentially in this decision but for the moment, will simply provide the following overview of the plaintiff's monetary claims:

ASSET	**AMOUNT CLAIMED**
1987 Harley Davidson motorcycle	$1,800
1990 Ford Thunderbird	$11,950
1955 Chev Bel-Air	$11,500
1993 Coachman Catalina trailer	$18,070
1994 Kawaski ATV	$187.60
1995 Suzuki 160 ATV	$497.50
1995 Yamaha 80 motorcycle	$1,374
Antiques	$5,000 (approximate)

[24] There were some other assets in respect of which the plaintiff initially advanced a claim for damages as well but those were withdrawn during his testimony at trial. The aggregate of the claims listed above is approximated at $50,379.

[25] Counsel for the defendant maintains, on the other hand, that an appropriate award of damages in this case only amounts to $13,785. The defendant concedes that it is liable for damage to the travel trailer but values that loss at $13,000 (details to follow). In addition, the defendant is prepared to compensate the

plaintiff for the small repair bills to the Kawaski and Suzuki ATVs as well as $100 for the repair of broken glass of an antique picture which brings the total to $13,785.10.

[26] The defendant denies any further liability to the plaintiff primarily on two grounds. With respect to the other vehicles, it is submitted that the plaintiff is unable to prove that he was their true owner, all of which were registered in the names of others. In addition, the defendant maintains that the plaintiff has failed to prove that any of these assets were damaged while they were in the custody and possession of SPMD. In short, the defendant submits that the plaintiff has failed to discharge the onus of showing that the seized assets (other than the antiques) were his property and that they were actually damaged while in the Crown's care.

EVIDENCE AND DAMAGES

[27] I turn now to an assessment of the various claims for damages advanced by the plaintiff as outlined in para 23 of this decision.

[28] I will say at the outset that the sparse quality of the evidence presented in this case makes it difficult for the court to make a proper analytical assessment for most of the claims made. It bears repeating that the initial onus is on the plaintiff to show that he owned or had a legal interest in the subject property and that it was

damaged while in the Crown's care. Only if that initial threshold is met does the onus then shift to the defendant to prove that it exercised reasonable care over the plaintiff's property.

[29] Without the benefit of legal counsel, the plaintiff was in a disadvantaged position. In the absence of counsel, he had no one to conduct a direct examination to guide him through his testimony, but rather was left to present a narrative on his own. Unfortunately, his direct testimony was often disjointed and disorganized and required repeated guidance from the court to have him focus on the issues within the parameters of this case to be decided. Indeed, the plaintiff openly admitted that he didn't know what he was doing when it came to presenting his case before the court. His testimony was lacking in detail in many respects and he presented very little in the way of documentary evidence to corroborate his testimony.

[30] No doubt his task was made more difficult by the passage of some 16 years since the seized assets were returned to him (or, in the case of most of the antiques, a passage of some 22 years). The plaintiff is to be commended, however, for doing the best he could in these trying circumstances and the court has no reason to question his credibility in the presentation of his evidence.

[31] The evidence of the defendant, on the other hand, was presented through a single witness, namely, Robert Charlebois. Mr. Charlebois is the former Regional Representative and Senior Case Officer, Operations Eastern Canada Division, of the SPMD, having retired about five years ago.

[32] Mr. Charlebois was not assigned to take up his duties here in Nova Scotia until 2010. At that point, he took over these duties from his predecessor, Mr. Phil McNeil. This was, of course, about six years after the last of the personal property assets had been returned to the plaintiff, and a year after the plaintiff had commenced this litigation.

[33] Mr. Charlebois testified that he reviewed the litigation when first assigned here and was responsible for the gathering and assimilation of all documentation in the defendant's possession that was required to be disclosed to the plaintiff for litigation purposes. In that capacity, Mr. Charlebois when presenting his evidence could only speak to the identification and interpretation of the various business records of SPMD he had assembled from the work of others. He therefore had no personal knowledge of how any of the plaintiff's various assets were stored or managed or properly cared for. The defendant was obviously content to rely solely on his evidence, however, where the main thrust of its position is that the plaintiff

cannot discharge the initial onus which he bears to prove ownership of the subject vehicles and that they were actually damaged while in the care of SPMD.

[34] With those background observations, I will now engage in the assessment of each of the plaintiff's claims, beginning with the one asset where the defendant has conceded such damage to have occurred.

1993 Coachman Catalina Travel Trailer -

[35] The plaintiff's testimony was that he and his parents were each interested in buying a new travel trailer for themselves in the spring of 1993 to continue their tradition of family camping at the Plantation Campground. He said he asked his parents to buy the second trailer (which was to be his) on the basis that he would trade in his existing Holiday Bunkhouse trailer and then pay them back for the balance of the purchase price later. In the meantime, the trailer was to be registered in his mother's name until such time as he was able to pay it off (which he says he ultimately did after he was released from jail).

[36] The plaintiff was able to produce a sales invoice from Paul's Trailer Sales dated June 24, 1993. This invoice records the sale of the subject trailer to Gwen Innocente at a purchase price of $25,573 (inclusive of HST). The invoice then records the trade-in allowance for the Holiday Bunkhouse trailer in the amount of

$18,570, leaving a balance of $7,003. Confusingly, the invoice also references the taking in on trade of a second trailer without mention of a separate trade-in allowance. Be that as it may, the defendant does not contest the plaintiff's evidence that he made a personal investment in the purchase of this trailer in the amount of $18,570 through the trade-in of his previous travel trailer.

[37] The plaintiff only had the use of his new trailer for a period of 2-3 years before it was seized by the defendant. The SPMD intake form lists the plaintiff as the owner even though it was provincially registered in his mother's name. The form also records the trailer has having been in generally good condition at the time it was seized.

[38] The travel trailer was turned over to SPMD after its seizure where it was stored outside (mostly at Autoport). There were repairs carried out by SPMD in 1999 for water damage but over its entire period of storage, the trailer remained outside, not winterized and with an unsealed roof. Over the next five years or so, the trailer continued to suffer water damage which produced a lot of rot and mold to its interior. That damage was never repaired and the trailer was ultimately returned to Ms. Innocente in October of 2004 in an unliveable condition. Mr. Innocente thereupon sold it to a third party for the sum of $500 to be used as a hunting camp.

[39] As noted earlier, the defendant concedes its liability for the damage sustained by this travel trailer during its eight years of storage. What is problematic is the task of measuring the appropriate quantum of compensatory damages to be paid to the plaintiff for this loss.

[40] To that end, counsel for the defendant has referred to a Case Report business record generated in 2012 which, in a single line entry, refers to an Appraisal of the trailer in the amount of $13,000 under date of November 20, 1999. It simply lists the source of this appraisal as "Appraisal Expert".

[41] That appraisal is not in evidence before the court, nor is its author or methodology known. It is simply a line entry in a computer generated case report, the reliability of which is completely unknown. The court is therefore not prepared to accept that evidence as a proper basis for the measurement of the plaintiff's loss of his trailer.

[42] That means that the only evidence the court has to work with in this regard is the common ground between the parties that the plaintiff personally contributed the sum of $18,573 to the purchase of the trailer through the trade in allowance he was given. I recognize that the plaintiff is not to be compensated for the mere depreciation of the value of an asset during its period of storage by SPMD.

Nonetheless, in the absence of any other available evidence, I accept the plaintiff's claim that he has completely lost his contribution to the purchase of this trailer, through the defendant's failure to take reasonable care of it, and that he should be fully compensated for it. I therefore award the plaintiff damages for the loss of the trailer in the amount of $18,070 (after subtracting its salvage value of $500).

1987 Harley Davidson Motorcycle

[43] At the time this motorcycle was seized by the RCMP on June 26, 1996 the plaintiff was having it restored by S&S Custom Cycle in Weymouth, Nova Scotia. The motorcycle had recently received an elaborate paint job (for which the plaintiff testified he had paid $3,500) and was largely in a state of disassembly at the time it was seized.

[44] The plaintiff complains that when the motorcycle was returned in December of 2004 (some 8.5 years later) there was a scratch on the newly painted gas tank and a missing rear wheel, for which he now seeks compensation.

[45] It should be noted that the registered owner of this motorcycle dating back to at least 1993 was the plaintiff's father, Alex Innocente and it was he who signed for the return of the motorcycle on December 14, 2004. The SPMD intake form

however, names the plaintiff as the owner of the motorcycle at the time of its seizure.

[46] I interject here that this is one of several vehicles that were seized by the RCMP whose registered owners were either family members or a friend of the plaintiff. It is apparent that the belief of the Crown was that the plaintiff was registering these vehicles in the names of others so as to hide assets that he personally owned, for the purpose of avoiding detection of his criminal activities. The plaintiff denied this to be the case in his testimony while maintaining that it was he who paid for everything. In any event, I am satisfied on a balance of probabilities that the plaintiff had a legal interest in this motorcycle.

[47] Once the motorcycle was seized, the RCMP turned it over to SPMD to be stored and managed. The SPMD intake records and photos show that the motorcycle was initially stored at its warehouse in several pieces in its state of disassembly. Those records make no mention of any damage having been observed to any of its various parts.

[48] For some reason (which could not be explained by Mr. Charlebois), the motorcycle was packaged up in boxes and moved from the SPMD warehouse to a AMJ Campbell Van Lines storage facility in March of 1999. The motorcycle

remained there in its disassembled state until it was returned in December of 2004 as aforesaid.

[49] A few months following its return, the plaintiff took the motorcycle back to S&S Custom Cycle to be examined. The plaintiff produced a report and quote from S&S Custom Cycle under date of September 5, 2005. In that document, the Description of Work was noted as being to "Determine what parts are missing from this customer's motorcycle and how much is involved to bring it back to the condition it was in when it was taken apart and removed from my shop by the RCMP in 1998".

[50] In that report, the author (whose signature is illegible) noted one of the missing parts as the rear wheel which carried a value of $650. The author went on to identify the damaged parts as consisting of scratches and blisters on all new chrome pieces, chips and scratches on some newly painted pieces, and dirt in the open engine. The author then went on to quote $1,000 plus HST as the cost of "Labour to restore this M/C to the condition it was in before (at the time) it was seized from my place of business by the RCMP in 1998".

[51] From this corroborative evidence, I am satisfied on a balance of probabilities that at some time during the transfer of this disassembled motorcycle from

Weymouth to Dartmouth, or perhaps during its lengthy period of storage and transfer between the SPMD warehouse and the AMJ Campbell Van Lines storage facility, the newly painted gas tank sustained a scratch requiring repair and that the rear wheel went missing. The defendant has not provided sufficient evidence to discharge its onus to satisfy the court that it used all reasonable care in the storage and management of this motorcycle throughout.

[52] The plaintiff acknowledged that he has not actually carried out the necessary restoration work to make this motorcycle roadworthy, and hence has never since transferred the registered ownership into his name. He says that he intends to do so once the restoration and repairs to the motorcycle are complete.

[53] In the result, I find that the plaintiff is entitled to recover damages in the amount of $1,800 as claimed, consisting of $1,150 for the cost of repairs and $650 for replacement of the missing rear wheel.

1955 Chevrolet Bel-Air

[54] The plaintiff testified that he bought this vintage automobile from Mr. Fred Cole over a period of time, although he did not say how much he paid for it. The car was seized from him, amongst other vehicles, on June 26, 1996 and taken to

the SPMD warehouse in Dartmouth. The car was first placed in the outdoor compound but then moved inside two days later.

[55] The registration of the car at the time was in the name of the plaintiff's girlfriend, Elizabeth Harrison. The plaintiff did not give a reason for this but maintained that it was he who bought the car and that he was its true owner. Neither did he give an explanation as to why it was Ms. Harrison who wrote to the Department of Justice a few weeks after its seizure requesting the return of "my vehicle" to her.

[56] In any event, I accept the plaintiff's evidence that he was the real owner of this vehicle. Since its return, it has been stored in his garage and it was he who obtained a restoration estimate in 2012 (of which more will be said later). It is obvious that both the RCMP and SPMD also considered him to be the actual owner because his name is so listed on the respective intake forms prepared after its seizure.

[57] The RCMP intake form describes the vehicle as then being in fair condition overall. The only specifics noted were fire damage to the hood from a small engine fire which occurred the day before, and some rust on the bumpers and underneath the vehicle (although no details were given).

[58] The Seized Property Report prepared by SPMD upon the arrival of the vehicle at its warehouse on June 26, 1996 describes the overall physical condition of the car as "GOOD". In the comments section, the only observations noted were some rust on the rocker panels, burn marks on the hood from a carburetor fire blistering the paint, and a slight oil leak from the engine. Attached to this report are a number of photographs taken at the time where the car appears to be in generally good condition for its age, albeit in need of the minor repairs above noted.

[59] The car was then stored at the SPMD warehouse until March of 1999 when it was moved to a Metro Self-Storage unit in Dartmouth. For some unknown reason, the car was then later transferred to a Metro Self-Storage unit in Halifax in October of 2002 where it remained until it was released to the plaintiff's mother on September 27, 2004.

[60] SPMD records show that during its period of storage of eight years and four months, nothing was ever done to service, repair or maintain this vehicle except for one isolated instance late in 2002 when a mobile mechanic from MacFarlands Rentit made a service call at Metro Self-Storage to start the car (whose keys were missing at the time of its seizure). I note that the date of this service call is in fairly close proximity to the time when the vehicle was moved from one storage unit to

another and whether the service call was successful or not is unknown. All the records disclose is that the car was stored at these three successive locations for a period in excess of eight years.

[61] Unfortunately, the photographs taken of this car at the time of its release are not very helpful in doing a before and after comparison of its condition. The photographs taken by SPMD show some rust in the vicinity of the rocker panels, some pitted chrome, and one indecipherable photo of some rust to its undercarriage.

[62] The plaintiff's main complaint in his testimony at trial, however, is that when he got the car back, there were holes in the floor pans of the car which had rusted through. Since its return, the car has been stored by the plaintiff in his own garage which he says is in the same condition now as when it was returned to him by SPMD.

[63] The plaintiff does not appear to have acted upon this, however, until April of 2012 when he took the car to B. Miles Auto Appraisal for an inspection. The inspection/appraisal report was entered in evidence by agreement, with counsel for the defendant taking no objection to its admissibility.

[64] In his report, the appraiser remarks that the car is still solid but that years of neglect have exposed old bodywork, and that its floor pans are now rotted from moisture and require replacement in order to operate the vehicle. His other observations were that it needs a new paint job, a rebuild of the motor and transmission (which he attributes to the car sitting so long while improperly stored) and a redo of the interior, brake and exhaust and fuel systems in order to return the car to the approximate condition it was in when it was laid up. The appraiser goes on to say that it would cost $25,000 or more to do a full restoration of the car but that a more modest restoration could be done to put the car in "good/driver condition" for about $11,500. The appraiser placed the "as is" value at $9,500 plus tax, rising to about $21,000 plus tax if the modest restoration were to be carried out.

[65] I interject here that this is consistent with the single line entry in the SPMD case report where it placed the estimated value of this vehicle as of February, 2000 at $20,000. The only other appraisal evidence we have is that of Parkway Antiques Limited (who primarily performed the valuation of the antique furniture to be dealt with later) and who placed an appraised value of this car at the time of its seizure at $4,500. That appraisal is given without any foundation whatsoever as to its author or its expertise or its methodology and I reject it out of hand as being

completely unrealistic. As noted by Mr. Miles in his appraisal report given in April of 2012, a 1955 Chevrolet Bel-Air is a highly desirable car with strong interest in the antique car collector market (which evidence I accept).

[66] It should also be noted, however, that I do not rely on Mr. Miles' opinion that there was improper storage of this vehicle. There is no indication that he had any personal knowledge of the conditions or circumstances surrounding the storage of the car or what steps may have been taken to preserve its physical condition and value. In short, there is no evidentiary foundation that would put Mr. Miles in a position to give such an opinion. Nor is there any evidence that he was familiar with the condition of the car at the time it was first put into storage.

[67] It follows that the pertinent evidence to be reviewed in assessing this aspect of the claim is that of the plaintiff and the information to be gleaned from the SPMD records spoken to by Mr. Charlebois. It is, of course, the plaintiff's burden to show that the vehicle was damaged while in the custody and possession of SPMD. Unfortunately, he was not able to produce photographs of the damage to the vehicle after it was returned to him, particularly with respect to the rotting of the floor pans of which he chiefly complains. We simply have his trial evidence that there were holes in the floor pans when the vehicle was returned to him that were not there at the time of its initial seizure. He further relies on the Miles'

appraisal report for the other damage sustained during the storage of the vehicle and the cost to repair it.

[68] All we know from the SPMD records is that the car was stored inside for a period of eight years and four months. Whether any of the three storage places were heated is unknown. Neither is there any indication whatsoever that any steps were taken by SPMD to control the level of moisture in the storage units (to which a vintage car would be vulnerable) or, for that matter, that even basic maintenance checks like fluid levels were ever made. Rather, it would appear that the car simply sat in storage for that lengthy period of time unattended.

[69] In his introductory evidence, Mr. Charlebois testified that the principal obligation of SPMD when storing seized assets is to maintain their fair market value until the case is over. He said that it is up to SPMD to maintain the fair market value of these assets through their proper storage, care and maintenance while in its custody and possession.

[70] I conclude from all this evidence that SPMD did not take sufficient reasonable steps for the care and maintenance of this vehicle while in its custody. I also conclude that its failure to do so did result in some damage to the vehicle beyond mere depreciation. Indeed, a vintage car such as this is far more likely to

hold its value, if not appreciate in value, with the passage of time, if properly cared for.

[71] The challenge facing the court, however, is the proper quantification of this loss without having a proper evidentiary foundation for its assessment. Nonetheless, when this occurs (most often with a self-represented litigant), the court must do its best to provide some measure of the loss with what little evidence it has to work with. This problem is compounded even more in the present case because the car has since remained in storage in the plaintiff's garage at his residence, without any restoration work ever having been done.

[72] However unsatisfactory it may be as a legal analysis, the only path the court can devise to the quantification of this loss is an admittedly arbitrary one. The situation here is that the Chevrolet was in storage for approximately 16 years from the time of its seizure until its damage appraisal was performed by Mr. Miles in 2012. During that period, the car was stored by SPMD for a little more than eight years. It was then stored for a little under eight years in the plaintiff's garage before he took it in for a damage appraisal. I am therefore prepared to roughly apportion the damage sustained by the vehicle equally to these two inactive periods of storage.

[73] As a second step, I am prepared to accept the modest restoration amount of $11,500 contained in the Miles' appraisal report as it stood in 2012. A halving of that number produces an amount of $5,750 attributable to the SPMD storage period. However, I am also of the view that a betterment allowance ought to be deducted from that amount especially where Mr. Miles writes that the sum of $11,500 "would return it to a condition similar to when it was stored with some things not right but others perhaps improved".

[74] The law is well settled that whenever a plaintiff is awarded damages for the cost of repair or replacement of parts or systems that represents a substantial betterment over their previous condition when the cause of action arose, a betterment allowance ought to be applied. That is because an award of damages should not serve to put the plaintiff in a better position than he would have been in had the damage never occurred. I refer to the decision of the Nova Scotia Court of Appeal in **Desmond v. McKinley**, 2001 NSCA 24 where this legal principle was endorsed and affirmed.

[75] To that end, I am going to fix the betterment allowance at 50% of the plaintiff's apportionment of the restoration costs, i.e., 50% of $5,750 which produces a damages figure in the plaintiff's favour for this asset of $2,875. This

may be said to be very rough justice but it is the best the court can do with what little evidence it has to work with.

1990 Ford Thunderbird

[76] The plaintiff testified that he bought the T-bird in 1994 for the sum of $12,000. However, he did not produce a bill of sale or any other proof of purchase and indeed, declined to say who he bought it from.

[77] What was produced in evidence by the defendant was a Certificate of Registration issued by the Registry of Motor Vehicles under date of May 14, 1996 (about six weeks before the vehicle was seized) in the name of Daniel Evans with a Halifax address. The plaintiff's explanation for this was that Mr. Evans was going to buy the car but had no money.

[78] Notably, the Warrant for the search and seizure of this vehicle issued on June 24, 1996 specified that it was located at the premises of Mr. Evans at his Halifax address. When the RCMP Seizure or Restraint form was prepared later that day, it listed the plaintiff as owner and Mr. Evans as operator of the car. At the time of its seizure, there were no license plates on it.

[79] The SPMD intake forms described the vehicle as being in good physical condition at the time, the only comments being that there were a few rust spots

around the door and some chips and scrapes on both bumpers. SPMD ultimately moved the car to Autoport for outside storage where it remained until March 31, 2005, almost nine years later.

[80] When the car was finally released, details of which will follow, it was taken to Steele Ford in Halifax for an inspection and opinion on its condition. The resulting report noted that the vehicle was in a deteriorated condition and certainly not roadworthy. The report further stated that the costs associated through repair would greatly exceed the value of the vehicle.

[81] As a result, the plaintiff testified that he junked the vehicle for $50 and produced in evidence a receipt for that amount from Travlon Auto Salvage dated June 8, 2005. With that credit against the $12,000 purchase price, the plaintiff now claims damages in the amount of $11,950 for the loss of the vehicle.

[82] In order to succeed, the plaintiff must first prove, of course, that he was the owner of the vehicle (or at least had a legal interest in it). The plaintiff adduced no documentary evidence whatsoever in proof of his ownership. His bare testimony at trial was simply that he bought the car in 1994 for $12,000, that it was he who arranged and paid for its inspection by Steele Ford shortly after the vehicle was

released in 2005 (even though Mr. Evans is named as customer on the Steele report), and that it was he who later junked it for $50.

[83] The plaintiff's assertion of true ownership of the vehicle is not consistent with the body of documentary evidence to the contrary. Apart from the fact that no Bill of Sale or other proof of purchase was entered in evidence, the following documents are noteworthy:

(1) The search warrant shows that the vehicle was to be seized from the address of Mr. Evans who was then named as operator of the vehicle on the RCMP intake form (which form also recorded that the vehicle had no license plates);

(2) As noted earlier, a Certificate of Registration of the vehicle in the name of Mr. Evans was issued by the Registry of Motor Vehicles about six weeks prior to the seizure;

(3) When the release of the vehicle was authorized by court order dated August 19, 2004 the arrangements for its return were made through the plaintiff's lawyer for reasons he did not explain. What we have in evidence is an Authorization and Direction form signed by Mr. Evans under date of February 22, 2005 authorizing the plaintiff's lawyer to make all arrangements necessary for the return of the car from SPMD. That form signed by Mr. Evans further authorizes and directs the lawyer to enter into discussions and negotiations with SPMD with respect to any costs associated with the repair of the vehicle.

(4) As a sequel to that, the plaintiff's lawyer sent a fax to SPMD on March 18, 2005 directing Mr. MacNeil to deliver the T-bird to Circle City Shell in Halifax. That in turn was followed by a standard form used by SPMD recording the fact that this vehicle had been returned to Mr. Evans. Added to that form was the signature of a representative of Circle City Shell under date of March 31, 2005 whereby Circle City Shell accepted the return of the car for Mr. Evans as per instructions from his lawyer. It further noted that the lawyer had been authorized by Mr. Evans to arrange for the return of the vehicle;

(5) The inspection report provided by Steele Ford dated May 4, 2005 (about five weeks later) names Mr. Evans as the customer and records its direction to bill Circle City for the inspection performed.

[84] The plaintiff has failed to give satisfactory explanations for these anomalies from the documentary evidence. Weighing the evidence as a whole, I am not satisfied that the plaintiff has met the burden of proving that he was either the true or beneficial owner of this vehicle at the time it was seized. He therefore cannot be awarded any damages for its loss.

Household Antiques

[85] At the time the search warrants were issued, the plaintiff was operating an antique furnishings business as a source of income. Under the execution of those warrants, the RCMP seized a collection of approximately 84 household antiques

which were then taken to the SPMD warehouse to be stored. Upon their arrival, they were all individually photographed by Mr. MacNeil.

[86] There is no dispute over the fact that the plaintiff was the owner of this entire collection of antiques.

[87] During his testimony, the plaintiff went through this series of photographs from which he identified the following ten pieces as having been damaged either in their transportation or storage:

1. Bateman eagle print – glass allegedly broken
2. Tiffany mushroom lamp – base allegedly broken
3. Decorative tortoise shell – indentation damage
4. Mirror – piece broken off from wooden frame
5. Limited edition bear print – broken glass
6. Three-legged side table – top scratched
7. Mirror – piece broken off wooden frame and compartment cover broken
8. Picture top table – piece of moulding missing
9. Clock – pendulum arm missing
10. Matching drum tables and coffee table – pieces broken off and separation of drawer joints

[88] The plaintiff testified that with the exception of the tortoise shell, none of these antiques were ever actually repaired. Rather, they were generally sold as is with the exception of the eagle print and the mushroom lamp which were discarded.

[89] The plaintiff frames his claim for the damage to the antiques under two categories. The first is for the estimated costs to repair the damaged items (which were never carried out except for the tortoise shell). The second category was the loss from reselling a number of pieces after their return at discounted prices on account of their physical damage. Under the latter category, the plaintiff was working from a copy of the Parkway Antiques Limited appraisal commissioned by SPMD upon which he had annotated the selling price of some 30 pieces (not all of which were damaged). If one were to disregard some overlap between the two, it appears that the plaintiff's claim would arithmetically be in the vicinity of $5,000.

[90] The problem with this aspect of the claim is a gaping lack of evidentiary records or other detail to sustain it. The court has no record of what the plaintiff paid for any of these antiques (except for a select few purchased in PEI). Neither has the plaintiff provided any appraisal to support his own valuations or the cost to repair, nor has he provided any receipts for the sale of these pieces (other than four sold in 2001).

[91] Unfortunately, the plaintiff did not take his own photographs of the damaged items at the time they were returned to him. The only evidence we have in this regard is an Exhibit Report prepared by the RCMP dated January 4, 1999 (shortly after all but six antiques pieces were returned to the plaintiff). On that report both

the RCMP officer and the plaintiff placed their initials beside each antique piece in acknowledgement of their return, and in addition, the plaintiff annotated eight pieces where the antique was damaged.

[92] With the scant and disjointed evidence given by the plaintiff in this regard, the court has found it to be an exercise in futility in trying to correlate and identify the damaged pieces as they are respectively referred to on the Parkway appraisal, the photographs and the Exhibit Report of the RCMP above mentioned. The quality of the evidence before the court on this aspect of the claim does not permit a detailed legal analysis of what the plaintiff is entitled to in the way of compensatory damages.

[93] As previously mentioned, the only antique that was actually repaired by the plaintiff was the decorative tortoise shell. That item was restored by Zwicker's Gallery to remedy an area of puncture and cracking of the shell, as well as the removal of scratches. The plaintiff produced an invoice from Zwicker's for this restoration work in the amount of $870 plus HST for a total of $1,000.50.

[94] Counsel for the defendant submits that since Parkway assigned an appraised value of $150 to this piece, it was unreasonable for the plaintiff to have paid

$1,000 to restore it. Alternatively, it is submitted that if any damages are to be paid for this item, they should not exceed the appraised value of $150.

[95] The test to be applied here, however, is not one of cost/benefit objectivity. The objective of an award of damages is to put the plaintiff in the same position he would have been in had the tortious damage not occurred. In applying this principle, I find that the plaintiff is entitled to recover the repair cost he incurred to repair the tortoise shell in the amount of $1,000.50.

[96] The plaintiff has also drawn attention to the loss of both the eagle print and the tiffany mushroom lamp (both of which were later discarded as aforesaid). Strangely, this lamp cannot be identified either on the Parkway appraisal report or the RCMP Exhibit Report (unless its description has been muddled somehow). The only record of it is by way of the SPMD photograph which on its face, does not disclose any damage.

[97] Similarly, the photograph of the eagle print taken by SPMD does not disclose any broken glass or other damage while the bear print does. I further note that on the RCMP Exhibit Report, the plaintiff annotated that the bear print was returned with broken glass but no such annotation was made in respect of the eagle

print. All things considered, I find that there is insufficient evidence to warrant an award of compensation to the plaintiff for either of these two items.

[98] The evidence is even more uncertain in attempting to evaluate the damage to the remaining items, all of which were resold with virtually no record keeping. I do, however, accept the plaintiff's evidence that the other items he identified were returned to him with the minor damage he described. Here again, the defendant has provided no evidence of the steps taken by SPMD to exercise proper care and preservation of these antiques while they were in its custody and possession.

[99] Having no basis upon which to evaluate these items individually, I'm simply going to round up the damages figure for the antiques from $1,100.50 (for the tortoise shell and the bear print) to the sum of $2,000. This is admittedly an arbitrary approach but it is the best the court can do in the circumstances to give some recognition to this aspect of the loss.

Suzuki and Kawaski ATVs

[100] Based on file annotations made by Mr. MacNeil, the defendant has agreed to pay to the plaintiff the sums of $497.50 and $187.60 respectively for service and repair work performed upon the release of these recreational vehicles, as claimed.

1995 Yamaha 80 Motorcycle

[101] The plaintiff testified that he bought this motorcycle in December of 1994 for his eight year old son at a purchase price of $1,674. His son was only able to drive it for two summers before it was seized by the RCMP. By the time the motorcycle was returned in 2004, his son had outgrown it and the plaintiff ultimately sold it to his nephew for $300. He now claims the difference of $1,374.

[102] This aspect of the plaintiff's claim fails simply because he was unable to provide any evidence whatsoever that the motorcycle sustained any damage while in the custody and possession of the SPMD. Indeed, during his direct testimony, the plaintiff withdrew this aspect of the claim, only to revive it in his re-direct examination. It must stand dismissed.

CONCLUSION

[103] In the final tally, I find that the plaintiff is entitled to recover damages from the defendant in the total rounded amount of $25,430. I will leave it to defence counsel to prepare the necessary order.

[104] I note that the parties did not, during their closing submissions or otherwise, raise the matter of pre-judgment interest that any damages award might attract. I will therefore leave it to the parties to now try and reach agreement themselves on

the matter of pre-judgment interest as well as the amount of costs to be paid. If agreement on either or both of those two issues cannot be reached, I would ask that written submissions be provided to me within the next 30 days.

J.