

THE ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

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against

HARDEEP HUNDAL

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P R O C E E D I N G S

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BEFORE THE HONOURABLE JUDGE D.F. GRAHAM
On JANUARY 26, 1995, COURTROOM L, OLD CITY HALL,
AT TORONTO, ONTARIO.

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A P P E A R A N C E S :

Counsel for the Crown
Counsel for the Accused

Ms J. Walke
For Sel

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THE COURT: Who's next.

5 MS WALKER: The next person is -- well, this is a Crown appeal, Your Honour. I don't know if the respondent is here. Maybe we can deal with the people.

THE COURT: What's the name?

MS WALKER: It's Hardeep Hundal.

HARDEEP HUNDAL: Yes I'm here.

10 THE COURT: Okay.

MS WALKER: This is a Crown appeal.

THE COURT: What's the appeal. What's his name?

HARDEEP HUNDAL: Hardeep Hundal.

MS WALKER: Surname, Hundal, number 11.

15 THE COURT: Fail to wear a seatbelt?

MS WALKER: Yes. And, Your Honour, this was without -- I -- to make things brief, there were submissions, written submissions made by the prosecution at the trial level which were rejected by that lower court and I'd be relying on precisely the same argument that was --

20 THE COURT: What did they say?

MS WALKER: Okay. You don't want to read it? You want me to give you a --

THE COURT: Give me what happened.

25 MS WALKER: -- in a nutshell. The man's a taxi driver and he was convicted of failing to wear a complete seatbelt assembly.

HARDEEP HUNDAL: No, I was --

30 MS WALKER: No, he was acquitted rather of that. And the grounds that he was relying on for his acquittal, Your Honour, were there that pursuant to the --

THE COURT: He was acquitted by the justice of the peace?

MS WALKER: Yeah, by the justice of the peace.

THE COURT: Yes.

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MS WALKER: We appealed that decision.

THE COURT: Why, what was he relying on?

MS WALKER: Well, there's a regulation which states --

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THE COURT: States taxi driver something or other, right?

MS WALKER: Yeah, are exempt and it goes on to --

THE COURT: I had it passed it when I was chairman of --

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MS WALKER: So, you're familiar with that, are you?

THE COURT: Well, give it to me again. What was it?

MS WALKER: In any event, they were exempt from the requirement that the upper torso restraints for driver seating position and seatbelt assemblies in the centre front seating position not be removed. There is, in the Regulation there is that wording and it states that taxi cabs are exempt from it. However, our argument -- and also there's the actual section in the Highway Traffic Act that deals with taxi cabs is section ---

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THE COURT: Yes. So, what did he do here? What did he do here? What was the matter with the seatbelt? Did he not have it on?

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MS WALKER: Well, I believe he wasn't wearing it at all --

THE COURT: You weren't wearing your seatbelt?

MS WALKER: -- that's what we were alleging.

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HARDEEP HUNDAL: I was not wearing a seatbelt, Your Honour. And there is a section an exemption in the

Highway Traffic Act which allows cab drivers not to wear the seatbelt.

THE COURT: Not all the time.

HARDEEP HUNDAL: Yes, Your Honour.

MS WALKER: No.

HARDEEP HUNDAL: And also, Your Honour, I presented in the court transcript from His Honour (sic) J. Clemens which drew the same way for a taxi cab driver and --

THE COURT: What does the section say?

MS WALKER: I have a copy here, I'll pass it up to you.

THE COURT: Let me have a look.

MS WALKER: It's underlined there and highlighted, Your Honour. It says, "...while there is a passenger..."

THE COURT: "Taxi exempt from the requirements, upper torso..." Did you have a fare or not?

HARDEEP HUNDAL: No, Your Honour. This, I'm -- where I'm, 613.7 doesn't say anything like Part 1 and 2 doesn't say anything about having a passenger in the car.

THE COURT: It says taxi cabs are exempt from the requirements.

HARDEEP HUNDAL: Right.

THE COURT: Yes. "...taxi are exempt from the requirements that upper torso restraints and seatbelt assembly in the centre front ..." "...should not be removed..."

MS WALKER: That isn't the same.

THE COURT: The driver while he's transporting for hire a passenger is exempt from that. Well, did he have a passenger or not; that's all I'm asking?

HARDEEP HUNDAL: No.

MS WALKER: No, he didn't.

HARDEEP HUNDAL: Your Honour, the first part here -

THE COURT: The first part of what?

HARDEEP HUNDAL: Of second, two Your Honour, it says, "taxi cabs are exempt from the requirement that (a) upper torso restraints of the driver's seating position..."

THE COURT: Yes.

HARDEEP HUNDAL: So, that means you're not required to wear the upper portion of the driver's seatbelt.

THE COURT: That's right, if you're transporting a passenger.

HARDEEP HUNDAL: No, that's the third part, Your Honour.

THE COURT: That's what?

HARDEEP HUNDAL: No, but that's separate from this one.

THE COURT: No, it isn't.

HARDEEP HUNDAL: Yes, Your Honour. The first, the second -- there are three --

THE COURT: At. 106.3. It's exempt from 106.3. Where's 106.3?

MS WALKER: Here, I'll show you. It's highlighted as well, Your Honour.

HARDEEP HUNDAL: There are three parts to that exemption, Your Honour, and the second part --

THE COURT: Yes, all right. Stop talking while I read it. "...shall wear a complete set in a properly secured fashion subject to section 5..."

Where's section 5? Oh, send him back for a new trial, okay?

HARDEEP HUNDAL: Your Honour it's pretty clear here that the charges didn't wear complete seatbelt assembly.

THE COURT: Yes.

HARDEEP HUNDAL: And very clearly says that taxi cabs are exempt from the requirement that support torso part of the seatbelt is not required. So that means the complete seatbelt is not required, you know, and the seatbelts in these cars are as per Canada's motor vehicle safety act of Canada.

THE COURT: Be quiet.

HARDEEP HUNDAL: Okay.

THE COURT: At section 3 and then section 5, "...while transporting a passenger for hire is exempt from 106.3." Is that right, is that what it says?

MS WALKER: Uh-humm.

HARDEEP HUNDAL: That's right, Your Honour.

THE COURT: Well, were you transporting a passenger?

MS WALKER: No.

HARDEEP HUNDAL: But in addition to that it also says that taxi drivers are exempt from the upper torso part of the driver's seatbelt. That is in addition to that.

THE COURT: Where does it say that?

HARDEEP HUNDAL: At Regulation 613.7.2

THE COURT: Taxi drivers ...

HARDEEP HUNDAL: So, we are allowed to render them wholly or partly disabled.

THE COURT: "Taxi cabs are exempt from the requirement that upper torso restraints for seating positions are exempt from the requirement and

seatbelt assemblies in the centre front seat not be removed..." Okay, so you say section 2 stands by itself?

5 HARDEEP HUNDAL: By itself, Your Honour.

THE COURT: So, why didn't they decide this? Who decided? They did -- he decided that, didn't he?

MS WALKER: Yes.

10 HARDEEP HUNDAL: Your Honour, there, there -- I have at least six or seven decisions in my favour and the Crown decided to appeal this one.

THE COURT: What was the reasoning of the J.P.?

MS WALKER: Well, essentially agreed with him that he was pursuant to Regulation 613 exempt from wearing his seatbelt at all times, but in my submission, that was --

15 THE COURT: Yes, 613.3 deals with section 106.

MS WALKER: You have to make reference to that section of the Highway Traffic Act which says that only when he has fares is he exempt from --

HARDEEP HUNDAL: No.

20 MS WALKER: Yes. And it would seem entirely illogical, Your Honour, for him to be --

THE COURT: If the driver of a taxi cab while driving for hire, and the other thing is that section 613.7.2 has a complete exemption. So, I don't know -- I think there's confusion here. I think the justice of the peace was right. They can amend the Act. I'm allowing your appeal.

25 HARDEEP HUNDAL: Thank you, sir.

MS WALKER: It was actually a Crown appeal, Your Honour so you'd have to dismiss.

30 THE COURT: All right, I'm dismissing the Crown appeal.

HARDEEP HUNDAL: Thank you, Your Honour.

THE COURT: They can get this section straightened out so it's quite clear what a taxi driver can do or not. One looks like it's sitting independent of the other sections.

HARDEEP HUNDAL: Thank you, sir.

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This is to certify that the foregoing is a true and accurate transcript of my recordings to the best of my skill and ability.

Jane McCarthy
Jane McCarthy
Official Court Reporter