

**IN THE DISTRICT COURT
MANUKAU OFFICE**

CIV-2013-055-093

UNDER

Section 106 of the Land Transport Act 1998

IN THE MATTER

of an appeal against a decision of the New Zealand Transport Agency to, inter alia, revoke a deed of appointment as a low volume vehicle inspector/inspecting organisation

BETWEEN

John Bernard Brett

Appellant

AND

New Zealand Transport Agency

Respondent

**SECOND SUBMISSION OF JOHN BERNARD BRETT
IN SUPPORT OF NOTICE OF APPEAL**

SWORN

2013

Litigant in person: John Brett
6 Polandson Place, Opaheke, Papakura

Illegality of revocation

1. My legal advice from Mr Tim Allen of Grove Darlow and Partners dated 9th August 2011 is appended as ATTACHMENT 1 to this submission.

2. Paragraph 11 of that letter states

“The Agency is acting beyond its delegated authority in accepting the LVVTA’s recommendations to suspend JBT’s licence based on their prescriptive technical interpretations contained in a document created by themselves, rather than assessing JBT’s certification practices on a performance basis of whether practical safety is being achieved or not”

Danger to public from Mr Brett’s Certification

3. The revocation is based on the premise that the Low Volume Vehicle Certification of Mr Brett constitutes a threat to safety. The premise is that Mr Brett is consistently careless and negligent about safety issues.
4. This premise is negated by the excellent safety record of the 4600 vehicles Certified by Mr Brett
5. This premise is negated by excellent scores achieved by Mr Brett on the NZTA Performance Review System
6. This premise is somewhat negated by the high regard in which Mr Brett is held by clients, as evidenced by references appended to his fourth affidavit.
7. This premise is also negated by the efforts made by Mr Brett to improve the LVV system:
 - a. Initiation of Auckland Certifier Peer training sessions, to facilitate sharing of knowledge and experience between LVV Certifiers.
 - b. Initiation and co-ordination of the

**“L.V.V. Operating Requirements Schedule, LVV Standards,
and LVV System. Submission from Auckland Certifiers”**

Identifying safety risks in the LVV system. (Attachment 16 to Mr Brett’s second affidavit)

- c. Mr Brett has been a Registered Engineering Associate continuously since 26th March 1986, and is subject to a strict code of professional conduct by the Engineering Associates Registration Authority (Attachment 15 to Mr Brett’s second affidavit)
 - d. Mr Brett has identified occasions in which strict compliance to LVV instructions can constitute a safety risk. Mr Brett has a formal ‘Certification Abandonment’ policy for these occasions. (Flow chart provided attachment 18 to Mr Brett’s second affidavit).
 - e. Establishing and running the website www.lowvolumevehicle.co.nz providing practical advice to people modifying vehicles.
- 8. These efforts appear to have been misconstrued by Mr Johnson, as a threat to his authority.
 - 9. Mr Johnson’s response has shown lack of respect to the extent of repeatedly making slanderous statements about Mr Brett, including allegations of mental illness
 - 10. Such an allegation appears in Mr Johnson’s sworn affidavit in Paragraphs 10.33 and 10.34
 - 11. The meeting referenced in Paragraph 10.34 was arranged by Mr Johnson to discuss alleged overweight issues with stretch limousines which I had certified.
 - 12. My third affidavit provides evidence that the allegations were false, and Mr Johnson appears unhappy that I would not accept his allegations.
 - 13. Mr Brett freely admits to mistakes he has made, and has put remedial action in place whenever necessary.

14. Mr Brett frequently works with other LVV Certifiers, even to the extent of doing LVV brake tests together.
15. Mr Brett has yet to meet an LVV Staff member on site, or whilst carrying out a Certification.
16. Mr Brett does not believe that his performance is anywhere near as poor as the picture painted by the LVVTA, and has sought and received frank opinions from his fellow Certifiers in Auckland to support this belief.

Weight of Evidence

17. A large weight of evidence against Mr Brett has been presented. This may at first seem compelling due to the large number of items presented
18. On analysis, it will be seen that most of the allegation have been previously levelled at Mr Brett, and rebutted, sometimes several times over 12 years.
19. 4,600 vehicles have been LVV certified in total.
20. 25 vehicles were included in Mr Stevenson's letter of consideration
21. Of these, 2 were the same complaint about the same vehicle
22. A further 2 of these have been withdrawn
23. 1 of the remainder has been reduced in scope
24. 1 further complaint has been added
25. The total number of vehicles for which evidence is presented in Affidavits is 23 (see Appendix 2)
26. Letters are presented showing that NZTA have dismissed or resolved all of the older allegations.
27. Despite this, the original allegations are re-presented as if newly discovered, without details of the rebuttals and eventual resolutions.
28. It will also be seen that each complaint appears in the reports of several witnesses. This gives the impression that either:-
 - a. The list of allegations is greater than it actually is, or that-

- b. Each of these witnesses has seen the vehicles in question and has agreed with the conclusions.
- 29. In fact most of the witness reports are simply re-writes of other reports, without the writer actually having seen the vehicles.

Danger to public from LVVTA

- 30. Mr Johnson had demonstrated lack of technical competence, and lack of concern for public safety, thus:-
 - a. Evidence was presented relating to potentially unsafe cast iron axles fitted to LVV Certified vehicles with the full knowledge and approval of Mr Johnson.
 - b. Mr Johnson admitted under oath to the dangers presented by failure of cast iron axles.
 - c. Mr Johnson described measures to endeavour to identify unsafe axles in current LVV Certifications, but showed no concern regarding the vehicles already certified.
 - d. Mrs Wallace-Deane at Paragraph 6 of her affidavit gives evidence about vehicles built by Van Extras with unsafe rear-facing seats.
 - e. Mr Johnson in his affidavit Clause 16.4 describes this evidence as follows: *"This statement is untrue, and is in fact just as outrageous as many of the appellant's wild allegations"*
 - f. Mr Johnson, in correspondence with NZTA, has even stated that he believes that mental illness on my part are the only possible explanation for my criticism of actions taken by him, or the LVVTA
 - g. Mr Johnson however admitted under cross examination that he knew that unsafe rear-facing seats were being fitted by Van Extras from 2002 to 2007.
 - h. Mr Johnson admitted under cross examination that he made no efforts to prevent unsafe rear-facing seats being installed by Van Extras.

- i. Mr Johnson described under cross examination the dangers presented by unsafe rear-facing seating.
 - j. Mr Johnson has admitted under oath that there are unknown numbers of vehicles in PSV service fitted with unsafe rear-facing seats.
 - k. Mr Johnson expressed no concern regarding occupants of the many PSV Vehicles in service with these unsafe rear-facing seats.
- 31. The LVVTA has also demonstrated similar incompetence, and inability to understand technical issues, or detect unsafe certifications,
 - a. as described in the '**L.V.V. Operating Requirements Schedule, LVV Standards, and LVV System. Submission from Auckland Certifiers, dated 2/1/2011**
 - b. as evidenced by Mr Brett's need for a Certification Abandonment Policy in the case where unsafe decisions are mandated by LVVTA.

Delegation to Mr Stevenson

- 32. The revocation of the Authority of Mr Brett has been made by Mr Peter Stevenson, Legal Adjudicator
- 33. The authority of Mr Stevenson to revoke the Authority of Mr Brett is subject to paragraph 4 of his Instrument of Sub-delegation, which says:-
"a fair minded lay observer might reasonably apprehend that the decision maker might not bring an impartial mind to the exercise of the discretion"
- 34. The letter of consideration to revoke the authority was based entirely on complaints from Mr Tony Johnson and the LVVTA.
- 35. The investigation of these complaints has been carried out, not by any independent investigator, but by Mr Johnson himself.
- 36. Mr Johnson has demonstrated that he is far from being impartial, and indeed has been conducting a campaign since 2002, to get Mr Brett out

of the system. This has including lies, slander and bullying, as evidenced by correspondence supplied.

37. Mr Stevenson had known Mr Johnson for only a few weeks when he began work on Mr Brett's revocation and could not have known of this history.
38. ***A fair minded lay observer*** (with any knowledge of the LVV System or of Mr Johnson) ***"might reasonably apprehend that the decision maker might not bring an impartial mind to the exercise of the discretion"*** in that the mind Mr Stevenson brought to bear was that of Mr Johnson.

Lack of impartiality of "Post revocation" reports

39. The subsequent reports by NZTA staff are presumably intended to reinforce Mr Stevenson's decision to revoke the authority of Mr Brett.
40. The impartiality of the report writers is questioned in that there might be implications for their continued employment if they were not supportive of the previously made decision.
41. Many of the reports written to justify the revocation have been partially discredited on technical grounds.

Way forward

42. Mr Brett takes responsibility for shortcomings in certain LVV Certifications and has put appropriate remedial actions in place as required.
43. Mr Brett believes that the NZTA needs to take ownership of the LVV problem, and replace the current incompetent technical autocracy with a professional controlling body of LVV Certifiers
44. The Agency is acting beyond its delegated authority in accepting the LVVTA's recommendations to suspend JBT's licence based on their prescriptive technical interpretations based in a document created by themselves, rather than assessing JBT's certification practices on a performance basis of whether practical safety is being achieved or not.
45. The actions of Mr Stevenson to revoke Mr Brett's authority is invalid due to paragraph 4 of his Instrument of Sub-delegation, which says: - ***"a fair***

“minded lay observer might reasonably apprehend that the decision maker might not bring an impartial mind to the exercise of the discretion” in that the mind he brought was that of Mr Johnson, who would not be apprehended as impartial.

On [] 2013

John Bernard Brett
