

October 5, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 15, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

Preliminary Matters

Records before me confirm that you have received a copy of the disclosure documents. I have proceeded with the review based on this confirmation.

You explained that you require your licence so that you can drive to work and to healthcare facilities. Among other things, you noted that you may need to have your appendix removed. You also noted your “clear drivers record”.

I acknowledge and appreciate your situation. However, under the Act I am not authorized to consider hardship, personal circumstances, employment or transportation needs, or your driving record. The scope of the review is limited to the grounds as defined in the Act.

You made various allegations about the investigating officer's conduct; however, I do not have the authority to address such matters.

You provided explanations for the symptoms of alcohol consumption that the officer observed. As such, I take it that you believe the officer did not have sufficient grounds to justify making an ASD demand.

The validity of the demand is not at issue in this review. Section 215.5(1)(c) of the Act requires me to confirm a prohibition if I am satisfied that a driver failed or refused to comply with a demand to supply a sample of breath by means of an ASD, and section 215.41(4) specifies that that demand must be made under the *Criminal Code*. Section 215.5(1)(b), which governs this review, does not incorporate that requirement. This section requires me to confirm your prohibition if I am satisfied that you were the driver within the meaning of section 215.41(1), and that the ASD registered a "FAIL".

Among others, you applied on the grounds that you had a reasonable excuse for failing or refusing to comply with the officer's demand, and your 7-day or 30-day prohibition should be reduced.

Since your IRP was served on the basis of an ASD "FAIL" result, the grounds associated with a refusal to comply with the ASD demand are not relevant to the issues before me. Similarly, as you received a 90-day IRP, I cannot consider the ground that your 7-day or 30-day prohibition should be reduced.

Finally, you raised other issues, such as officers waving people through, which are not relevant to this review. In this decision I will only be addressing the issues set out below.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

In the Report to Superintendent (the "Report"), the investigating officer indicated that you were driving or in care or control of a vehicle at 2128 hours on September 15, 2012.

There is no evidence before me to the contrary. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a “FAIL”?

In the Report, the officer indicated that at 2136 hours, the first ASD, serial number 101277, registered a “FAIL”, which he showed to you. He further indicated that at 2140 hours, the second ASD, serial number 56983, registered a “FAIL”, which he also showed to you. In the Occurrence Report, the officer confirmed that you provided two fail results, and that he showed both results to you.

You stated that you “saw no number reading or anything” and you “still don’t believe [you] failed the test”. You also stated that “there was no reading on the ASD device – just – – –”.

Your evidence directly contradicts the officer’s evidence on this point. In considering the officer’s evidence in general, I find it to be detailed and persuasive. Turning to your evidence, I note that you did not deny twice telling the officer that you had not consumed any alcohol on the day in question. You also did not deny subsequently telling the officer that you had not consumed any alcohol since that morning. This is very strange considering that in your submissions you claimed that you left Grand Forks at approximately 7pm (1900 hours), and that you had dinner and consumed a half a glass of wine before you left. You also claimed that you consumed alcohol 4.5 hours prior, which I take to mean prior to providing the roadside samples. This would have been approximately 5pm (1700 hours). I find that you were not truthful with the officer about your alcohol consumption. Having carefully considered all of the evidence before me, I find that I prefer the officer’s version of events.

I am satisfied that the ASD registered a “FAIL”.

Were you advised of your right to a second analysis?

In the Report, the officer indicated that he advised you of your right to a second test on a different ASD, and that the lower test result would prevail.

There is no evidence before me to the contrary. I am satisfied that you were advised of your right to a second breath test analysis.

Was the second analysis provided by the officer?

As noted, the officer’s evidence is that you provided a second result.

There is no evidence before me to the contrary. I am satisfied that the second analysis was provided by the officer.

Was the second analysis performed on a different ASD?

As noted, the officer’s evidence is that the second result was obtained on a different ASD.

There is no evidence before me to the contrary. I am satisfied that the second analysis was performed on a different ASD.

Was the Notice served on the basis of the lower analysis result?

In the Report, the officer recorded both results as "FAIL".

I am satisfied that the Notice was served on the basis of the "FAIL" result.

Was the ASD reliable?

The officer provided two Certificates of Qualified ASD Calibrator in which Amanda Bain certified that she is a qualified ASD Calibrator.

For the first ASD, the qualified ASD calibrator neglected to record the details of the dry gas Alcohol Standard. As such, I am satisfied that the ASD was not reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 4, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

October 2, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP) No. s.22

Introduction

On August 9, 2012, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the Act) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (BAC) being not less than 80 milligrams of alcohol in 100 millilitres of blood (80 mg%);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (ASD);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the oral hearing I confirmed with your lawyer, Jennifer Currie, that she had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

You applied on four grounds, two of which were not applicable to your situation because of the reason for which you were prohibited. For your benefit, I have considered all the grounds available to you in case you omitted some when completing the application form.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Was your BAC less than 80 mg% even though the ASD registered a “FAIL”?

During the hearing, Ms. Currie referred to the Report To Superintendent (RTS), the Narrative and your affidavit and stated that the first ASD result of a “FAIL” is unreliable. She stated that it was not a proper sample due to mouth alcohol from your last drink, and from the chewing tobacco you had in your mouth just prior to the ASD test.

After reviewing all of the evidence before me I note the following:

- The constable indicated that you were stopped at 20:46 hours.
- At 20:48 hours you were asked to exit the vehicle and to spit out the chewing tobacco you had in your mouth; you complied.
- When asked, you advised the constable that you had consumed a “Canadian”, which I take to mean beer, while playing volleyball, about 1 minute before being stopped.
- The first ASD test was administered at 20:58 hours and registered a “FAIL” result.
- The second ASD test was administered at 20:01 hours and registered a “FAIL” result.

In determining the effects of mouth alcohol on ASDs, I turn to the Superintendent’s Report on ASDs (the Report on ASDs), which contains information reflecting current police practices. The Report on ASDs states that breath samples are taken at least 15 minutes after the last drink was consumed to allow for elimination of mouth alcohol.

Having considered your evidence and the constable’s evidence, I find it more likely than not that the ASD registered a “FAIL” due to alcohol in your mouth, and not as a result of alcohol in your blood.

Having made this finding, there is no need to consider the other issues in this review.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including August 30, 2012, the date your vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

October 5, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 15, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “WARN” as a result of your blood alcohol concentration (“BAC”) being not less than 50 milligrams of alcohol in 100 millilitres of blood (“50 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

Issues

Having reviewed all of the material before me, I find that one issue is determinative of this matter, namely, was the ASD reliable?

Facts, Evidence and Analysis

Was the ASD reliable?

I find that you smoked a cigarette within one minute prior to providing your second ASD sample. Ms. Leamon submitted ASD material that states that ASD operators must wait three minutes after the subject has finished smoking because the presence of smoke in a breath sample can cause inaccurate readings.

I am satisfied that the ASD was not reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

s.15

Adjudicator

cc: Sarah Leamon
Fax: 604-685-8308

October 2, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 16, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing your lawyer, Sarah Leamon, confirmed that she had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was your BAC less than 80 mg% even though the ASD registered a “FAIL”?

The Superintendent’s Report on ASDs states that breath samples are taken at least 15 minutes after the last drink was consumed to allow for the elimination of alcohol.

In the Narrative, the officer indicated that he stopped you at 02:15 hours on September 16, 2012, because you ran over several pylons at a roadblock and you almost struck an unmarked police car. The officer noted that there was a strong odour of liquor coming from inside the vehicle and there were two male occupants. You were identified as the driver. The officer also noted that there were three cans of Kokanee beer in the centre console, two of which were empty, the third has still sealed. The officer indicated that you had a strong odour of liquor and you were asked to exit the vehicle. You denied consuming any alcohol that evening. The officer made an ASD demand at 02:20 hours and you provide two breath samples at 02:22 hours and 02:27 hours, respectively.

You indicated that while driving, you and your passenger shared a beer. You stated that no more than a few seconds had passed between your last sip of beer and the time you were stopped by the officer. You denied consuming alcohol because you knew you were not impaired by alcohol. On September 16, 2012, you did not know about the issue of mouth alcohol. If you had, you would have told the officer that you had just finished drinking beer prior to encountering him.

Based on the totality of the evidence before me, I am not satisfied that you consumed your last drink more than 15 minutes before the ASD tests were conducted. For this reason, I am satisfied that your BAC was less than 80 mg%.

Having made this finding, I need not consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 2, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



s.15

Adjudicator

cc: Sarah Leamon, Acumen Law Corporation
Fax: 604-685-8308

October 11, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 23, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Your lawyer, Colleen Hay, provided a late “summary of argument”, which I considered despite its tardiness.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?

- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

The investigating officer noted that he saw you in care or control of a motor vehicle on 5th Street in Courtenay. You confirmed you were driving. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a "FAIL"?

The officer noted that the device registered a "FAIL". There is no evidence to the contrary. I am satisfied that the ASD registered a "FAIL".

Were you advised of your right to a second analysis?

The officer noted that he advised you of the right to a second test. There is no evidence to the contrary. I am satisfied that you were advised of your right to a second breath test analysis.

Was the second analysis provided by the officer?

The officer noted that you declined the opportunity of a second analysis. There is no evidence to the contrary. I am satisfied that you were provided with the opportunity to take a second breath test analysis.

Was the Notice served on the basis of the lower analysis result?

Given that the penalty applied was compatible with the lowest test result, there being only one, I am satisfied that the Notice was served on the basis of the lower analysis result as dictated by the Act.

Were the ASD results reliable?

The officer provided a certificate of a qualified ASD calibrator, which confirmed that the device was operating correctly. However, the certificate was not signed, so I am unable to confirm its accuracy and I will not consider it. I am satisfied that the ASD result was reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 11, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date your vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Colleen Hay
Fax: (877) 837-0548

October 3, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On August 23, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Kris Pechet. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

There is one issue determinative of this review:

Was the ASD reliable?

Having reviewed all of the evidence before me, I find that Mr. Pechet has provided persuasive submissions with respect to the reliability and functionality of the first ASD the officer used in your case. As a result, I find that I am not satisfied the ASD was reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including September 13 2012, the date your vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

October 25, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No.

s.22

Introduction

On October 14, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Paul Johnson. I have proceeded with this review based on that confirmation.

Facts, Evidence and Analysis

After reviewing the totality of the evidence before me, including your lawyer's submissions, it is my finding that there is insufficient evidence to uphold this prohibition.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 25, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



s.15

Adjudicator

Paul Johnson, FH&P
cc: Fax: 250-762-8616

October 11, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 21, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

You applied on the grounds that: the ASD, which formed the basis for the prohibition, did not register a “warn” reading; the ASD registered a “warn”, but your BAC was less than 0.05

(50 milligrams of alcohol in 100 millilitres of blood); you did not refuse or fail to comply with a demand to provide a breath sample; you had a reasonable excuse for refusing or failing to comply with the officer's demand to provide a breath sample; and, your 7-day or 30-day driving prohibition should be reduced because you did not have the required number of previous IRPs. However, those grounds are not applicable to your situation because the Constable alleged on the Notice of Driving Prohibition that he was prohibiting you from driving for 90 days because a sample of your breath on an ASD registered a "FAIL" and your ability to drive was affected by alcohol.

Records at this office confirm that your legal counsel, John Chak received full disclosure of the documents before me. At the start of the oral hearing, Mr. Chak acknowledged that he had received disclosure. I have proceeded with the review based on this confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was the ASD reliable?

In the Report to Superintendent (the "Report"), the officer indicated that you provided your first breath sample into an ASD with serial number 101904. The officer provided a Certificate of Qualified ASD Calibrator (the "Certificate") for the ASD. Mr. Chak drew my attention to the expiry for the Airgas dated 2012-06-14, or June 14, 2012. He stated that it is not possible to conclude that the device has been properly serviced or calibrated, and I concur. Accordingly, I cannot be satisfied that the first ASD test was reliable. Having made this finding, I do not need to consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 11, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

cc: John C. Chak by fax [604] 282 7509

October 18, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No s.22

Introduction

On September 29, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office indicate that your lawyer, Paul Pearson, has received full disclosure of the documents before me. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Upon reviewing the evidence of Constable Buckler, I find that there is one issue that is determinative of this review.

Was the ASD reliable?

Constable Buckler's evidence indicates that you provided breath samples into two separate ASDs, and the ASDs registered "FAIL" results at 21:08 hours and 21:19 hours, respectively. In both the Report to Superintendent ("RTS") and Narrative, the constable has stated that the first ASD used was serial number 061504 and the second ASD was serial number 101285. However, after reviewing the two Certificates of Qualified ASD Calibrator ("Certificate") provided by the constable, I note that I have before me a Certificate for ASD serial number 061504 and for an ASD with serial number 101303. I have not been provided with the Certificate for ASD serial number 101285. As such, I cannot be satisfied that the second ASD used in your case was properly calibrated at the time of your ASD breath test analyses.

Having made this finding, I do not need to consider any other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 18, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15
Adjudicator

Cc: Paul Pearson - fax: [250]480-0004

October 30, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No.

s.22

Introduction

On August 28, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of all the documents before me was given to your lawyer, Paul Evans. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was your BAC less than 80 mg% even though the ASD registered a “FAIL”?

The Superintendent’s Report on ASDs states that breath samples are taken at least 15 minutes after the last drink was consumed to allow for the elimination of mouth alcohol.

Mr. Evans submitted that you were truthful with the officer at the roadside when he asked you how much you had to drink. As such, he argued that the ASD test results are unreliable due to mouth alcohol, and that your BAC did not exceed 80 mg%.

After reviewing all of the evidence before me I find that your evidence is consistent with that of the officer in that, when you were stopped at 23:09 hours you advised the officer that you had a drink “a few minutes ago”. That would place the time of your last drink at about 23:06 hours, which is only seven minutes prior to the first ASD test and twelve minutes before the second ASD test.

Further, I acknowledge that you denied saying you finished a drink “10 minutes prior” when asked by the officer for the second time. However, even if I accepted the officer’s evidence that you did in fact say you consumed alcohol “10 minutes” prior”, it would still place your last drink between 22:59 and 23:03, which is still within 15 minutes of the first ASD test.

Based on the totality of the evidence before me, I am not satisfied that you consumed your last drink more than 15 minutes before the ASD tests were conducted. For this reason, I am satisfied that your BAC was less than 80 mg%.

Having made this finding, I need not consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

s.22
Adjudicator

cc: Paul Evans, Stern Albert Shapray & Associates
Fax: 604-590-5626

October 19, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP) No. s.22

Introduction

On September 29, 2012, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the "Act") requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (the "ASD") registered a "FAIL" as a result of your blood alcohol concentration (BAC) being not less than 80 milligrams of alcohol in 100 millilitres of blood (80 mg%);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that your legal counsel, Jesse Gelber, received full disclosure of the documents before me. I have proceeded with the review based on this confirmation.

Issues

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL" and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?

- If requested, was the second analysis provided by the officer and performed using a different ASD?
- Was the ASD reliable?
- Was the Notice served on the basis of the lower analysis result?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

In his evidence, Officer Mills indicates that on September 29, 2012 at 20:52 hours, he observed you driving on Columbia Avenue in Castlegar.

In your sworn affidavit you acknowledge driving.

Based on the evidence before me, I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act, at the time in question.

Did the ASD register a "FAIL" and was it as a result of your BAC exceeding 80 mg%?

The police evidence indicates that you provided a breath sample into an ASD with serial number 101034 at 21:05 hours, which resulted in a "FAIL".

Mr. Gelber submits that I cannot be satisfied that this "FAIL" result was reliable because the Certificate of Qualified ASD Calibrator indicates the ASD calibration expiry date for this ASD was July 31, 2012.

I concur.

Based on the evidence, I am not satisfied that the ASD registered a "FAIL" as a result of your BAC exceeding 80 mg%.

Having made this finding, there is no need to consider the other issues in this review.

Decision

Based on the evidence, I revoke your driving prohibition, monetary penalty, and vehicle impoundment as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 19, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

pc: Jesse Gelber via fax

October 12, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No.

s.22

Introduction

On September 21, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (Act) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Jesse Gelber. I have proceeded with the review based on this confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “WARN”, and was it as a result of your BAC exceeding 50 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

I find there is one issue that is determinative of my review.

Were the ASDs reliable?

Having considered the Certificates of Qualified ASD calibrator, I note that the calibration expiry date for both ASDs was over two weeks prior to the date of the incident. As such, I am satisfied that the ASDs were not reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 12, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc: Jesse Gelber
250-368-9401

October 25, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No.
Introduction

s.22

On October 7, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing, I confirmed that full disclosure of the documents before me had been provided to you. I have proceeded with this review based on that confirmation.

You applied for this review on two grounds, one of which was not applicable to your situation because of the reason for which you were prohibited. For your benefit, I have considered all the grounds available to you in case you omitted some when completing the application form.

During the hearing, you stated that you were really nervous on the evening in question because you had never had to do anything like that before, and because the officer was yelling at you. You explained that you recently obtained a union job and it is the best job you have ever had and you are doing really well. You indicated that you could lose your job if you are unable to drive for the full 90 days, because without your licence and vehicle you are unable to transfer your tools and other work gear around. You also stated that you want to go to therapy for your knee and you require a vehicle and your licence in order to do that. You asked if there was any way I could reduce the driving prohibition and vehicle impoundment.

I acknowledge that a 90-day driving prohibition can have far reaching implications for a person who needs to drive for various employment and other personal reasons. However, in the context of this review the Act does not authorize me to consider an individual's driver's record, personal circumstances and employment needs. Nor does it allow me to reduce or alter the terms of your driving prohibition or vehicle impoundment. The issues that I must determine in this review are outlined in detail below.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Having reviewed the evidence of Constable Fletcher and your submissions, I find there is one determinative issue in this review.

Was the ASD reliable?

Constable Fletcher's evidence indicates that on October 7, 2012, you provided breath samples into two separate ASDs, and the ASDs registered "FAIL" results at 02:56 hours and 03:01 hours, respectively. In the Report to Superintendent ("RTS"), the constable has stated that the first ASD used was serial number 101195.

After reviewing the Certificate of Qualified ASD Calibrator ("Certificate") provided by Cst. Fletcher for ASD serial number 101195, I note that it indicates that the ASD had a calibration expiry date of July 23, 2012. As such, I cannot be satisfied that the first ASD used on you was properly calibrated at the time of ASD test analysis', on October 7, 2012.

Having made this finding, I do not need to consider any other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 25, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

October 16, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 28, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing I confirmed that you had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and AnalysisWere you a driver within the meaning of section 215.41(1) of the Act?

The investigating officer noted that he saw you in care or control of a motor vehicle on Highway 97 in Summerland. There is no evidence to the contrary. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a "FAIL"?

The officer noted that the device registered a "FAIL". There is no evidence to the contrary. I am satisfied that the ASD registered a "FAIL".

Were you advised of your right to a second analysis?

The officer noted that he advised you of the right to a second test. There is no evidence to the contrary. I am satisfied that you were advised of your right to a second breath test analysis.

Was the second analysis provided by the officer?

The officer noted that you declined the opportunity for a second test. There is no evidence to the contrary. I am satisfied that you were provided with the opportunity for a second breath test analysis.

Was the Notice served on the basis of the lower analysis result?

Given that the penalty applied was compatible with the lowest test result, there being only one, I am satisfied that the Notice was served on the basis of the lower analysis result as dictated by the Act.

Were the ASD results reliable?

The officer provided a certificate of a qualified ASD calibrator, which confirmed that the device was operating correctly. There is no evidence before me that it was not working properly at the time of the test.

You stated that you drank some beer immediately before being pulled over, so you suspect that the test might be unreliable due to residual mouth alcohol. The officer located an open can of beer in the console of your vehicle after he had completed the test. On noting the open can, he did not ask you when, or if, you consumed any and he did not repeat the test. In order to establish reliability of the result, I find the officer should have taken this open can into consideration. Your lawyer, Kevin Filkow, suggested the same.

I am not satisfied that the ASD result was reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 16, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc: Kevin Filkow
Michaels & Filkow
Fax: (604) 270-3787

October 22, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 6, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

The investigating officer noted that she saw you in care or control of a motor vehicle on s.22
s.22 There is no evidence to the contrary. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a "FAIL"?

The officer noted that the device registered a "FAIL". There is no evidence to the contrary. I am satisfied that the ASD registered a "FAIL".

Were you advised of your right to a second analysis?

The officer noted that she advised you of the right to a second test. There is no evidence to the contrary. I am satisfied that you were advised of your right to a second breath test analysis.

Was the second analysis provided by the officer?

The officer noted that she performed a second test. There is no evidence to the contrary. I am satisfied that you were provided with a second breath test analysis.

Was the Notice served on the basis of the lower analysis result?

Given that the penalty applied was compatible with the lowest test result, both being the same, I am satisfied that the Notice was served on the basis of the lower analysis result as dictated by the Act.

Were the ASD results reliable?

The officer provided certificates of a qualified ASD calibrator, which confirmed both devices were operating correctly.

You provided sworn affidavits from a friend and from your father confirming that you finished off your last beer (of four) a few minutes before leaving the bar. Given that your tests were both conducted within fifteen minutes of that drink, you believe that the results were affected by residual mouth alcohol. You stated that you left the bar at 11:15 (pm) but I find it more likely, based on the rest of your evidence and that of the police, that you left the bar at 12:15 (am). The officer noted you as being in care or control of the vehicle at 00:19 hours (12:19 am). I find you likely finished your drink four minutes earlier, if I accept your statement as fact.

The officer asked you when your last drink was; not when you finished your last drink but also not when you started it. I find that your last drink means when you last consumed any liquid by mouth. You stated to the officer that your last drink was about an hour or 45 minutes before. However, I believe that that was an error on your part, misinterpreting the question. You also said that you drank about three beers, which you have since adjusted to four. However, I do not find it likely that you provided the answers that you did in order to deceive the officer.

Your lawyer, Brian Juriloff, provided a forensic expert's report that stated your BAC would not have exceeded 37mg% based on your reported, and supported, drinking pattern.

Given the overwhelming evidence that your BAC would not have been close to returning "FAIL" results, I find it more likely than not that they were affected by residual mouth alcohol. I am not satisfied that the ASD results were reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter that I am releasing the vehicle.

Adjudicator

cc: Brian Juriloff
Fax: (604) 504-5880

October 9, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP) No. s.22

Introduction

On September 22, 2012, a peace officer served you with a Notice of Driving Prohibition (Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the Act) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- You were a driver within the meaning of section 215.41(1);
- the Approved Screening Device (ASD) registered a 'fail' as a result of your blood alcohol concentration (BAC) being not less than 80 milligrams of alcohol in 100 millilitres of blood (80 mg%)
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office indicate that disclosure was provided to you. I proceeded with the hearing based on this information.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a 'fail', and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed with a different ASD?
- Was the Notice served on the basis of the lower analysis result?

- Was the ASD reliable?

Facts, Evidence and Analysis

Having reviewed the evidence of Constable Foster and your submission, I find there is one issue that is determinative of this review.

Were you a driver within the meaning of section 215.41(1) of the Act?

In the Report to Superintendent (Report), Constable Foster of the Parksville RCMP stated that you had a vehicle under your care or control at 20:14 hours on September 22, 2012. In his vehicle impoundment report, the constable stated that the police received a report of a vehicle running with a male occupant watching a house. Constable Foster located the vehicle and the occupant.

In your written submission you stated that on September 22, 2012, you were waiting in your vehicle for your wife to leave her parent's residence. The car had been turned off for over an hour, and the engine was cold. You had placed the keys in the glove box, rather than leave them in the ignition, or on your person. Your family home was less than a two (2) minute drive away, but you decided to sit in your vehicle, waiting to sober up before driving.

Part of the test for whether a person has care or control of a vehicle requires some use of the vehicle or its equipment that involves a risk of putting the vehicle into motion so that it could become dangerous. You argued that you were simply in the driver's side of the vehicle when the peace officer came upon the vehicle. You were not a driver; you did not have care or control. Although there may be a presumption of care or control when a person occupies the driver's seat that may be rebutted if you never engaged in a course of conduct that involved a risk of putting the vehicle in motion. To establish care or control, a person must voluntarily consume alcohol and be impaired; while in such a state, use the vehicle or its equipment and fittings in such a way as to create a risk of setting the vehicle in motion, so that it could become dangerous.

In your letter, you stated that you had no intention of driving. You had decided to go for a walk around the Eaglecrest sub-division that would take between 1½ to 2 hours. Your purpose for getting into the vehicle was to avoid sitting in public while under the influence. You knew you had too much to drink and the danger of driving home while impaired.

If a person could set a vehicle in motion, they may nevertheless still have care or control of a vehicle. Acts of care or control, short of actual driving, involve some use of the vehicle or course of conduct that would involve a risk of putting the vehicle in motion so that it could become potentially dangerous. A lack of intent to operate a vehicle does not necessarily mean that you did not have care and control.

When Constable Foster first attended the scene at 20:14 hours, you admit to being in the driver's seat. Neither you, nor the attending officer, indicated that the vehicle was inoperable. You were waiting for your wife. Your vehicle was stationary, in a parked position. Although the police received a report of a vehicle running with a male occupant, there is no time reference as

to when this occurred. I note that Constable Foster did not state he observed you drive the vehicle. He simply made the inference that you were in care and control when the police dispatch received a complaint. Given the absence of a clear time reference, I do not place much weight on police evidence that the vehicle was running.

Your wife stated in her submission that upon his arrival at the scene, Constable Foster explained that the car was not running, and that the vehicle had obviously been parked there for a long time as the engine was cold. The constable noted that the car keys were in the glove box of the vehicle.

At the time the police officer approached the parked vehicle, I find that it was not running, and the ignition key was in the glove compartment; there was no significant risk of the vehicle being put into motion. The vehicle was parked. I accept that you did not intend to drive the vehicle and had parked the car with the purpose of waiting for your wife or going for a walk.

Based on the evidence before me, I find that it is more likely than not that you were not a driver within the meaning of section 215.41(1) of the Act on September 22, 2012, at 20:14 hours. As a result, there is no need for me to consider the remaining issues before me.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 9, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

October 17, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 27, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, William Whyard. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was the ASD reliable?

In the Report to Superintendent (the "Report"), the officer indicated that you provide your first breath sample into an ASD with serial number 065854. The officer provided a Certificate of Qualified ASD Calibrator (the "Certificate") for the ASD. Mr. Whyard drew my attention to the ASD's calibration expiry date of September 24, 2012. He indicated that the date had lapsed because your test was conducted on September 27, 2012. In reviewing the police evidence before me, I concur. Accordingly, I cannot be satisfied that the first ASD was reliable. Having made this finding, I do not need to consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 17, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



Adjudicator

cc: William Whyard
Fax: 604-485-7161

October 25, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 10, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Upon reviewing the evidence of Constable Gallon I find that his evidence does not support his allegations.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Adjudicator s.15

October 1, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On August 10, 2012, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office indicate that you have received full disclosure of the documents before me. I have proceeded with the review based on this confirmation.

You applied on seven grounds, two of which are not applicable to your situation because of the reason for which you were prohibited. For your benefit, I have considered ALL the grounds available to you in case you omitted some when completing the application form

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Was the Notice served on the basis of the lower analysis result?

In the Narrative, Cst. Mante indicated that you attempted 8 times to provide a sample into ASD serial number 101023. He stated that after the 8 attempts he formed the opinion that you were refusing by purposely failing to provide a suitable sample. He indicated that at 01:37 hours he explained to you that you had the right to a second test, and that since you refused the first test that the results of the second would prevail, and noted that you said sure you would like a second test. A second ASD test was administered on ASD serial number 055658 and it registered a “FAIL” result at 01:42.

After reviewing all of the evidence before me, I find that Cst. Mante attempted to administer two ASD tests but there is only one valid result. As such, I cannot be satisfied that the Notice was served on the basis of the lower of the two analyses.

Having made this finding, there is no need to consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date your vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

October 16, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 30, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing, I confirmed with your lawyer, Sylvia Andrews that she had received full disclosure of the documents before me. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

There is one issue determinative of this review:

Were you a driver within the meaning of section 215.41(1) of the Act?

Having reviewed all of the evidence before me, I am persuaded by Ms. Andrew's submission that there is insufficient evidence of the time at which you were alleged to have been driving or in care or control of a vehicle, and insufficient evidence that you were a driver on a highway or industrial road when the officer made his demand and served you the Notice, as required by the Act. In short, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 17, 2012, the date your vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

October 30, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”)

s.22

Introduction

On October 19, 2012, peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Jennifer Currie. I have proceeded with this review based on that confirmation.

You applied on the grounds that: the ASD, which formed the basis for the prohibition, did not register a “warn” reading; the ASD registered a “warn”, but your BAC was less than 0.05 (50 milligrams of alcohol in 100 millilitres of blood); you did not refuse or fail to comply with a demand to provide a breath sample; you had a reasonable excuse for refusing or failing to comply with the officer’s demand to provide a breath sample; and, your 7-day or 30-day driving prohibition should be reduced because you did not have the required number of previous IRPs.

However, those grounds are not applicable to your situation because the Constable alleged on the Notice of Driving Prohibition that he was prohibiting you from driving for 90 days because a sample of your breath on an ASD registered a “FAIL” and your ability to drive was affected by alcohol.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

In the Report to Superintendent (the “Report”), the officer indicated that you were driving or in care or control at 1942 hours on October 19, 2012. In the Narrative Text Hardcopy (“Narrative”) the officer reported that he attended a single vehicle collision where a blue s.22 driven by you, drove into a series of crash barrels on Highway #1. You advised the officer that someone had cut you off; however, the officer had received information that there was a complaint regarding your driving prior to the crash. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a “FAIL”?

In the Report, the officer indicated that the ASDs registered a “FAIL” at 1948 and 1959 hours, respectively. There is no evidence before me to the contrary.

I am satisfied that the ASDs registered a “FAIL”.

Were you advised of your right to a second analysis?

In the Report, the officer indicated that you were advised of your right to a second analysis. Your evidence is consistent with that of the officer on this issue.

I am satisfied that you were advised of your right to a second breath test analysis.

Was the second analysis provided by the officer?

In the Report, the officer indicated that he provided you with a second analysis. You indicated that you provided a second breath sample.

I am satisfied that the second analysis was provided by the officer.

Was the second analysis performed on a different ASD?

I am satisfied that the second analysis was performed on a different ASD.

Was the Notice served on the basis of the lower analysis result?

In the Report, the officer recorded both ASD test results as a "FAIL". There is no evidence before me to the contrary.

As both test results were the same, I am satisfied that the Notice was served on the basis of the "FAIL" result.

Was the ASD reliable?

Ms. Currie submitted that the evidence fails to establish that the first ASD used was properly calibrated or serviced as the officer failed to provide a Certificate for the first test. Ms. Currie submitted that for the first test the officer used an ASD with a serial # of 061114 and submitted a Certificate for an ASD with a serial # 06114. Ms. Currie submitted that this Certificate may correspond to an ASD with a serial number of 006114 or 061141.

I acknowledge that the officer recorded the serial # for the first ASD as 061114 and subsequently provided a Certificate for an ASD bearing serial # 06114. I agree with Ms. Currie.

As such, I am satisfied that the ASD was not reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 30, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

cc: by fax Jennifer Currie by fax: [604] 590-5626

October 29, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No

s.22

Introduction

On August 23, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

During the hearing, I confirmed with you that you had received full disclosure of the documents before me. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

I note that you were issued a 90 day driving prohibition because an ASD registered a “FAIL” result. However, after having reviewed all of the evidence before me, I am revoking your driving prohibition.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

October 17, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 5, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the Motor Vehicle Act (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the Criminal Code to provide a sample of breath for analysis by means of an approved screening device (“ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records before me confirm that your lawyer, Kyla Lee was faxed a copy of the disclosure documents. At the outset of the oral hearing Ms. Lee confirmed that she had received them. I have proceeded with the review based on this confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Did you fail or refuse to comply with an ASD demand?

The officer served the Notice of Driving Prohibition on the basis that you failed or refused, without a reasonable excuse to comply with a demand under the Criminal Code to provide a sample of breath for analysis by means of an ASD. However, the evidence from the officer does not support this allegation.

Having made this finding, I do not need to consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 17, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicato

cc: Kyla Lee by fax: [604] 685-8308

October 31, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 13, 2012, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing your lawyer, Kyla Lee confirmed that she had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was the ASD reliable?

Having reviewed the Certificate of Qualified ASD Calibrator for ASD 100982, I am not satisfied that the ASD was reliable at the time of your test.

Having made this finding, I do not need to consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 31, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



s.15

Adjudicator

cc: Kyla Lee, Acumen Law Corporation
Fax: 604-685-8308

October 26, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 5, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (Act) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Dilraj Gosal. I have proceeded with the review based on this confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

I find there is one issue that is determinative of my review.

Were you a driver within the meaning of section 215.41(1) of the Act?

The officer's evidence is that on October 5, 2012, at approximately 2235 hours, he located you and a passenger asleep in a vehicle, parked in a gravel lot.

Your evidence, which was corroborated by a number of witnesses, is that you were planning on sleeping in the vehicle until morning, when you would be sure that there was no alcohol in your system. The vehicle keys were in your passenger's purse, located in the back seat.

Having carefully considered all of the evidence before me, I find that you did not intend to drive your vehicle. I also find that there was no risk that you would inadvertently set the vehicle in motion. As such, I am satisfied that you were not a driver within the meaning of section 215.41(1) of the Act.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 25, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15
Adjudicator

cc: Dilraj Gosal
604-510-5195

November 7, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 1, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

You applied on several grounds, some of which are not applicable to your situation because of the reason for which you were prohibited. For your benefit, I have considered ALL the grounds available to you in case you omitted some when completing the application form.

I acknowledge, from your submission, that you require your licence for employment reasons. However, under the Act, I am not authorized to consider hardship, personal circumstances, employment, or transportation needs in this review. The scope of the review is limited to the issues below. Similarly, I am not permitted to change the terms and conditions of the prohibition.

The prohibition was stayed until November 20th, as I was unable to make a decision within 21 days. The impounded vehicle was released and you were provided with a temporary licence.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

The investigating officer noted that he saw you in care or control of a motor vehicle on Granville Street in Vancouver. You confirmed you were driving. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a “FAIL”?

The officer noted that the device registered a “FAIL”. There is no evidence to the contrary. I am satisfied that the ASD registered a “FAIL”.

Were you advised of your right to a second analysis?

The officer noted that he advised you of the right to a second test. There is no evidence to the contrary. I am satisfied that you were advised of your right to a second breath test analysis.

Was the second analysis provided by the officer?

The officer noted that he performed a second test. There is no evidence to the contrary. I am satisfied that you were provided with a second breath test analysis.

Was the Notice served on the basis of the lower analysis result?

Given that the penalty applied was compatible with the lowest test result, both being the same, I am satisfied that the Notice was served on the basis of the lower analysis result as dictated by the Act.

Were the ASD results reliable?

The officer provided certificates of a qualified ASD calibrator, which confirmed both devices were operating correctly. I note that the certificates were not signed by the calibrator, his signature being photocopied on each page. Therefore, I find that I cannot accept the certificates, which throws doubt on the reliability of the devices and consequently the results. I am not satisfied that the ASD results were reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle has been notified by separate letter that I am releasing the vehicle.

October 17, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP) No. s.22

Introduction

On October 3, 2012, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the Act) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (ASD) registered a “FAIL” as a result of your blood alcohol concentration (BAC) being not less than 80 milligrams of alcohol in 100 millilitres of blood (80 mg%);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the outset of the oral hearing your lawyer, David Albert, confirmed that he received full disclosure.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?

- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

I find there is one issue that is determinative of my review.

Were you a driver within the meaning of section 215.41(1) of the Act?

Mr. Albert submitted evidence regarding this issue, including your affidavit, the affidavit of your friend, s.22 and the criminal court case of *R. v. McLachlan*.

Having considered the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

The corresponding vehicle impoundment is also revoked. If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 17, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.22

Adjudicator

cc: David Albert
604-590-5626

October 30, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 15, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the review, I confirmed with your lawyer, Sarah Leamon, that she had received full disclosure of the documents before me. I have proceeded with the review based on this confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

There is one issue determinative of this review:

Was the ASD reliable?

In the Report to Superintendent, the officer indicated that you provide a breath sample into an ASD with serial number 101487. The officer provided a Certificate of Qualified ASD Calibrator (the “Certificate”) for the ASD.

Ms. Leamon noted that the Certificate shows the ASD’s calibration expiry date was October 9, 2012, while the date of your ASD test was October 15, 2012. This means the calibration of the ASD had expired at the time of your ASD test. Accordingly, I cannot be satisfied that the ASD was reliable.

Having made this finding, I do not need to consider other issues in this review.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver’s licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver’s Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 30, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

October 19, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No s.22

Introduction

On October 4, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing your lawyer, Joseph Doyle, confirmed that he had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was the ASD reliable?

In the Report to Superintendent (the "Report"), the officer indicated that you provide breath samples into ASDs with serial numbers 024940 and 042153. The officer provided Certificates of Qualified ASD Calibrator (the "Certificates") for both ASDs. Mr. Doyle drew my attention to the service expiry for ASD 024940 noting that it was dated 2012-5-17, or May 17, 2012. He stated that it is not possible to conclude that the device has been properly serviced or calibrated, and I concur. Accordingly, I cannot be satisfied that the first ASD was reliable. Having made this finding, I do not need to consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 19, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.


s.15

Adjudicator

cc: Joseph Doyle, Johnson Doricic Doyle Sugarman
Fax: 604-688-8356

October 17, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 29, 2012, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing your lawyer, Emmet Duncan confirmed that you had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was the ASD reliable?

The officer's evidence is that you provided breath samples into two different ASDs, serial numbers 101474 and 101490. The officer provided a Certificate of a Qualified ASD Calibrator for ASD serial number 101474. However, I note that I do not have before me a Certificate of Qualified ASD Calibrator for ASD 101490. Without this evidence, I am unable to determine the calibration and service expiry date for this device. Consequently, I cannot be satisfied that ASD 101490 was reliable.

Having made this finding, I do not need to consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 17, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



s.15

Adjudicator

Cc: Emmet Duncan
Fax: 604-488-1413

October 25, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No Introduction

s.22

On October 6, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Having reviewed all of the evidence of before me, I find there is one determinative issue in this review.

Were you a driver within the meaning of section 215.41(1) of the Act?

In reviewing the Report to Superintendent (“RTS”) the investigating officer stated that the date and time of driving or care or control was October 6, 2012, at 02:50 hours. However, the evidence contained in the officer’s Narrative indicates that 02:50 hours is not the time you were observed driving or in care or control of the vehicle, but rather the time that he attended the residence where you and Cst. Pfifer were. Ultimately, I am unable to determine a reliable time of driving or care of control.

Having made this finding, I do not need to consider any other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver’s licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver’s Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 25, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

October 5, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 18, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (“ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Lisa Helps. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

Facts, Evidence and AnalysisWere you a driver within the meaning of section 215.41(1) of the Act?

In the Narrative of Constable Shoesmith, he stated that at 21:11 hours on September 18, 2012, Surrey RCMP received a report of a disturbance in a parking lot adjacent to the complainant's residence. The complainant stated that he could hear four intoxicated males talking loudly about guns but he did not observe any weapons. Cst. Shoesmith, Cst. Raaflaub, and Sgt. Reshaur were dispatched to investigate.

According to Sgt Reshaur's Narrative, he was the first officer to arrive on scene. He indicated that he observed several males inside the vehicle. He pulled up facing the vehicle and turned on his high beams lighting up the interior of the car. He stated that he heard and saw the driver exclaim "shit, it's the police!" then the driver ran from car's driver seat. He stated that the driver was wearing a t-shirt and pants. He remained with the vehicle and the other three occupants and waited for backup to arrive. The other vehicle occupants identified you as the driver and owner of the vehicle and stated that you fled because you were scared.

Cst. Shoesmith arrived on scene within a few minutes. You attempted to flee from the scene after hiding in some brush. Cst Shoesmith caught up to you and placed you under arrest. Sgt Reshaur was unable to positively identify because he only caught a "fleeting look" at you when you fled. In the Report to Superintendent, the officer stated that the date and time of driving or care or control was September 18, 2012 at 21:18 hours.

You have provided no evidence in this matter. Ms. Helps submitted that you were not in care or control of the vehicle. Stated that there is no police evidence that:

- You were in possession of the keys to the vehicle
- The vehicle was operable
- The engine or any vehicle accessories were engaged

She also stated that the vehicle was on scene when the 911 call was made at 21:11 and still on scene when police arrived at 21:18 hours.

Unlike the *Criminal Code*, the Act does not have a presumption that a person who occupies the seat normally occupied by the operator of the vehicle is deemed to be in care or control of the vehicle.

There is compelling evidence before me that you initially occupied the driver's seat of the vehicle, and there is no evidence that the vehicle was inoperable. However, while you must have had some means of gaining entry to the vehicle, there is no compelling evidence before me that you were in possession of the keys to the vehicle or that the keys were in the ignition. The police did not provide evidence on this point. Further, there is also no compelling evidence before me that you interacted with the fitting of the vehicle in such a way that I could conclude that you had assumed control or management over the vehicle. Also, I am unable to conclude that you had the means to put the vehicle in motion, intentionally or accidentally.

Based on the evidence before me, I am satisfied that you were not a driver within the meaning of section 215.41 of the Act on September 18, 2012 at 21:18 hours.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 5, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



s.15

Adjudicator

cc: Lisa Helps, Helps Law Corporation
Fax: 604-669-5558

October 22, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 4, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

The investigating officer noted that he saw you in care or control of a motor vehicle on 156th Street in Surrey. There is no evidence to the contrary. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a "FAIL"?

The officer noted that the device registered a "FAIL". There is no evidence to the contrary. I am satisfied that the ASD registered a "FAIL".

Were you advised of your right to a second analysis?

The officer noted that he advised you of the right to a second test. There is no evidence to the contrary. I am satisfied that you were advised of your right to a second breath test analysis.

Was the second analysis provided by the officer?

The officer noted that he performed a second test. There is no evidence to the contrary. I am satisfied that you were provided with a second breath test analysis.

Was the Notice served on the basis of the lower analysis result?

Given that the penalty applied was compatible with the lowest test result, both being the same, I am satisfied that the Notice was served on the basis of the lower analysis result as dictated by the Act.

Were the ASD results reliable?

The officer provided certificates of a qualified ASD calibrator, which confirmed both devices were operating correctly.

Your lawyer, David Albert, pointed out that the officer noticed open liquor in your vehicle and that you told him that you had been drinking while waiting for your sister to return home. Despite this the officer performed both tests with fifteen minutes of arriving on the scene, which suggests that both results could be tainted by mouth alcohol. I agree with Mr. Stern and I find the officer was unreasonable in not waiting for fifteen minutes before conducting the tests.

I am not satisfied that the ASD results were reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter that I am releasing the vehicle.

Adjudicator

cc: David Albert
Stern Albert Shapray & Associates
Fax: (604) 590-5626

October 11, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 30, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and AnalysisWere you a driver within the meaning of section 215.41(1) of the Act?

The investigating officer noted that a border guard saw you in care or control of a motor vehicle at the Pacific Highway border crossing. There is no evidence to the contrary. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a "FAIL"?

The officer noted that the device registered a "FAIL". There is no evidence to the contrary. I am satisfied that the ASD registered a "FAIL".

Were you advised of your right to a second analysis?

The officer noted that he advised you of the right to a second test. There is no evidence to the contrary. I am satisfied that you were advised of your right to a second breath test analysis.

Was the second analysis provided by the officer?

The officer noted that he performed a second test. There is no evidence to the contrary. I am satisfied that you were provided with a second breath test analysis.

Was the Notice served on the basis of the lower analysis result?

Given that the penalty applied was compatible with the lowest test result, both being the same, I am satisfied that the Notice was served on the basis of the lower analysis result as dictated by the Act.

Were the ASD results reliable?

The officer provided two certificates of a qualified ASD calibrator, which were for the same device. I did not get a certificate regarding the first ASD that was used. While I have evidence that it was calibrated correctly, I am unable to tell whether or not it was serviced correctly. Because of that, I am not satisfied that the first ASD result was reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 11, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date your vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Michael Shapray
Stern Albert Shapray & Associates
Fax: (604) 590-5626

October 9, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 22, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the Motor Vehicle Act (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the Criminal Code to provide a sample of breath for analysis by means of an approved screening device (“ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing I confirmed that you had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

Did you fail or refuse to comply with an ASD demand?

I will go directly to this issue.

Your lawyer, Kyla Lee, pointed out various errors in the police evidence. Of significant importance was that the officer stated that she located you outside a casino at 01:59 hours and noted that you appeared to be under the influence of alcohol. Although you denied driving she was able to ascertain that you were in care or control of a vehicle while watching a video of you driving westbound on Dominion Street.

The officer must make a demand forthwith after forming the required reasonable suspicion that you have alcohol in your body. The officer in your case clearly formed that suspicion well before 02:40 hours when she made the demand. Further, she said you refused the demand at 02:25 hours, which makes no sense. From the officer's evidence I cannot ascertain whether or not a valid demand was made, although it seems likely that one was not made on you.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter that I am releasing the vehicle.

Adjudicator

cc: Kyla Lee
Acumen Law Corporation
Fax: (604) 685-8308

October 10, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 28, 2012, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (“ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

Preliminary Matters

Records before me confirm that your lawyer, Jennifer Currie, has received all of the disclosure documents. I have proceeded with the review based on this confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

Facts, Evidence and Analysis

There is one issue determinative of this review:

Did you fail or refuse to comply with an ASD demand?

The investigating officer reported that he responded to a call from casino security stating that you were ejected from the casino for being intoxicated. The officer reported that he read an ASD demand at 0351 hours. He stated that you were given 7 opportunities. He stated that you provided small amounts of breath, would stop blowing, or you would place your tongue over the hole.

In your Affidavit you stated that you blew to the best of your ability.

The officer provided a Certificate of Qualified ASD Calibrator for the ASD serial number 101958 which shows that the ASD Service Expiry Date was recorded as March 20, 2012. In summary, I am not satisfied that you failed or refused to comply with the ASD demand.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 10, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

cc: Jennifer Currie
Fax: 604-590-5626

OCTOBER 24, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 11, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

You applied on the grounds that: you did not refuse or fail to comply with a demand to provide a breath sample. However, this ground is not applicable to your situation because the Constable alleged on the Notice of Driving Prohibition that he was prohibiting you from driving for 90 days because a sample of your breath on an ASD registered a “FAIL” and your ability to drive was affected by alcohol.

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was the ASD reliable?

In the Report, the officer recorded the serial # for the ASD as “04593”. The officer provided two Certificates of Qualified ASD Calibrator and I find neither of them match the serial number recorded in the officer’s Report.

I am satisfied that the ASD was not reliable.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver’s licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver’s Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Adjudicator s.15

October 18, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 29, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (“ASD”) (the “Demand”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office indicate that full disclosure of all of the documents before were made available to you. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

Facts, Evidence and Analysis

Upon reviewing all of the evidence before me, I find there is one determinative issue before me.

Did you fail or refuse to comply with an ASD demand?

There are two matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, and whether you failed or refused to comply with that demand.

After reviewing all of the evidence before me, I find that there is insufficient evidence to establish that you failed or refused to comply with the ASD demand.

Having made this finding, there is no need to consider any other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 18, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

October 31, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 14, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

In the Narrative, Constable Rempel stated that he “identified the subject as the driver/care & control”, and noted that there were two occupants in the vehicle. He indicated that your identification was confirmed verbally and through CPIC and PRIME. In the Report to Superintendent, the constable stated that the date and time of driving or care or control was October 14, 2012 at 01:00 hours.

In your written submission, you explained in detail the sequence of events of that evening. Your brother, s.22, had driven you and a friend to the Starlight Casino in his car. You and your friend went next door to Schanks Sports bar to watch the UFC Anderson Silva fight and your brother went to the casino to play poker. Your brother gave you the keys to his vehicle because he knew you and your friend had been drinking and s.22

s.22 This means the engine only starts after a breath sample has been provided and no alcohol is detected by the device.

You indicated that after the fight was over your friend and you walked out to the vehicle to retrieve cigarettes. You noted that you had a little too much to drink and were pretty intoxicated. When you left the bar something happened at the casino parking which resulted in you being charged with mischief. After the paperwork was finished you talked to your brother who was still inside the casino playing poker and told him that you and your friend would be waiting in the vehicle. You indicated that you got into the driver’s seat and your friend got into the passenger seat. You indicated the following:

- your brother was the designated driver, you had no intention of driving,
- you made no attempt to blow into the breathalyzer s.22
- s.22 it would have been impossible for you to have started your brother’s vehicle, since you were intoxicated that evening,
- you were seated in a relaxed position,
- your seatbelt was not on,
- the keys were in your pocket, not in the ignition,
- you told the constable that you were just sitting there waiting for your brother who was sober and that you had no intention of driving.

While you stated that you had the keys to the vehicle on your person, there is no evidence before me that the keys were in the ignition, or that the vehicle engine was running. The constable did not provide evidence on this point. Further, there is also no convincing evidence before me that you interacted with the fittings of the vehicle in such a way that I could conclude that you had assumed control or management over the vehicle. Also, in the absence of any further evidence I am unable to conclude that you had the means to put the vehicle in motion, intentionally or accidentally.

Based on the evidence before me, I am satisfied that you were not a driver within the meaning of section 215.41 of the Act on October 14, 2012 at 01:00 hours.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

OCTOBER 23, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No

s.22

Introduction

On October 8, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Dil Gosal. I proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Having reviewed the evidence of Constable Heath and your lawyer’s submissions, I find there is one determinative issue in this review.

Was the ASD reliable?

In the Report to Superintendent (the “RTS”), Constable Heath indicated that you provided breath samples into two ASDs, although he did not supply the serial numbers of these devices. The officer also provided Certificates of Qualified ASD Calibrator (the “Certificates”) for ASDs with serial numbers 101530 and 100913. The former Certificate is incomplete, and there is no evidence before me connecting the ASDs referenced in the Certificates to the rest of the officer’s evidence.

Based on the evidence before me, I am not satisfied that the ASDs were reliable. Having made this finding, I do not need to consider other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver’s licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver’s Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 23, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc. Dil Gosal
604-510-5195 (fax)

October 18, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 7, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing your lawyer, Sarah Leamon, confirmed that she had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Having reviewed the evidence of Constable Young and your lawyer’s submissions, I find there is one determinative issue in this review.

Was the ASD reliable?

In the Report to Superintendent (the “RTS”), Constable Young indicated that you provided a two breath samples into two separate ASDs which registered as “FAIL” results at 05:08 hours and 05:13 hours, respectively. The constable indicated that the first ASD used was serial number 040220, and the second ASD used was serial number 040236. The constable provided two Certificates of Qualified ASD Calibrator (“Certificate”). However, both Certificates pertain only to ASD serial number 040220. There is no evidence before me regarding the calibration of the ASD serial number 040236 which was used to analyze your second suitable breath sample, therefore, I cannot be satisfied that the second ASD was reliable.

Based on the evidence before me, I am not satisfied the ASD was reliable. Having made this finding, I do not need to consider other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver’s licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver’s Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 18, 2012.

s.22

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Page 3

You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc. Sarah Leamon
Fax: 604-685-8308

October 19, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 7, 2012, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was the ASD reliable?

The officer's evidence is that you provided breath samples into two different ASDs, serial numbers 040236 and 040220. The officer provided a Certificate of a Qualified ASD Calibrator for ASD serial number 040236. However, I note that I do not have before me a Certificate of Qualified ASD Calibrator for ASD 040220. Without this evidence, I am unable to determine the calibration and service expiry date for this device. Consequently, I cannot be satisfied that ASD 040220 was reliable.

Having made this finding, I do not need to consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that the corresponding vehicle impoundment is also revoked.


s.15

Adjudicator

October 1, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No s.22

Introduction

On September 15, 2012, a peace officer served you with a Notice of Driving Prohibition (Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the Act) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- You were a driver within the meaning of section 215.41(1) of the Act;
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device (ASD); and,
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office indicate that disclosure has been provided to your lawyer, Mr David Jenkins. I have proceeded with the hearing based on this information.

I note that the charge indicated on the Notice was for failing to comply with a demand to provide a sample of breath for analysis by an ASD. The Report to Superintendent (Report), submitted by Constable Charron, indicates in Section 6, however, that you complied with the demand and provided a breath sample at 03:41 hours on September 15, 2012. The officer submitted no persuasive evidence of a failure or refusal to comply with a demand. Accordingly, I do not find that you failed to comply with a demand.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Adjudicator

s.15

cc: David Jenkins
Fax: (250 565 8001)

October 11, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No

s.22

Introduction

On September 27, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “WARN” as a result of your blood alcohol concentration (“BAC”) being not less than 50 milligrams of alcohol in 100 millilitres of blood (“50 mg%”)
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on this confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “WARN”, and was it as a result of your BAC exceeding 50 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed with a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Since it is determinative of this review, I will address only the following issue.

Was the ASD reliable?

The officer provided two Certificates of Qualified ASD Calibrator.

Robert McDonald certified that for ASD Serial # 101894, he checked the calibration of the ASD on August 24, 2012, and found it to be within the recommended limits. He noted the ASD had a calibration expiry date of September 21, 2012.

As you noted in your submissions, the officer administered your ASD tests on September 27, 2012, meaning that the calibration of ASD Serial #101894 was expired when the officer administered your ASD test. Since the ASD calibration was expired when the officer administered it, I cannot be satisfied that the ASD was reliable. In turn I cannot be satisfied the “WARN” reading from that test was reliable.

Having made this finding, I do not need to address other issues in this review.

Decision

As a result of my findings, I revoke your driving prohibition and monetary penalty, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver’s licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver’s Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

October 11, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No.

s.22

Introduction

On September 22, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the oral hearing, I confirmed that full disclosure of the documents before me was provided to your lawyer, Emmet Duncan. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following issue.

Was your BAC less than 80 mg% even though the ASD registered a "FAIL"?

After considering all of the evidence before me, I am not convinced that the "FAIL" reading on the ASDs was a result of alcohol in your blood.

I am satisfied that your BAC was less than 80 mg%.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 11, 2012, the date your vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

October 31, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No.

s.22

Introduction

On October 10, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

In reviewing the material before me, I note that the investigating officer did not sign the Report to Superintendent or the Occurrence Report.

Decision

I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 31, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc: Anthony Robinson
Fax: 604-687-3097

October 10, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No s.22

Introduction

On September 9, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (“ASD”) (the “Demand”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing your lawyer, Jack Harris, confirmed that he had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

Facts, Evidence and Analysis

Upon reviewing all of the evidence before me, I find there is one determinative issue before me.

Did you fail or refuse to comply with an ASD demand?

There are two matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, and whether you failed or refused to comply with that demand.

During the hearing, you stated that you blew 4 times in a row into the ASD just as you were explained how to by the officer. You stated that you were in front of the officer with the ASD visible in front of your face the entire time during the 4 attempts, and you never observed the officer eject and re-insert the mouthpiece or put a new mouthpiece on the ASD.

Mr. Harris stated in the hearing that there is no mention in the RTS, the Synopsis or the Narrative that you were purposely trying to not provide a sample of your breath into the ASD. In fact that the officer did not at all describe what you were doing, if anything, to prevent a proper sample from registering. He further stated that a properly operated and working ASD cannot produce 4 "NoGo" results in a row. He noted that in the RTS and the Synopsis the officer stated that 4 "NoGo's" were registered. Mr. Harris noted that the officer's evidence as to the readings that were obtained and the functionality of the ASD is not consistent with a properly operating ASD. He referred to the Superintendents Report on ASDs and noted that it states that after 3 attempts the word "VOID" will appear. He stated that there is no convincing evidence from the officer a "VOID" appeared on the 3rd attempt or that after the 3rd attempt he ejected the mouthpiece and reinserted it. Mr. Harris also provided 3 pages from a Breathalyzer Manual (the Manual) for the Alco-Sensor IV DWF in support of his submission.

Having considered all of the evidence before me, I find that Mr. Harris has provided persuasive submissions with respect to the reliability and functionality of the ASD the officer used in your case. As a result, I find that I am not satisfied the ASD was reliable, and therefore cannot find that you failed to comply with the officer's demand.

Based on the evidence before me, I am satisfied that you did not fail or refuse to comply with a Demand.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

s.22

IRP Review Decision
Page 3

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including, the date the vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc Jack Harris
fax 604-859-1375

October 5, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 22, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing your lawyer, Kyla Lee confirmed that she had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following ground:

Was the ASD reliable?

In the Report to Superintendent (the "Report"), the officer indicated that you provide a breath sample into an ASD with serial number 051206. The officer provided a Certificate of Qualified ASD Calibrator (the "Certificate") for the ASD. Ms. Lee drew my attention to the service expiry for the device noting that it was dated 2012-05-15, or May 15, 2012. She stated that it is not possible to conclude that the device has been properly serviced or calibrated, and I concur. Accordingly, I cannot be satisfied that the first ASD was reliable. Having made this finding, I do not need to consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 5, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.


s.15

Adjudicator

cc: Kyla Lee, Acumen Law Corporation
Fax: 604-685-8308

October 24, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No

s.22

Introduction

On October 6, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and AnalysisWere you a driver within the meaning of section 215.41(1) of the Act?

The investigating officer noted that he saw you in care or control of a motor vehicle on South Fraser Way in Abbotsford. You were seated in the driver's seat with the engine running. However, you deny being in care or control of the vehicle.

You had no intention of driving; simply, warming up and charging your cell phone. The parking brake was engaged and you did not have your seatbelt on. There is no evidence to the contrary. You stated that you were trying to locate your friend to find out which one of three options you were both going to take to get home; you could take a cab, call your wife for a ride or easily walk home. You were in your vehicle for several minutes trying to locate your friend by phone.

In this review, I am obliged to consider whether or not an intention to drive existed. In your case, I am satisfied that it did not. Therefore, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act. I need not consider the other issues.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 24, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

October 24, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP) No. s.22

Introduction

On October 3, 2012, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the "Act") requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (the "ASD") registered a "FAIL" as a result of your blood alcohol concentration ("BAC") being not less than 80 milligrams of alcohol in 100 millilitres of blood ("80 mg%");
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that your legal counsel, Jennifer Currie, received full disclosure of the documents before me. I have proceeded with the review based on this confirmation.

Issues

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL” as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- If requested, was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

In his evidence, Officer Young indicates that on October 3, 2012 at 0131 hours, he observed you driving on Bourquin Crescent in Abbotsford.

In your sworn affidavit you acknowledge driving.

Based on the evidence before me, I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act, at the time in question.

Did the ASD register a “FAIL” as a result of your BAC exceeding 80 mg%?

The police evidence indicates that you provided a breath sample into an ASD at 0133 hours, which resulted in a “FAIL”. You provided a second breath sample into a different ASD at 0141 hours, which also resulted in a “FAIL”.

In your affidavit you indicate that you agree with Officer Young’s evidence that you told him the time of your last drink was “5 minutes ago”.

Ms. Currie argues that based on the evidence before me I cannot be satisfied that the ASD “FAIL” results were accurate.

I concur.

Based on the evidence, I am not satisfied that the ASDs registered a “FAIL” as a result of your BAC exceeding 80 mg%.

Having made this finding, there is no need to consider the other issues in this review.

Decision

Based on the evidence, I revoke your driving prohibition, monetary penalty, and vehicle impoundment as required by s. 215.5(4) of the *Act*. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 24, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

pc: Jennifer Currie via fax

October 1, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 14, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “WARN” as a result of your blood alcohol concentration (“BAC”) being not less than 50 milligrams of alcohol in 100 millilitres of blood (“50 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “WARN”, and was it as a result of your BAC exceeding 50 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed with a different ASD?

- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and AnalysisWere you a driver within the meaning of section 215.41(1) of the Act?

The investigating officer noted that he saw you driving on Sumas Way in Abbotsford. You confirmed you were driving. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a "WARN"?

The officer's report shows that the ASD registered a "WARN". There is no evidence to the contrary. I am satisfied that the ASD registered a "WARN".

Were you advised of your right to a second analysis?

The officer noted that he advised you of the right to a second test. There is no evidence to the contrary. I am satisfied that you were advised of your right to a second breath test analysis.

Was the second analysis provided by the officer?

The officer noted that he provided you with a second test. There is no evidence to the contrary. I am satisfied that the second analysis was provided by the officer.

Was the second analysis performed on a different ASD?

There is evidence before me of different devices being used for each test. I am satisfied that the second analysis was performed on a different device than that used in the first test.

Was your BAC less than 50 mg% even though the ASD registered a "WARN"?

You questioned the results because you believe that residual mouth alcohol may have elevated the readings. Just prior to driving away from a hockey rink you had a couple of sips of beer, which were likely within fifteen minutes of being tested. I agree. Given that you told the officer that you had just had a drink, he should have waited before he did the test.

I am satisfied that your BAC was less than 50 mg% even though the ASD registered a "WARN".

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Records show that the vehicle was impounded and has since been released. Upon receipt of proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date the vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to the owner.

Adjudicator

October 26, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On October 8, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (the “ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

Records at this office confirm that you received full disclosure of the documents before me. I have proceeded with the review based on this confirmation.

Issues

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?

- If requested, was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and AnalysisWere you a driver within the meaning of section 215.41(1) of the Act?

Having reviewed the evidence provided by Officer Peters, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act, at the time in question.

Having made this finding, there is no need to consider the other issues in this review.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 26, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

October 18, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22

Introduction

On September 29, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Matters

At the beginning of the hearing, I checked to ensure that you had received all of the documents before me in this review. You indicated that there were two documents you had not received. I adjourned the hearing to allow time for this office to re-send those documents, and resumed the hearing the next day at which time you had received them.

You provided a document to indicate that you had, in error, checked off the ground for review “I had a reasonable excuse for failing to comply with the officer’s demand to provide a breath

sample.” For your benefit, I have considered all the grounds available to you in case you omitted some when completing the application form.

The issues I must consider are set out below.

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Were the ASDs reliable?

Facts, Evidence and Analysis

I find there is one issue determinative of this review.

Were the ASDs reliable?

The officer provided two Certificates of Qualified ASD Calibrator in which Cst. Jonathan McKinney certified that he was a qualified ASD Calibrator. Cst. McKinney indicated that the service expiry dates for ASD Serial Number 042894 and ASD Serial Number 077527 are July 2, 2014. The Superintendent’s Report on Approved Screening Devices (ASDs) indicates that ASDs are serviced on an annual basis. Here the ASD service expiry dates are greater than one year in the future, and as a result, I am not satisfied as to the reliability of the ASD.

Based on the evidence before me, I am not satisfied the officer’s evidence establishes that the ASDs were properly functioning.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver’s licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver’s Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 18, 2012. You are

responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15
Adjudicator