

December 18, 2012

s.22

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

Introduction

On November 11, 2011, 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* requires me to confirm your prohibition if I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*, and that the approved screening device (ASD) registered a "FAIL".

I must revoke your driving prohibition if I am satisfied that you were not a driver within the meaning of section 215.41(1), or that the ASD did not register a "FAIL".

In reaching my decision on this review, I must consider all relevant information provided to me, including the peace officer's report.

Preliminary Matters

Records at this office confirm that disclosure was provided to you prior to your scheduled written hearing. I have proceeded with the hearing based on this confirmation.

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.

Issues

There are two issues in this review:

1. Were you a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*?
2. Did the ASD register a "FAIL"?

Facts, Evidence and Analysis

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

In his Report to Superintendent (the "Report"), the officer reported that on November 10, 2011, at 0130 hours you were operating or had care or control of a motor vehicle. You provided evidence stating that you were not in the vehicle for the purpose of driving. You provided a parking ticket that shows you paid for that space until 6:00a.m. on November 11, 2011. You stated that while you were in possession of the keys they were not in the ignition.

Consequently, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the *Act*.

Having made this finding I do not have to consider anything further.

Decision

Based on the evidence, I am not satisfied that you were a driver as defined under s. 215.41(1) of the *Act*. I thereby revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the *Act*.

Records show that your vehicle was impounded and has since been released. Upon receipt of proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including December 12, 2011, the date the vehicle was eligible for release. Original receipts and invoices with proof of payment must be submitted for reimbursement. You must also enclose a copy of this letter to ensure the correct charges are refunded to you. You may send your invoice to the Superintendent of Motor Vehicles at the address noted below.

Adjudicator s.15

December 19, 2012

s.22

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

Introduction

On June 24, 2011, 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. 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

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 located you driving on your private driveway, which is not a “highway” as defined under the Act.

I am satisfied that you were not a driver within the meaning of section 215.41(1) of the Act. Having made this finding, I do not need to consider any further 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.

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, which was July 25, 2011. Original 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: Jeremy Carr
250-388-7327

DECEMBER 3, 2012

s.22

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

Introduction

On November 27, 2011, 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) of the Act and that the approved screening device (ASD) registered a warn or a fail.

I must revoke your driving prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am satisfied that you were not a driver within the meaning of section 215.41(1), or that the ASD did not register a warn or a fail.

Section 215.5(2) of the Act states that if I determine that you were prohibited from driving for a longer time period than the Act requires, I must substitute the correct prohibition, vary the monetary penalty for which you are liable under section 215.44(1), and vary or revoke any corresponding vehicle impoundment.

In reaching my decision on this review, I must consider all relevant information provided to me, including the peace officer's report.

Preliminary Matters

At the beginning of the oral review I listed the documents that were sent to your lawyer, Sarah Leamon, in disclosure. Ms. Leamon acknowledged that she had received them on your behalf. I have proceeded with the hearing based on this confirmation.

Issues

There are two issues in this review:

1. Were you a driver within the meaning of section 215.41(1) of the Act?
2. Did the ASD register a fail?

Facts, Evidence and Analysis

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

Did the ASD register a "fail"?

In part four of the RTS, Constable French stated that you provided a breath sample into an ASD that registered a "fail" at 0318 hours. I note that the officer indicated that the device had a service expiry date of "2011-09-29". The ASD was expired and consequently, I do not have an ASD result.

Based on the evidence before me, I am not satisfied that an ASD registered a "fail" on November 27, 2011, at 0318 hours.

Decision

I am not satisfied that the ASD registered a fail on November 27, 2011 at 0318 hours.

I therefore revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act. You may resume driving once 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 the Enhanced Driver's Licence.

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

December 17, 2012

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

On October 16, 2011, 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* requires me to confirm your prohibition if I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act* (the Act), and that the approved screening device (ASD) registered a "FAIL".

I must revoke your driving prohibition if I am satisfied that you were not a driver within the meaning of section 215.41(1), or that the ASD did not register a "FAIL".

In reaching my decision on this review, I must consider all relevant information provided to me, including the peace officer's report.

Preliminary Matters

Records at this office confirm that disclosure was provided to your lawyer, Joe Doyle, prior to your scheduled written hearing. I have proceeded with the hearing based on this confirmation.

Issues

There are two issues in this review:

1. Were you a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*?
2. Did the ASD register a "Fail"?

Facts, Evidence and Analysis

Did the ASD register a "fail"?

Mr. Doyle provided calibration records for the ASDs used in your case. After reviewing all of the evidence before me I find the ASD information before me is contradictory and indicates to me that the first ASD used on you was expired. Based on the evidence before me, I am not satisfied that the ASD registered a "fail".

Having made this finding, I do not need to consider whether or not you were a driver within the meaning of section 215.41(1) of the Act.

Decision

Based on the evidence before me, I am not satisfied that the ASD registered a "fail". I therefore revoke your driving prohibition, as required by s. 215.5(4)(c)(1) of the *Act*.

Records indicate that your vehicle was impounded and has since been released. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 26, 2011, the date the vehicle was eligible for release. Original receipts and invoices with proof of payment must be submitted for reimbursement. You must also enclose a copy of this letter to ensure the correct charges are refunded to you. You may send your invoice to the Superintendent of Motor Vehicles at the address noted below.

Adjudicator

cc: Joe Doyle
Fax: [604] 688-8356

December 19, 2012

s.22

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

Introduction

On October 25, 2011, 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* requires me to confirm your prohibition if I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*, and that the approved screening device (ASD) registered a "FAIL".

I must revoke your driving prohibition if I am satisfied that you were not a driver within the meaning of section 215.41(1), or that the ASD did not register a "FAIL".

In reaching my decision on this review, I must consider all relevant information provided to me, including the peace officer's report.

Preliminary Matters

Records at this office confirm that disclosure was provided to your lawyer, William Jessop prior to your scheduled written hearing. I have proceeded with the hearing based on this confirmation.

Issues

There are two issues in this review:

1. Were you a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*?
2. Did the ASD register a "FAIL"?

Facts, Evidence and Analysis

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

- Did the ASD register a "FAIL"

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In considering this issue I note that per s. 215.42(3) of the *Motor Vehicle Act*, the result of an individual's second breath test analysis prevails.

Here, there is conflicting evidence before me with regard to the second test. The officer's Report is silent with respect to a second result, the evidence in the Narrative Text Hardcopy (the "Narrative") shows you refused the second test, the Vehicle Impoundment Report indicates the results were "FAIL" X2 and last, the allegation on the Notice of Driving Prohibition is that an approved screening device registered "FAIL".

Based on the evidence before me, I am not satisfied that the ASD registered a "FAIL".

Having made this finding, I do not need to consider whether or not you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*.

Decision

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

Records show that your vehicle was impounded and has since been released. Upon receipt of proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including November 25, 2011, the date the vehicle was eligible for release. Original receipts and invoices with proof of payment must be submitted for reimbursement. You must also enclose a copy of this letter to ensure the correct charges are refunded to you. You may send your invoice to the Superintendent of Motor Vehicles at the address noted below.

Adjudicator s.15

cc: Bill Jessop by fax: [604] 590-5626

December 18, 2012

s.22

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

Introduction

On November 12, 2011, 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* requires me to confirm your prohibition if I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*, and that the approved screening device (ASD) registered a "fail".

I must revoke your driving prohibition if I am satisfied that you were not a driver within the meaning of section 215.41(1), or that the ASD did not register a "fail".

In reaching my decision on this review, I must consider all relevant information provided to me, including the peace officer's report.

Preliminary Matters

Records at this office confirm that disclosure was provided to you prior to your scheduled written hearing. I have proceeded with the hearing based on this confirmation.

Issues

There are two issues in this review:

1. Were you a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*?
2. Did the ASD register a "fail"?

Facts, Evidence and Analysis

After reviewing all of the evidence before me I find the information before me is contradictory and therefore not reliable. Having made this finding, I do not need to consider whether or not you were a driver within the meaning of section 215.41(1) of the Act.

Decision

I therefore revoke your driving prohibition, as required by s. 215.5(4)(c)(1) of the *Act*.

Records show that your vehicle was impounded and has since been released. Upon receipt of proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including December 13, 2011, the date the vehicle was eligible for release. Original receipts and invoices with proof of payment must be submitted for reimbursement. You must also enclose a copy of this letter to ensure the correct charges are refunded to you. You may send your invoice to the Superintendent of Motor Vehicles at the address noted below.

Adjudicator s.15

December 7, 2012

s.22

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

Introduction

On November 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);
- 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 full disclosure of the documents before me was provided to you. I have proceeded with the hearing based on that confirmation.

In the Notice, the officer ticked the box to indicate that you were prohibited because you failed or refused, without a reasonable excuse, to comply with a demand made under the *Criminal Code* to provide a sample of your breath by means of an ASD. However, the officer has not provided evidence to support this charge.

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 of this by separate letter.

DECEMBER 20, 2012

s.22

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

s.22

Introduction

On December 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, Scott Mulder, confirmed that he had received all of the disclosure documents before me. I 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 Penney 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 Penney indicated that you provided a breath sample into an ASD with serial number 055935. The officer also provided a Certificate of Qualified ASD Calibrator regarding an ASD with the same serial number. The Certificate states that the ASD service expiry date for this ASD was October 30, 2012, which was approximately five weeks prior to service of the Notice. I cannot be satisfied, therefore, that 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.

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. Scott Mulder
250-635-4998 (fax)

December 4, 2012

s.22

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

Introduction

On November 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

At the beginning of the hearing, you confirmed that you 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 issue:

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 055642. The officer provided a Certificate of Qualified ASD Calibrator (the “Certificate”) for that ASD. In reviewing the Certificate, I note that the calibration expired for this ASD on November 22, 2012, one day before your test was conducted. Consequently, I am not satisfied that 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.

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 December 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.

December 6, 2012

s.22

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

Introduction

On November 17, 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 you 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 all of the evidence before me, I find there is one determinative issue in this review.

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

After carefully considering all of the evidence before me, I find that the "FAIL" reading was not a result of your BAC exceeding 80 mg%. As such, I am satisfied that your BAC was less than 80 mg% even though the ASD registered a "FAIL".

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 December 6, 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.

December 20, 2012

s.22

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

Introduction

On December 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 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, Ken Repstock, that he had received full disclosure of the documents before me. I have proceeded with the review based on this confirmation.

Mr. Repstock noted that the copy of the Report to Superintendent (the "Report") faxed at 12:25 on December 2, 2012 (according to the fax header) was not signed by a commissioner for taking affidavits. He suggested that the Report was "neither sworn nor solemnly affirmed by the issuing officer at the time he signed the prescribed form". Mr. Repstock cited various sections of the Act, the decision in *Sivia v. British Columbia (Superintendent of Motor Vehicles)* and the decision in *Murray v. British Columbia (Superintendent of Motor Vehicles)*.

The implication of Mr. Repstock's argument is that the copy of the Report faxed at 12:50 on December 2, 2012 is also not properly sworn. I respectfully disagree. That document contains the signature and printed name of a commissioner for taking affidavits. I am not aware of anything improper in the commissioner signing the Report after the investigating officer. I accept the Report and the accompanying documents as sworn before a commissioner on December 2, 2012.

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.

Were you advised of your right to a second analysis?

After considering the totality of the evidence before me, I am satisfied that you were not advised of your right to a second analysis.

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 December 20, 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: Ken Repstock
Fax: 250-563-2527

December 4, 2012

s.22

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

Introduction

On November 17, 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 your lawyer, Jeffrey Green 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

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

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

Upon reviewing the evidence before me, I am not satisfied that you were the driver within the meaning of section 215.41(1) of the Act. Having made this decision I do not have to consider anything further.

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 December 3, 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 Jeffrey Green [250] 361 9181

December 21, 2012

s.22

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

Introduction

On December 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. At the start of the oral hearing you acknowledged that you 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?
- 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 Innes indicates that on December 8, 2012 at approximately 0045 hours, he observed you drive up to a police roadblock on Clarke Drive in Squamish.

During the oral hearing you acknowledged driving.

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

Were you advised of your right to request a second analysis?

The police evidence indicates that you were advised of your right to request a second breath test. In his Occurrence Report, Officer Innes indicates that he told you,

“You have the right to request a second breath test forthwith, using a second approved screening device. By law the lower of the two samples will prevail. You have until I serve you with the notice of driving prohibition to request this second test. Do you understand?”

You acknowledge that Officer Innes asked if you wanted to provide another breath sample; consequently, I am satisfied that he has met the requirement under section 215.42(1)(b) of the Act.

If requested, was the second analysis provided by the officer and was it performed on a different ASD?

Officer Innes provides the following evidence regarding your right to request a second breath test.

“He stated he did not want to provide a second sample as it would also say fail. He then became angry and even more aggressive. He stated he did not trust the corrupt

machines and wanted a blood test. He was told that his only option was for a second breath test. He then clearly stated that he did not wish to provide a second breath test.”

During the hearing you provided the following evidence:

- You were not aggressive and angry; you were mildly disputive.
- Your eyes were glossy and blood shot from sanding drywall all day.
- You told police that you drank 2 beers more than an hour earlier.
- When you blew into the ASD, Officer Innes told you to blow harder.
- You blew again and he showed you that it registered a “FAIL”.
- You weigh 260 lbs; you cannot see how 2 beers would register a “FAIL”.
- You told Officer Innes there must be something wrong with the ASD.
- It was pouring rain out and you believe that must have affected the ASD.
- Officer Innes offered you a second test and you said you wanted to speak to someone before you blew a second time.
- You asked Officer Innes what your options were. You asked if you could go to the detachment to blow into the machine there or to have a blood test. Officer Innes said, “No”.
- You asked if you could call your lawyer, but Officer Innes did not respond.
- He turned away, walked to his car, got in the driver’s side and started to write up papers.
- When he came back he handed you the papers and you told him, “If that’s all you can do for me, let’s do it.” meaning that you wanted to provide another breath sample.
- He told you that it was too late and refused to give you another test. He said that you were now prohibited from driving, you would have to pay \$5000 and have a device in your vehicle for a year.
- He was laughing when he told you this.
- You believe that he should have talked to you a minute or two to explain to you that the second test was your only option, but instead, he turned his back on you, refused to respond to your questions and just walked away.

Having reviewed your evidence and the police evidence, I find your evidence equally compelling. Because of this, I am not satisfied by the evidence that you were given the opportunity to provide a second breath sample on a different ASD.

Having made this finding, there is no need to address 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 the owner has not already done so, he may go directly to the location where his vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 21, 2012. He is responsible for any storage costs beyond that date. He 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

December 7, 2012

s.22

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

Introduction

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 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.

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 the ASD reliable?

In the Report to Superintendent, the officer indicated that you provided a breath sample, which registered a "FAIL", into ASD serial number 100836. However, the officer did not provide any evidence to demonstrate that the noted ASD was functioning properly.

I am not satisfied that 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 the date your vehicle was eligible for release, which was November 21, 2012. Original 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.

December 21, 2012

s.22

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

Introduction

On December 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 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 your legal counsel, Jamie Butler, 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 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

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

In his evidence, Officer Rentz indicates that on December 1, 2012 at 0216 hours, he observed you driving on Lazelle Avenue in Terrace.

Based on the evidence, 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 you fail or refuse to comply with an ASD demand?

The issue of whether you failed or refused to comply with a demand is twofold. First, the evidence must establish that an officer made a demand on you pursuant to section 254 of the *Criminal Code*. Second, the evidence must establish that you failed or refused to comply with the demand.

Mr. Butler submits that Officer Hertz has failed to provide evidence sufficient to establish that your failure or refusal to provide a breath sample was clear and unequivocal.

I concur.

Based on the evidence, I am not satisfied that you failed or refused to comply with the ASD demand.

Having made this finding, there is no need to address the third issue.

Decision

Based on the evidence before me, I am not satisfied that on December 1, 2012, you failed or refused to comply with an ASD demand. I therefore revoke your driving prohibition and monetary penalty as required by s. 215.5(4) of the *Act*. As a result, the prohibition has been removed from your driving record and you may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

The vehicle impoundment is also revoked. The owner may go directly to the place that his vehicle was impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 21, 2012. He is responsible for any storage costs beyond that date. He should also know that if this vehicle is not retrieved within 30 days of the expiry of the impoundment, the impound lot may take steps to dispose of the vehicle.

Adjudicator s.15

pc: Jamie Butler

DECEMBER 28, 2012

s.22

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

Introduction

On December 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 hearing your lawyer confirmed that he had received all of the disclosure documents before me. I 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 Carter 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 Carter indicated that you provided a breath sample into an ASD with serial number 055111. The officer also provided a Certificate of Qualified ASD Calibrator regarding an ASD with the same serial number. The Certificate states that the service expiry date for this ASD was October 2, 2012, which was over two months prior to service of the Notice. I cannot be satisfied, therefore, that 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 the date of this letter. 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.

December 20, 2012

s.22

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

Introduction

On December 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);
- 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, Lolita Rudovica. 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 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?

There are two matters for me to determine in this issue. I must determine whether the officer made a valid demand, and whether or not you failed or refused to comply with that demand.

Having considered the totality of the evidence before me, I am not satisfied that the officer made a valid ASD demand. Having made this finding, I do not need to consider the other issue.

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.

December 28, 2012

s.22

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

Introduction

On December 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 your legal counsel, David Albert, received full disclosure of the documents before me. At the start of the oral hearing, Mr. Albert acknowledged that he had received disclosure. 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?

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

Facts, Evidence and Analysis

Was the ASD result reliable?

Mr. Albert submits that Officer Noel has failed to provide evidence sufficient to establish that the ASD with serial number 055111 was reliable on December 8, 2012.

I concur.

Based on the evidence, I am not satisfied that the ASD result was reliable.

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 December 28, 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: David Albert via fax

December 17, 2012

s.22

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

Introduction

On December 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.

Issues

I will go directly to the relevant issue:
Were the ASDs reliable?

Were the ASDs reliable?

The officer failed to provide any information regarding the calibration and service expiry dates of either ASD used in your tests. Without that information, I am unable to tell whether or not the devices were, or when they were, calibrated and serviced correctly. Therefore, 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.

s.15

s.15
Adjudicator

December 7, 2012

s.22

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

Introduction

On November 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 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, Paul Evans, 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?
- Was the second analysis provided by the officer and performed using a different ASD?

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

Facts, Evidence and Analysis

Was the ASD result reliable?

Mr. Evans submits that Officer Kirkwood has failed to provide evidence sufficient to establish that the ASD with serial number 101291 was reliable on November 18, 2012.

I concur.

Based on the evidence, I am not satisfied that the ASD result was reliable.

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 December 7, 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: Paul Evans via fax

December 19, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No

s.22

Introduction

On November 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 your lawyer, Jeffrey Arndt. I have proceeded with this review based on that confirmation.

Issues

The following is the only issue in this review:

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

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

The investigating officer reported that there was a report of a “male parked not waking up in running vehicle.” The officer attended and noted that she witnessed you in care or control of a vehicle. She reported that you were driving or in care or control of a vehicle at 07:11 hours, on November 30, 2012.

Your evidence is that you were parked at your girlfriend’s house, and that you had gone to sleep in your truck because you needed to be alone after having had too much to drink, at about 4:30 or 5:00 in the morning. It was about minus 20 degrees, and so you turned the vehicle engine on so you could run the heater. You had driven there with a friend, s.22, earlier the day before. It was your intention to exit your vehicle and to go back into your girlfriend’s home after you awoke that morning. s.22 gave evidence that corroborated yours. He stated that he had gone to sleep inside the house. He was aware you had gone to your vehicle, and believed you would not leave without him, and said that you both planned to remain at your girlfriend’s place and then to go shopping for snowmobiles later that day.

Having reviewed 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.

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 December 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.

December 21, 2012

s.22

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

Introduction

On December 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

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?
- 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 Dyck indicates that on December 8, 2012 at approximately 2346 hours, he observed you driving on Marshall Road in Abbotsford.

In your written submissions you acknowledged driving.

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

Were you advised of your right to request a second analysis?

The police evidence indicates that you were advised of your right to request a second breath test.

You acknowledge that Officer Dyck advised of your right to a second breath test; consequently, I am satisfied that he has met the requirement under section 215.42(1)(b) of the Act.

If requested, was the second analysis provided by the officer and was it performed on a different ASD?

Having reviewed the evidence, I am not satisfied that you were given the opportunity to provide a second breath sample into a different ASD.

Having made this finding, there is no need to address 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 the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 21, 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

December 28, 2012

s.22

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

Introduction

On December 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 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, Kyla Lee, received full disclosure of the documents before me. At the start of the oral hearing Ms. Lee acknowledged that she 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?
- 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 Paulmert indicates that on December 9, 2012 at 0025 hours, he observed you driving on 100th Street in Fort St. John.

In your affirmed affidavit you acknowledge driving.

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

Were you advised of your right to request a second analysis?

Ms. Lee submits that Officer Paulmert has failed to provide evidence sufficient to establish that you were advised of your right to request a second breath test.

I concur.

Based on the evidence, I am not satisfied that you were advised of your right to request a second breath test analysis.

Having made this finding, there is no need to address 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 the owner has not already done so, she may go directly to the location where her vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 28, 2012. The owner is responsible for any storage costs beyond that date. The owner 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: Kyla Lee via fax

December 7, 2012

s.22

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

Introduction

On November 17, 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, Kyla Lee, received full disclosure of the documents before me. At the start of the oral hearing Ms. Lee acknowledged that she had received disclosure. 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?

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

Facts, Evidence and Analysis

Was the ASD result reliable?

Ms. Lee submits that Officer Davis has failed to provide evidence sufficient to establish that the ASD with serial number 101483 was reliable on November 17, 2012.

I concur.

Based on the evidence, I am not satisfied that the ASD result was reliable.

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 December 7, 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: Kyla Lee via fax

December 21, 2012

s.22

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

Introduction

On December 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);
- 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.

Preliminary Matters

Records at this office indicate that you received the 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 "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 you a driver within the meaning of section 215.41(1) of the Act?

Having considered all of the evidence before me, 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.

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

Records show that your vehicle was impounded and has since been released. 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. Original 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.

December 18, 2012

s.22

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

Introduction

On December 2, 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 indicate that the documents which the officer provided to this office have been disclosed to you. I have proceeded with the hearing 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

The officer has not provided a Report To Superintendent, Narrative, or other evidence to support the allegations in the Notice. I am therefore not satisfied that the officer has established the allegations of fact which form the basis of your prohibition.

Having made this decision I do not have to consider anything further.

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 December 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.

December 12, 2012

s.22

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

Introduction

On December 2, 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

I will go directly to the relevant issue.

- Was the ASD reliable?

Facts, Evidence and Analysis

Were the ASD results reliable?

The officer provided certificates of a qualified ASD calibrator, which, as your lawyer, Sarah Leamon, pointed out, were both past the required service date. Therefore, 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.

s.15

s.15

Adjudicator

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

December 13, 2012

s.22

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

Introduction

On November 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

Records at this office indicate that your lawyer, Dilraj Gosal, received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

At the scheduled hearing time of 10:00 a.m. on December 5, 2012, I attempted seven times to contact Mr. Gosal at the contact phone number he provided this office; however, each time I

IRP Review Decision
Page 2

was unsuccessful. Mr. Gosal called this office at approximately 10:20 a.m. and I was able to speak with him briefly. Mr. Gosal informed me that he was having great difficulty with his phone line and advised me to continue with the review based on the written submission he had already provided this office.

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 before me, I find there is one determinative issue in this review.

Was the ASD reliable?

After carefully considering all of the evidence before me, I find that evidence before me regarding the ASD is unreliable. Therefore, I cannot be satisfied that the ASD was reliable.

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 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.

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 December 13, 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.

December 6, 2012

s.22

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

Introduction

On November 17, 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 you 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 carefully reviewed all of the evidence before me, I find there is one determinative issue in this review.

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

After carefully considering all of the evidence before me, I find that the “FAIL” reading was not a result of your BAC exceeding 80 mg%. As such, I am satisfied that your BAC was less than 80 mg% even though the ASD registered a “FAIL”.

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 December 6, 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.

December 12, 2012

s.22

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

Introduction

Likely on December 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

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 is the only issue in this review:

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

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.

Your lawyer, Diego Solimano, advised that you told him that you were asleep in the driver's seat of the vehicle when the police arrived. You had decided to relax a minute, after a long day renovating two apartments, one being your own, but instead fell asleep. You had parked the vehicle approximately eleven hours earlier and had no intention of driving it again, as you were legally parked directly outside your own apartment block.

Given that I must consider intention, I find it likely that you had no intention to drive, being parked outside your home. 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.

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 December 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.

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. Original 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.

December 14, 2012

s.22

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

Introduction

On November 26, 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, 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 the ASD reliable?

Having reviewed the Certificate of Qualified ASD Calibrator for ASD 042151, 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 December 14, 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.

December 3, 2012

s.22

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

Introduction

On June 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

Records at this office confirm that full disclosure of the documents before me was provided to you at the time you made your application for review at the East Vancouver Drivers Licensing Office on July 6, 2012. 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 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 Officer Randall, I find there is one determinative issue in this review.

Was the ASD reliable?

Though the officer provided certificates of a qualified ASD calibrator, I cannot accept the contents therein, and therefore 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.

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. 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, which was August 1, 2012. Original 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. Kyla Lee
Acumen Law Corporation
604-685-8308 (fax)

December 4, 2012

s.22

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

Introduction

On November 17, 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

I will address the only relevant issue.

- Was the ASD reliable?

Facts, Evidence and Analysis

Were the ASD results reliable?

The officer provided certificates of a qualified ASD calibrator, which confirmed both devices were operating correctly. As your lawyer, Kyla Lee, pointed out, the certificates were not signed by the calibrator, his signature being photocopied on each page. I agree, and because of that 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.

s.15

s.15

Adjudicator

cc: Kyla Lee
Acumen Law Corporation
Fax: (604) xxx-yyyy

December 19, 2012

s.22

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

Introduction

On December 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

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.

I will go directly to the relevant issue:

- Was the ASD reliable?

Facts, Evidence and Analysis

Were the ASDs reliable?

The officer provided certificates of a qualified ASD calibrator. As pointed out by your lawyer, Kyla Lee, the second ASD had an expired calibration date. Therefore, I am not satisfied that at least one of the ASD results was reliable resulting in a revocation of 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.

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

December 12, 2012

s.22

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

Introduction

On November 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 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 review I confirmed with your lawyer, Sarah Leamon, 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 carefully reviewed all of the evidence before me, I find there is one determinative issue in this review.

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

After carefully considering all of the evidence before me, I find that the “FAIL” reading was not a result of your BAC exceeding 80 mg%. As such, I am satisfied that your BAC was less than 80 mg% even though the ASD registered a “FAIL”.

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.

Records show that the corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter that upon receipt of the 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.

December 27, 2012

s.22

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

Introduction

On December 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 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 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 issue.

Was the ASD reliable?

In the absence of a Certificate of Qualified ASD Calibrator, I am not satisfied that the ASD used 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 December 27, 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.

December 21, 2012

s.22

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

Introduction

On December 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 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, Sukhbinder Nunrha. 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 issue.

Was the ASD reliable?

In the Report to Superintendent, the officer indicated that you provided breath samples into two different ASDs, both of which resulted in a “FAIL”. Having considered the Certificates of Qualified ASD Calibrator, I am not satisfied that the ASDs used were reliable.

I am not satisfied that the ASDs are 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 December 20, 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.

December 13, 2012

s.22

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

Introduction

On November 25, 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 documents before me was provided to your lawyer, Jon Duncan. 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 all of the evidence before me, I find there is one determinative issue in this review.

Was the ASD reliable?

After carefully considering all of the evidence before me, I note that Cst. MacDonald indicated in the Report to Superintendent ("RTS") that you registered "FAIL" results on two different ASDs. However, the constable has not provided any required information regarding either of the ASDs used on you on November 25, 2012. As such, I cannot be satisfied that the ASDs were reliable.

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 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.

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 December 13, 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.

December 31, 2012

s.22

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

Introduction

On December 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 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 your application for review, you checked the box next to the ground that you did not refuse or fail to comply with the officer’s demand. However, since your IRP was served on the basis of an ASD “FAIL” result, that is not applicable. For your benefit I have considered all grounds applicable to your situation.

Records at this office confirm that full disclosure of the documents before me was provided 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 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 you were in care or control of the motor vehicle at 00:56 hours on December 11, 2012.

In your affidavit, you include the specific detail that you admitted to the officer that you had been 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"?

In the Report to Superintendent ("RTS"), the officer indicated you provided a sample of breath into ASD serial number 042899 at 00:59, and that the sample registered a "FAIL."

I am satisfied that the ASD registered a "FAIL".

Was the ASD reliable?

The officer provided a Certificate of a Qualified ASD Calibrator in which William Hudyma certified that he is a qualified ASD Calibrator. He also certified that on November 28, 2012, he checked the calibration of ASD serial number 042899. He found the ASD to be within the recommended limits and functioning correctly. He recorded the ASD calibration expiry as December 26, 2012, and the service expiry date as April 3, 2012.

I am satisfied that the ASD was reliable.

Were you advised of your right to a second analysis?

Based on a number of inconsistencies in the officer's evidence, as well as the sworn evidence you present, I am not satisfied that you were properly informed of your right to a second test, as per s. 215.42(1) of the Act.

Having made this finding, I do not need to consider the further 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

IRP Review Decision
Page 3

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 December 31, 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.

s.15

s.15

Adjudicator

cc. Jon M. Duncan
fax: 888-899-4906

December 24, 2012

s.22

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

Introduction

On December 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 you. I have proceeded with the review based on that confirmation.

On the day you applied for review, December 11, 2012, a fax cover was sent to this office from the Service BC Office in Chilliwack BC. It states: “Client will submit written letter in the next day or two.” On December 18, 2012, Brian Juriloff advised this office that you advised him you would not be sending a written submission. I have proceeded on this review with the evidence before me, that of the police.

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 you were in care or control of the motor vehicle on Chilliwack River Road in Chilliwack at 00:16 hours on December 8, 2012. You made no submission; 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"?

In the Report to Superintendent ("RTS"), the officer indicated you provided a sample of breath into an ASD at 00:20, and that the sample registered a "FAIL."

I am satisfied that the ASD registered a "FAIL".

Were you advised of your right to a second analysis?

The officer indicated on the RTS that he advised you of your right to a second analysis. With no evidence to the contrary, I am therefore satisfied that he advised you of your right to a second breath test analysis.

Was the second analysis provided by the officer?

The officer noted in the RTS and Narrative Report that you did not request a second ASD analysis. With no evidence to the contrary, I am therefore satisfied that the second test was not performed by the officer.

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

The penalty applied is compatible with the lowest test result. With a single test result, I am satisfied that the Notice was served on the basis of that result, here being "FAIL."

Was the ASD reliable?

In the RTS, the officer indicated that you provided a sample into an ASD with serial number 066877. The officer, however, provided no further evidence with respect to the reliability of the device, and I am not satisfied that the ASD was reliable.

Having made this finding, I do not need to consider the further issue.

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.

s.22

IRP Review Decision
Page 3

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 December 24, 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.

s.15

s.22

Adjudicator

cc. Brian Juriloff
fax: 604-504-5880

December 20, 2012

s.22

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

Introduction

On December 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 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, Robert Gunnell, confirmed that he had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

In the hearing, Mr. Gunnell argued that in light of *Murray v. British Columbia (Superintendent of Motor Vehicles)* 2012 BCSC 1730, there is insufficient evidence to uphold your driving prohibition. He stated that the documents attached to the officer’s unsworn report cannot be considered.

I have read and considered *Murray* and acknowledge that the officer's Report to Superintendent is not sworn and cannot be considered. However, the remaining evidence provided by the officer can still be considered; it simply cannot be considered as sworn evidence.

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 Notice served on the basis of the lower analysis result?

The evidence before me is that you were advised of your right to a second test and you requested a second test. However, I note that I do not have before me a valid Certificate of Qualified ASD Calibrator for the ASD used for your second test, ASD 057765. In the absence of this evidence, I cannot be satisfied that the ASD was functioning correctly and cannot rely on the result of the second test. Because you requested two tests, and there is only one valid result, I am satisfied that the Notice was not served on the basis of the lower of the two analyses.

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 December 20, 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: Robert Gunnell
Fax: 604-463-6889

December 13, 2012

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

Introduction

On November 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);
- 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 your lawyer, Mark Cacchioni received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

In the Notice, the officer ticked the box to indicate that you were prohibited because you failed or refused, without a reasonable excuse, to comply with a demand made under the *Criminal Code* to provide a sample of your breath by means of an ASD. However, I note that in the officer’s sworn Report to Superintendent (“RTS”) he has indicated that an ASD registered a “FAIL” result at 20:29 hours. I find the officer’s evidence to be confusing and inconsistent, as to the reason you were you were prohibited.

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.

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 December 13, 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.

December 19, 2012

s.22

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

Introduction

On November 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* (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 outset of the oral hearing your lawyer, Danny Markovitz, 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 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

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

Did you have a reasonable excuse?

When considering the evidence before me, I find that you had a reasonable excuse.

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 December 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

cc: Danny Markovitz
778-297-3131

December 3, 2012

s.22

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

Introduction

On November 17, 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 review, I confirmed with your lawyer, Sarah Leamon, that she had received all of the documents before me in this review. I have proceeded with the review based on this confirmation.

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?
- Was the ASD reliable?

Facts, Evidence and Analysis

There is one issue that is determinative of my review.

Was the ASD reliable?

Having considered the evidence before me, I am not satisfied that the ASD used in your case 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 December 3, 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.

December 19, 2012

s.22

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

Introduction

On December 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);
- 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 you 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?

Facts, Evidence and Analysis

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

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

After considering the totality of the evidence before me, I am not satisfied that you were a driving 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.

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 December 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

s.15
Adjudicator

December 4, 2012

s.22

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

Introduction

On November 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

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Sarah Leamon. 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 the ASD reliable?

In the Report to Superintendent, the officer indicated that you provided breath samples into two different ASDs, both of which resulted in a “FAIL”. Having considered the Certificates of Qualified ASD Calibrator, I am not satisfied that the ASDs used were reliable.

I am not satisfied that the ASDs are 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 December 4, 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.

December 7, 2012

s.22

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

Introduction

On November 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

Records at this office indicate that you received the 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.

Was the ASD reliable?

Having considered the Certificates of Qualified ASD Calibrator, I find that the ASDs used were unreliable.

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 December 7, 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.

December 21, 2012

s.22

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

Introduction

On December 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 hearing your lawyer, Mitch Foster, confirmed 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 your BAC less than 80 mg% even though the ASD registered a "FAIL"?

Having considered all of the evidence before me, I am satisfied that your BAC was less than 80 mg% even though the ASD registered a "FAIL".

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 December 21, 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: Mitch Foster
Fax: 604-687-4299

December 13, 2012

s.22

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

Introduction

On November 24, 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, David Silverman, 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 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?

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

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 December 13, 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.

December 21, 2012

s.22

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

Introduction

On December 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 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 were provided full disclosure of the documents before me. At the start of the oral hearing you acknowledged that you had received disclosure. I have proceeded with the review based on this confirmation.

I acknowledge that losing your driver’s licence will adversely impact you; however, I have no authority under the Act to consider the hardship you will experience, personal circumstances, employment, or transportation needs, in the course of this review.

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

Facts, Evidence and Analysis

Was the ASD result reliable?

I have reviewed the police evidence and find that Officer Dumais has failed to provide evidence sufficient to establish that the ASD with serial number 039497 was reliable on December 4, 2012.

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 December 21, 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.

DECEMBER 4, 2012

s.22

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

Introduction

On November 25, 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 you 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

There is one issue that is determinative of my review.

Was the ASD reliable?

Having considered the evidence before me, I am not satisfied that the ASD used in your case 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.

December 20, 2012

s.22

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

Introduction

On December 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.

Preliminary Matters

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

Mr. Marshall noted that the Report to Superintendent (the “Report”) was not signed by a commissioner for taking affidavits. He suggested that I cannot consider it or the documents attached to it.

I agree that the unsworn Report is not evidence before me. However, I disagree with the suggestion that I cannot consider the investigating officer’s other material. While that material is not sworn, it falls within the category of “any other relevant documents and information forwarded to the superintendent by the peace officer who served the notice of driving prohibition or any other peace officer, including peace officers’ reports that have not been sworn or solemnly affirmed” (section 215.49(1)(d) of the Act).

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?

After considering the totality of the evidence before me, 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.

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 December 20, 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.

December 11, 2012

s.22

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

Introduction

On November 20, 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, Geoffrey Simair, 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?
- Was the second analysis provided by the officer and performed using a different ASD?

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

Facts, Evidence and AnalysisWas the ASD result reliable?

Mr. Simair submits that Officer Rutherford has failed to provide evidence sufficient to establish that the ASD with serial number 101295 was reliable on November 20, 2012.

I concur.

Based on the evidence, I am not satisfied that the ASD result was reliable.

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 December 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

pc: Geoffrey Simair via fax

December 5, 2012

s.22

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

Introduction

On November 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 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. At the start of the oral hearing you acknowledged that you had received disclosure. I have proceeded with the review based on this confirmation.

I acknowledge that losing your driver’s licence will adversely impact you; however, I have no authority under the Act to consider the hardship you will experience, personal circumstances, employment, or transportation needs, in the course of this review.

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?
- 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 her evidence, Officer Matson indicates that on November 18, 2012 at approximately 0345 hours, she observed you driving southbound on Oak Street in Vancouver.

During the oral hearing you acknowledged driving.

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

Were you advised of your right to request a second analysis?

The police evidence indicates that you were advised of your right to request a second breath test. In her Occurrence Report, Officer Matson states, “After s.22 provided the first sample, PCs advised s.22 of his additional right to second breath sample as well as the accompanying information regarding the readings of both samples.”

During the hearing you provided the following evidence:

- On the morning in question, you were the designated driver for your two intoxicated friends.
- You consumed one beer at 8:00 p.m. and had a second drink at 10:00 p.m. You then stopped drinking.
- It was windy and raining at the time you were stopped by police.
- You do not know how the officer could smell liquor in the vehicle because of this.
- When you provided a breath sample into the ASD, the officer did not show you the result.
- She told you to get back into your car and wait and then went back to her vehicle. She was with a male officer.
- You waited for about 20 minutes and your friend asked you if they had offered you a second breath test. You told him, “No”.

- You then went to the police car to see what was taking so long. The male officer jumped out of the passenger side of the vehicle and met you outside.
- You asked him if you were supposed to have a second breath test and he said, “No, we’re not giving you a second test.”
- You said, “I thought you were supposed to give me a second test.” and he did not respond.
- When you asked what was taking so long, the male officer told you that they were waiting for the proper paperwork to arrive.
- Eventually a second officer showed up and brought the paperwork.
- The police report indicates that you declined the second test, but you were not offered it.

I have reviewed the police evidence and note the following:

- The officers were working in plain clothes and driving an unmarked police car.
- At approximately 0350 hours, Officer Matson approached the driver’s side of your vehicle and identified herself as a police officer.
- The only sign of indicia of impairment she observes is an odour of liquor emanating from your vehicle.
- She observed two intoxicated passengers in your vehicle.
- She formed the opinion that you were impaired by alcohol while you were still sitting in your vehicle.
- She issued you with the IRP and vehicle impoundment documentation at approximately 0420 hours, 30 minutes after stopping you roadside.

Having reviewed your evidence and the police evidence, I find your evidence equally compelling. Because of this, I am not satisfied that it is more probable than not that you were advised of your right to request a second breath test analysis.

Having made this finding, there is no need to address 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 the owner has not already done so, he may go directly to the location where his vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 5, 2012. He is responsible for any storage costs beyond that date. He 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

December 12, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP) No.

s.22

Introduction

On November 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);
- 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 outset of the oral hearing your lawyer, Sarah Leamon, confirmed that she 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 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

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

Did you fail or refuse to comply with a demand?

When considering the evidence before me, I find 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.

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 the date the 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.

Original 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.

Adjudicator

cc: Sarah Leamon
604-685-8308

December 11, 2012

s.22

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

Introduction

On November 24, 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 review, I checked with your agent, Larry Sigurdson, that he had received full disclosure of the documents before me. He acknowledged that he received all the documents.

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 that is determinative of my review.

Was the second analysis provided by the officer and performed using a different ASD?

Having considered the evidence before me, I am not satisfied that the ASD the officer used for your second ASD test was reliable. The officer indicated that the ASD displayed a “NOGO” on nine attempts to provide a sample. This is contrary to the requirements of proper procedure or a properly functioning ASD, as set out in the Superintendent’s Report on Approved Screening Devices (ASDs), in which a “VOID” should be displayed after 3 attempts or after 1 minute. Further, there is no evidence from the officer that he ejected the mouthpiece and reinserted it, and it was your evidence that he did not do so.

In summary, I am not satisfied that you were given a second analysis on a correctly functioning ASD.

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 December 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.

December 28, 2012

s.22

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

Introduction

On December 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 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 and your legal counsel, Colby Jensen, received full disclosure of the documents before me. I have proceeded with the review based on this confirmation.

I acknowledge your submissions regarding how you were treated by Officer Smith on the evening in question; however, I have no authority under the Act to deal with matters regarding police treatment; therefore, I cannot consider this information while conducting this review.

Issues

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”?
- 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 result of the ASD reliable?
- Was the ASD “FAIL” a result of your BAC exceeding 80 mg%?
- 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 Smith indicates that on December 7, 2012 at 2218 hours, he observed you driving on Pandosy Street in Kelowna and issued you a driving prohibition on December 10, 2012.

Based on the evidence, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act, on December 10, 2012.

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 December 28, 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: Colby Jensen

December 18, 2012

s.22

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

s.22

Introduction

On December 2, 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 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 issue.

Was the ASD reliable?

In the Report to Superintendent, the officer indicated that you provided breath samples into two different ASDs, both of which resulted in a “FAIL”. Having considered the Certificates of Qualified ASD Calibrator, I am not satisfied that the ASDs used were reliable.

I am not satisfied that the ASDs are 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 December 18, 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.

December 19, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP) No.

s.22

Introduction

On December 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);
- 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

The Act reads:

3.1) If, at any time or place **on a highway or industrial road**,

(a) a peace officer makes a demand to a driver under the Criminal Code to provide a sample of breath for analysis by means of an approved screening device and the approved screening device registers a warn or a fail, and....

Considering that the officer made the demand while you were at the police station rather than at roadside, I find that he did not comply with the section of the Act that governs 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 December 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

cc: Lawrence Myers
604-688-8350