

JANUARY 15, 2013

s.22

**REVIEW DECISION     Immediate Roadside Prohibition No.     s.22**

**Introduction**

On November 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 you received full disclosure of the police documents prior to your written hearing. I have proceeded with this review based on that confirmation.

You submitted that a decision by the Supreme Court made on November 30, 2011, declared the "fail" portion of section 215.41 of the *Motor Vehicle Act* to be unconstitutional, and the length and costs of the suspension unreasonable. However, the court in *Sivia v. British Columbia (Superintendent of Motor Vehicles)* 2012 BCSC 1030 found that the declaration of unconstitutionality should apply prospectively, and did not say that any prohibitions should be cancelled. The court said that in the cases before it, the legislation was valid at the time the prohibition was issued and so the driver was responsible for the consequences.

Your prohibition was served on November 25, 2011, therefore, the legislation was valid at the time the prohibition was issued to you. You applied to the Superintendent for a review of that prohibition and the Superintendent extended the time for rendering a decision and stayed your driving prohibition until the conclusion of the *Sivia* case. The extension was necessary, in order

IRP Review Decision  
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to wait for the court's final decision. As the *Sivia* case is now concluded, the Superintendent is proceeding with completing your review. The Superintendent does not have any authority to revoke or cancel a valid IRP except as provided in the statute.

You submitted that you are an s.22 and you rely on your vehicle to pick up materials, carry tools and to allow you to go to several different job sites in one day. If you are unable to do this, you may lose your job and you will be unable to pay your rent and bills. You said that "to be able to get to and from to (sic) work after a 30 day suspension with an interim or probation type licence that will allow [you] just to do [your] job is all [you] request." However, while I understand that a driving prohibition can result in hardship, possibly even the loss of employment, I am not authorized by the *Motor Vehicle Act* to consider an individual's personal circumstances, including their driving needs for any purpose, in this review. Further, I am not authorized to alter the terms of a driving prohibition or to grant an individual a restricted licence to enable them to drive for work or any other purpose, as you suggested.

### 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 ASDs register a "fail"?

Having considered the evidence before me in its entirety, I am not satisfied that the ASDs used to test your breath on the night in question, registered reliable "fail" results.

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

### Decision

Based on the evidence before me, I am not satisfied that you were a driver as defined under s. 215.41(1) of the *Motor Vehicle Act* and that the ASD registered a "fail".

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

You were notified that your vehicle was eligible for release on December 16, 2011. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 16, 2011. You are responsible for any storage costs beyond that date. **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.

January 24, 2013

s.22

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

**Introduction**

On November 26, 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, Kathryn Campbell prior to your scheduled oral hearing. At the beginning of the oral review, you advised me that Ms. Campbell would not be representing you in this hearing and she forwarded the disclosure documents to you. You acknowledged that you had received them. 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**

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

In his Report to Superintendent (Report) Constable Abendroth reported that he responded to a witness report of you passed out behind the wheel at 0515 hours on November 26, 2011.

You provided an Affidavit in which you described your intent with regard to sitting in your vehicle. To support your claim you included Affidavits and cell phone records from s.22  
s.22 for my consideration.

Based on the evidence before me, I am not satisfied that you were a driver as defined under s. 215.41(1) of the *Motor Vehicle Act*.

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

### **Decision**

I therefore revoke your driving prohibition, as required by s. 215.5(4)(c)(1) of the *Motor Vehicle 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 December 16, 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.

Adjudicator s.15

January 7, 2013

s.22

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

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**Introduction**

On May 28, 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 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 “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**

This is a re-hearing. Records at this office confirm that disclosure was provided to your lawyer, Kyla Lee. I have proceeded with the review based on this confirmation.

Ms. Lee made submissions in relation to the applicability of the amended Act and the version of the Act under which your prohibition was originally issued.

The court in *Sivia v. British Columbia (Superintendent of Motor Vehicles)* 2012 BCSC 1030 found that the declaration of unconstitutionality should apply prospectively. The court said that in the cases before it, the legislation was valid at the time the prohibition was issued. Your prohibition was served on May 28, 2011, and the legislation was valid at the time the prohibition was issued to you. In turn, I am satisfied that I may proceed on the basis of the legislation that was in effect at the time the prohibition was issued.

Since it has no bearing on the outcome of my decision, I make no finding on the applicability of the Superintendent’s Report that is included in the evidence before me.

## IRP Review Decision

**Issues**

There are 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**

There is one issue that is determinative of my decision in this review.

Did the ASD register a "FAIL"?

The officer reported that he conducted the ASD test at 02:22 hours, on May 28, 2011, within the same minute that he reported you to have been driving or in care or control of a vehicle. The officer reported that you admitted to the consumption of beer, and that the time of your last drink was at 01:20 hours.

You provided evidence to show that despite the officer's report that your last drink was at 01:20 hours, you had in fact finished your last sip of beer from a bottle of beer you purchased prior to driving that evening, and which your friend, s.22 had with him while you were both in the vehicle. You stated that you took your last sip from your bottle of beer no more than two or three minutes before you were pulled over by the officer. When you were pulled over, you passed the bottle to s.22 who placed it in the side passenger door pocket and covered it with an orange vest.

Evidence from s.22 corroborates your evidence. You also included photographs of a beer bottle in the passenger side door, which you took while the vehicle was at the impound lot. You included a letter signed by an individual at the City of New Westminster Towing and Storage that references your vehicle, and which indicates the presence of an open bottle of beer in the passenger side door of the vehicle.

Due to your evidence with respect to the presence of mouth alcohol when the officer conducted his ASD test, and based on the evidence before me in its totality, I am not satisfied that an ASD properly registered a "FAIL" on May 28, 2011.

**Decision**

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

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

s.22

## IRP Review Decision

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

s.15

Adjudicator

cc. Kyla Lee  
fax: 604.685.8308

January 31, 2013

s.22

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

**Introduction**

On December 23, 2010, 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 Arndt, 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?

After considering the totality of the evidence before me, I find your evidence to be more persuasive than the police evidence.

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

### **Decision**

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

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

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

s.15

Adjudicator

cc: Jeffrey R. Arndt, Dejardins Arndt  
Fax: 250-746-1511

JANUARY 9, 2013

s.22

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

**Introduction**

On November 23, 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**

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

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

In the Report to Superintendent (RTS), Constable Higgins stated that he witnessed you in the driver's seat of the vehicle with the keys in the ignition trying to start the engine.

After reviewing the evidence before me, I find that I have no reliable evidence of a time of driving or care or control. As such, I cannot be satisfied that you were a driver within the meaning of section 215.41 of the Act.

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

## 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 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.

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 16, 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.

January 31, 2013

s.22

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

**Introduction**

On November 28, 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**

Records at this office confirm that your lawyer, Jeremy Carr, has received all of the disclosure documents before me. I proceeded with the review based on that 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

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

After reviewing the evidence before me, I find that I cannot establish a reliable date of driving. As such, I cannot be satisfied that you were a driver within the meaning of section 215.41 of the Act.

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

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

The vehicle impoundment is also revoked. 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.

January 24, 2013

s.22

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

**Introduction**

On November 26, 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**

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

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

After reviewing the evidence before me, I find that I cannot be satisfied that you were a driver within the meaning of section 215.41 of the Act.

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

## 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 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.

The vehicle impoundment is also revoked. Upon receipt of proof of payment, the Superintendent of Motor Vehicles will pay the 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 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.

January 30, 2013

s.22

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**REVIEW DECISION Immediate Roadside Prohibition (IRP) No.**

s.22

**Introduction**

On November 28, 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, and your 7-day or 30-day driving prohibition should be reduced because you did not have the required number of previous IRPs. However, those grounds are not applicable to your situation because the Constable alleged on the Notice of Driving Prohibition that he was prohibiting you from driving for 90 days because a sample of your breath on an ASD registered a "fail" and your ability to drive was affected by alcohol.

In your written submissions you stated that this is your first IRP, and you asked for a reduction or elimination of the penalty amount and time. You stated that you work full time, and you are a father. You stated that your driver's licence is a necessary part of your job to support your family which you stated you would never jeopardize.



I acknowledge and appreciate your situation. However, under the *Motor Vehicle Act* I am not authorized to consider hardship, personal circumstances, or an individual's driving record in this review. The scope of the review is limited to the grounds as defined in the *Motor Vehicle Act*.

In addition, subject to section 215.5(3), the *Motor Vehicle Act* does not grant me any discretion to alter the terms of a driving prohibition.

## 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 ASDs register a "fail"?

In section 4 of the officer's Report to Superintendent (the "Report") I note that the officer failed to record information relating to the "Calibration Expiry" or the "Service Expiry". As such, I am not satisfied that the ASD used to test your breath on the night in question, registered a reliable "fail" result.

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 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.

Records show that the vehicle was impounded and has since been released. Upon receipt of proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including December 16, 2011, the date the vehicle was eligible for release. Original receipts and invoices with proof of payment must be submitted for reimbursement. The owner of the vehicle has been advised by a separate letter how to apply to have these costs reimbursed.

JANUARY 10, 2013

s.22

**REVIEW DECISION     Immediate Roadside Prohibition No.     s.22**

**Introduction**

On November 24, 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 your lawyer, Geoffrey Simair, received full disclosure of the police documents prior to your written hearing. I have proceeded with this review based on that confirmation.

Mr. Simair submitted that because of the decision in *Sivia v. British Columbia (Superintendent of Motor Vehicles)*, 2011 BCSC 1639, in which the court declared the "fail" portion of section 215.41 of the *Motor Vehicle Act* to be unconstitutional, I do not have the jurisdiction to proceed with this review, and that your prohibition should be cancelled. The court in *Sivia v. British Columbia (Superintendent of Motor Vehicles)* 2012 BCSC 1030 found that the declaration of unconstitutionality should apply prospectively, and did not say that any prohibitions should be cancelled. The court said that in the cases before it, the legislation was valid at the time the prohibition was issued and so the driver was responsible for the consequences. Your prohibition was served on November 24, 2011, therefore, the legislation was valid at the time the

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prohibition was issued to you. You applied to the Superintendent for a review of that prohibition and the Superintendent extended the time for rendering a decision and stayed your driving prohibition until the conclusion of the *Sivia* case. The extension was necessary, in order to wait for the court's final decision. As the *Sivia* case is now concluded, the Superintendent is proceeding with completing your review. The Superintendent does not have any authority to revoke or cancel a valid IRP except as provided in the statute.

### 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"?

In her opinion letter, Audrey Jakus, Forensic Consultant, asserted that there is nothing in the police evidence to verify that the ASD units identified as "EE" and "S" in the officer's typed synopsis are the same ASDs noted as bearing serial numbers "101813" and "101296" in the officer's Report to Superintendent. I concur.

Consequently, since I cannot be certain that the calibration and service expiry and other information pertaining to the ASDs in the officer's Report to Superintendent is the correct information for the ASDs used to administer your breath tests, I am not satisfied that the ASD registered a "fail".

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

### Decision

Based on the evidence before me, I am not satisfied that you were a driver as defined under s. 215.41(1) of the *Motor Vehicle Act* and that the ASD registered a "fail".

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

s.22

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You were notified that your vehicle was eligible for release on December 15, 2011. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 15, 2011. You are responsible for any additional costs. **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.

s.15

Adjudicator

cc: Geoffrey Simair  
(250) 385-4506



January 9, 2013

Driver's Licence s.22

s.22

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

**Introduction**

On November 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 indicate that document disclosure was provided to you prior to your scheduled written hearing. I have proceeded with the review based on this confirmation.

Your lawyer submits that as a result of the Court decision in *Sivia v. British Columbia (Superintendent of Motor Vehicles)* 2011 BCSC 1639, penalties and prohibitions that would apply to you have been found unconstitutional. Your lawyer asks that there be no further action against you in reliance on an unconstitutional legislative scheme.

With respect to your lawyer's submissions, the court in *Sivia v. British Columbia (Superintendent of Motor Vehicles)* 2012 BCSC 1030 found that the declaration of unconstitutionality should apply prospectively, and did not say that any prohibitions should be cancelled. The court said that in the cases before it, the legislation was valid at the time the prohibition was issued and so the driver was responsible for the consequences.

Your prohibition was served on November 25, 2011; therefore, the legislation was valid at the time the prohibition was issued to you. You applied to the Superintendent for a review of that prohibition and the Superintendent extended the time for rendering a decision and stayed your driving prohibition until the conclusion of the *Sivia* case. The extension was necessary, in order to wait for the court's final decision. As the *Sivia* case is now concluded, the Superintendent is proceeding with completing your review. The Superintendent does not have any authority to revoke or cancel a valid IRP except as provided in the statute.

## 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*?

The Notice of Driving Prohibition identifies you as the driver. The Report to Superintendent (RTS) indicates that on November 25, 2011 two off duty police officers stopped you from driving away until police attended. The RTS indicates that keys were in the ignition, the vehicle was on, and that you were behind the wheel. The Police Narrative report (PN) states that Victoria Police received a call from the Yates street parkade indicating that a man was trying to drive his vehicle away and that he was impaired by alcohol. The PN indicates the male was being held down by two males, not letting him drive away. The PN states that the two men were walking outside the parkade when they saw you enter into your vehicle while stumbling and observed you struggle to put your key in the ignition. The PN indicates the two men entered the parkade and approached the vehicle that you had successfully started and you were attempting to put the vehicle in reverse and drive. The PN indicates they removed you from the vehicle and turned it off, and then called police. The PN indicates that the police attended the second floor of the parkade and identified you, and due to your overwhelming level of intoxication in a public place, you were transported to Victoria Police cells.

Your lawyer submits that the police officer did not witness you driving at any time. The officer is relying on information provided by two off duty military police officers. You directly challenge the second hand information that the officer is relying on as you advise that you were not sitting in your truck and that you did not put your keys in the ignition or start the vehicle and did not back it up. You submit that the two military police officers could not have observed what the officer reports they observed. You state that your truck was parked on the second floor of the parkade and could not be seen while walking outside the parkade as alleged by the two off duty officers. You state it is impossible from outside the parkade, to see the location where your vehicle was parked, let alone observe you putting keys in the ignition. You submit that the events described in the NR simply did not occur. You state that you simply reached into the truck, picked up your cell phone and were tackled as you were closing the door to the truck. You submit that you could smell alcohol on the breath of at least one of the men who tackled you and you believe that both the men who tackled you were intoxicated. You also state that you provided your truck key to police to give to the tow truck driver before you were taken to the police station. You submit that the PN report indicates that the off duty police officer removed the key from the

vehicle, and this statement within the PN is inconsistent with the key still being in your pocket when the police arrived.

The evidence within the RTS is in direct conflict with the evidence within your sworn affidavit. The second hand information within the RTS and PN indicate you were sitting in the vehicle with the keys in the ignition and vehicle running and attempting to drive. You state you were not sitting in your truck and that you did not put your keys in the ignition or start the vehicle, and did not back up. You state you were simply retrieving your cell phone from the vehicle.

I find both accounts of the incident to be believable. However, I have decided to assign less weight to some of the evidence within the RTS and PN. The evidence within the RTS and PN is not firsthand observation of the officer. We do not have the benefit of direct evidence from the off duty officers as they failed to provide statements as promised within the PN. You submit that you parked your truck on the second floor of the Parkade. The PN corroborates your evidence, as Cst. Dewit states he attended to the second floor of the Parkade. The off duty police witnesses submit they were walking outside the parkade when they observed you stumble, and struggle to get your key into the ignition. The PN indicates they had to enter into the parkade in order to approach and intervene. I am not convinced that these two witnesses were able to observe you from street level, outside the parkade, putting your keys in the ignition of your vehicle. For this reason, I am not convinced the information provided to Cst Dewit is entirely trustworthy. You also submit that you detected alcohol on the breath of one witness and believe both witnesses were intoxicated. This also leads me question whether the information they provided is entirely reliable.

In deciding which account of the incident I find more convincing, I refer back to the police evidence. There is a burden of proof on the police to provide evidence that is reliable and credible. In this case, the police officer did not observe you in care or control of the vehicle at any time. As I have not found the second hand information within the police evidence to be entirely trustworthy, I accept your version of the events.

Based on the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act* on November 25, 2011.

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

## Decision

Based on the evidence before me, I am not satisfied that you were the driver as defined under s. 215.41(1) of the *Motor Vehicle Act*, on November 25, 2011. 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 December 16, 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.

s.15

Adjudicator

cc: Michael T Mulligan, Lawyer, via fax 250-480-0004



January 16, 2013

s.22

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**REVIEW DECISION     Immediate Roadside Prohibition No.     s.22**

**Introduction**

On November 19, 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 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 "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".

Additionally, 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 in your specific case, I must substitute the correct prohibition and 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**

An oral hearing was originally held on December 8, 2011. An opportunity was provided to you to present further submissions, either by way of oral hearing, or in writing. Since you made no further submissions, I have proceeded with my review based on the submissions presented at the hearing on December 8, 2011.

Records at this office indicate that disclosure documents were provided to you. I have proceeded with the hearing based on this confirmation.

Driving Prohibition Review Decision  
Page 2

## 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

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

In the Report to Superintendent (RTS), the investigating officer indicated that he responded to a motor vehicle complaint in a Walmart parking lot. The officer reported an occupant seated in the driver's seat of a vehicle with the keys in the ignition. The officer identified you as the person in the driver's seat of the vehicle. He reported that you were in care or control of a vehicle at 12:50 hours, on November 19, 2011.

The officer reported that, after the officer served you with the prohibition, you advised that you would walk to a residence located approximately 100 feet away where you would be staying for the night.

In your submission, you stated that you had parked the vehicle at 4:00 that afternoon, and had not moved it since. You said you had no intentions of driving the vehicle, and you were only in the vehicle so that you could provide warmth for friends as they were being picked up. You indicated you told your mother that you were staying over at your friend's home, which is located adjacent the Walmart parking lot.

Your father, s.22 provided submissions in which he indicated that you had told him that you were attending a party and would be sleeping over at the host's residence that night. s.22 stated that you were in the car because other friends were being picked up by their parents and you were allowing them to stay in the car to keep warm while awaiting the arrival of their parents.

s.22 stated that the undisturbed snow around where your vehicle was parked indicates that you had not been driving it. This is evidence that your vehicle was not the one reported to have been driving recklessly.

The mother of one of the attendees at the party, s.22 also provided submissions. s.22 stated that you had the opportunity to drive her daughter home that evening, and you declined to do so. s.22 submitted that if you had intended to drive that evening, you would have driven her daughter home.

In view of the police evidence that you stated you were returning to the residence where you were staying for the night, I find your evidence credible that you were not intending to drive that evening. I am satisfied that you had the keys in the ignition in order to heat the vehicle and to allow your friends a warm place to wait before being picked up. I find there is insufficient evidence that your vehicle may have been accidentally set in motion while you were in it. Further, I am not satisfied the officer's evidence establishes that your vehicle was the subject of the reported complaint, nor does it establish the time at which the reported activity occurred.

Driving Prohibition Review Decision  
Page 3

Based on the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41 of the Act on November 19, 2011 at 12:50 hours.

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

**Decision**

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

You were notified that your vehicle was eligible for release on December 15, 2011. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 15, 2011, the date the vehicle was eligible for release. You are responsible for any storage costs beyond that date. 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.

Adjudicator



January 29, 2013

Driver's Licence s.22

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* 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 indicate that document disclosure was provided to you prior to your scheduled written hearing. I have proceeded with the review based on this confirmation.

Your application for review shows you selected all the review grounds on the application, including that you did not fail or refuse to comply with a peace officers demand to provide a breath sample. The Notice of Driving prohibition (Notice) indicates the reason for the prohibition was due to a sample of your breath registering a fail on an ASD. Therefore, I will proceed with this review on the grounds that an ASD registered a fail reading.

Your lawyer submits that the "ARP" legislation infringes on the Charter insofar as it concerns the prohibition, penalty and costs arising from a screening device registering a fail reading over .08.

With respect to your lawyer's submission, the court in *Sivia v. British Columbia (Superintendent of Motor Vehicles)* 2012 BCSC 1030 found that the declaration of unconstitutionality should apply prospectively, and did not say that any prohibitions should be cancelled. The Court said

that in the cases before it, the legislation was valid at the time the prohibition was issued and so the driver was responsible for the consequences.

Your prohibition was served on November 27, 2011; therefore, the legislation was valid at the time the prohibition was issued to you. You applied to the Superintendent for a review of that prohibition and the Superintendent extended the time for rendering a decision and stayed your driving prohibition until the conclusion of the *Sivia* case. The extension was necessary, in order to wait for the court's final decision. As the *Sivia* case is now concluded, the Superintendent is proceeding with completing your review. The Superintendent does not have any authority to revoke or cancel a valid IRP except as provided in the statute.

## Issues

There are two issues in this review:

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

## Facts, Evidence and Analysis

### Did the ASD register a "fail"?

I agree with your lawyer's submission regarding a requirement for a second analysis. After considering the evidence before me, I am not convinced the ASD registered a fail on November 27, 2011 at 00:58 hours.

Having made the finding that an ASD did not register a fail, there is no need to consider the issue of whether you were a driver.

## Decision

Based on the evidence before me, I am not satisfied that an ASD registered a "fail" on November 27, 2011. 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 December 15, 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.

s.15

cc: Michael Mines. Lawyer, via fax 604-687-3097



January 23, 2013

Driver's Licence

s.22

s.22

## **REVIEW DECISION     Immediate Roadside Prohibition (IRP)- No.**

s.22

### **Introduction**

On November 26, 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 indicate that document disclosure was provided to you prior to your scheduled written hearing. I have proceeded with the review based on this confirmation.

Your lawyer submits that the ARP legislation concerning the prohibition, penalty and costs infringe on the Charter as it is not a reasonable limit which is demonstrably justified in a free and democratic society. Your lawyer submits that the fail reading of the ASD cannot be used against you and therefore there is no evidence in support of the driving prohibition. Your lawyer cites *Sivia v. British Columbia (Superintendent of Motor Vehicles)* 2012 BCSC 1639.

With respect to your lawyer's submission, the court in *Sivia v. British Columbia (Superintendent of Motor Vehicles)* 2012 BCSC 1030 found that the declaration of unconstitutionality should apply prospectively, and did not say that any prohibitions should be cancelled. The court said that in the cases before it, the legislation was valid at the time the prohibition was issued and so the driver was responsible for the consequences.

Your prohibition was served on November 26, 2011; therefore, the legislation was valid at the time the prohibition was issued to you. You applied to the Superintendent for a review of that prohibition and the Superintendent extended the time for rendering a decision and stayed your driving prohibition until the conclusion of the *Sivia* case. The extension was necessary, in order to wait for the court's final decision. As the *Sivia* case is now concluded, the Superintendent is proceeding with completing your review. The Superintendent does not have any authority to revoke or cancel a valid IRP except as provided in the statute.

## Issues

There are two issues in this review:

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

## Facts, Evidence and Analysis

### Did the ASD register a "fail"?

After considering the evidence before me, I am not convinced the ASD registered a "fail" on November 17, 2011, at 16:27 hours.

Having made the finding that an ASD did not register a fail, there is no need to consider the issue of whether you were a driver.

## Decision

Based on the evidence before me, I am not satisfied that an ASD registered a "fail" on November 26, 2011. 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 December 15, 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.

s.15

Adjudicator

cc: Michael Mines, Lawyer, via fax 604-687-3097

JANUARY 28, 2013

**REVIEW DECISION     Immediate Roadside Prohibition No.     s.22**

**Introduction**

On November 27, 2011, a peace officer served you with a Notice of Driving Prohibition (Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* 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 full disclosure of the police documents was sent to your lawyer, Oliver Butterfield, prior to your written hearing. I have proceeded with this review based on that confirmation.

The ground on which you applied for this review is not applicable to your situation because the officer alleged that you were being prohibited from driving because an ASD test resulted in a "fail". Therefore, I will consider all of the grounds available to you in this review, applicable to those circumstances.

**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"?

As there is one issue that is determinative in this review, I will only be addressing that issue.



### **Facts, Evidence and Analysis**

#### Did the ASD register a "fail"?

Having carefully considered the evidence before me, I am I am not satisfied that the ASD registered a "fail".

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

### **Decision**

Based on the evidence before me, I am not satisfied that you were a driver as defined under s. 215.41(1) of the *Motor Vehicle Act* and that the ASD registered a "fail".

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

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 14, 2011, the date the vehicle was eligible for release. You are responsible for any storage costs beyond that date. **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.

Adjudicator

cc: Oliver Butterfield  
(250) 860-2766

January 22, 2013

s.22

**REVIEW DECISION     Immediate Roadside Prohibition No.     s.22**

**Introduction**

On January 15, 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 your lawyer, Bruce McIntosh, received full disclosure of the police documents prior to your written hearing. I have proceeded with this review based on that confirmation.

Mr. McIntosh noted that Mr. Justice Sigurdson declared the "fail" portion of section 215.41 of the *Motor Vehicle Act* to be unconstitutional. He further argued that despite the finding that the declaration of invalidity would only be applied prospectively, you do not fall into the category of petitioners contemplated by Justice Sigurdson. Mr. McIntosh suggested that in your case I should take the view that the relevant sections were found to be invalid.

I respectfully disagree. Your prohibition was served on January 15, 2011; therefore, the legislation was valid at the time the prohibition was issued to you.

**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 ASDs register a "fail"?

Having considered the evidence before me in its entirety, I am satisfied that the ASDs used to test your breath on the night in question did not register reliable "fail" results.

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

## **Decision**

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

Your vehicle was authorized for release on February 16, 2011. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including that date. You are responsible for any storage costs beyond that date. 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.

s.15

Adjudicator

cc: Bruce McIntosh  
Fax: 604-568-4597

January 16, 2013

s.22

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## REVIEW DECISION Immediate Roadside Prohibition (IRP) No.

s.22

### Introduction

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

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

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

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

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

### Preliminary Matters

Records indicate that you received full disclosure.

### Issues

The following are the issues in this review:

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

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

### **Facts, Evidence and Analysis**

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

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

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

### **Decision**

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

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

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

s.15

Adjudicator

cc: Geof Simair  
250-385-4506

January 25, 2013

s.22

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

### **Introduction**

On January 4, 2013, 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, Jennifer Currie, received full disclosure of the documents before me. I have proceeded with the review based on this confirmation.

### **Issues**

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL” 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 ASD “FAIL” as a result of your BAC exceeding 80 mg%?
- Was the Notice served on the basis of the lower analysis result?

**Facts, Evidence and Analysis**Was the ASD “FAIL” as a result of your BAC exceeding 80 mg%?

Ms. Currie submits that the ASD “FAIL” results are unreliable due to mouth alcohol.

In reviewing the evidence in its totality, I find your evidence equally compelling as the police evidence. Consequently, I am not satisfied that the ASDs registered a “FAIL” as a result of your BAC exceeding 80 mg%.

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

**Decision**

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including January 25, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

pc: Jennifer Currie via fax

January 17, 2013

s.22

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

s.22

### Introduction

On December 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

I note the officer served you a ninety-day prohibition because you had care or control of a motor vehicle and a sample of your breath on an approved screening device registered “FAIL” and your ability to drive was affected by alcohol. However, the evidence in the Report to Superintendent shows that you blew a “WARN”, despite the officer’s narrative suggesting a “FAIL” was registered.

Given the conflict in the officer’s evidence, I find that you were likely prohibited incorrectly. Because of that, I find that I am not satisfied that the ASD registered a “FAIL” as a result of your BAC being not less than 80 mg%.



**Decision**

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including January 17, 2013. 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

January 11, 2013

s.22

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

**Introduction**

On December 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 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 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**

#### Was the ASD result reliable?

Ms. Lee submits that Officer Fortier has failed to provide evidence sufficient to establish that the ASD with serial number 65878 was reliable on December 23, 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 January 11, 2013. 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.22

pc: Kyla Lee via fax

JANUARY 10, 2013

s.22

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

**Introduction**

On December 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);
- an 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**

Having reviewed the evidence of Constable Baker and your lawyer's submissions, 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?

Based on the specific evidence before me in this case, I find there is no reliable time of driving. Accordingly, 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 other issues.

**Decision**

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

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

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

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

Adjudicator

cc. Sarah Leamon  
604-685-8308 (fax)

January 31, 2013

s.22

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

**Introduction**

On January 13, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

Records before me confirm that the disclosure documents were made available to you. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “WARN”, and was it as a result of your BAC exceeding 50 mg%?
- Were you advised of your right to a second analysis?

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

### **Facts, Evidence and Analysis**

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

In the Report to Superintendent for the IRP (the "Report"), the investigating officer indicated that you were driving or in care or control of a vehicle at 0217 hours on January 13, 2013.

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

#### Did the ASD register a "WARN"?

In the Report, the officer indicated that you provided one ASD "WARN" result.

There is no evidence before me to the contrary. I am satisfied that the ASD registered a "WARN".

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

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

Your evidence is that the officer did not give you a chance for a second test.

While you disputed the officer's evidence, you did not provide any evidence of what actually happened after you provided your "WARN" result. Ultimately, you have not convinced me that the officer fabricated his sworn evidence on this point.

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

#### Was the second analysis provided by the officer?

In the Report, the officer's evidence is that you did not request a second test. In the Synopsis, he stated, s.22 refused to provide a 2<sup>nd</sup> breath test".

Your evidence is that due to the language barrier you were unable to request a second test.

The officer clearly turned his mind to the language barrier. He noted on the Report that you did not understand the question regarding the time of your last drink. He also noted in the Synopsis that you "spoke little English". However, the officer did not make any reference to your inability to understand your right to a second test. I have already found that the officer advised you of your right to a second analysis. I accept the officer's evidence that you did not request a second test. As a result, the officer was not required to provide you with a second analysis.

Was the second analysis performed on a different ASD?

As noted, the officer was not required to provide you with a second analysis.

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

The officer recorded your one result as a "WARN".

There is no evidence before me to the contrary. I am satisfied that the Notice was served on the basis of the "WARN" result.

Was the ASD reliable?

There is no ASD information before me. As such, I am satisfied that the ASD was not reliable.

**Decision**

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

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

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

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 January 17, 2013. 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. 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.



January 9, 2013

s.22

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## REVIEW DECISION Immediate Roadside Prohibition (IRP) No.

s.22

### Introduction

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

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

- you were a driver within the meaning of section 215.41(1);
- the 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 indicate that you received full disclosure.

### Issues

The following are the issues in this review:

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

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

### **Facts, Evidence and Analysis**

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

*Was the ASD reliable?*

Having considered the Certificate of Qualified ASD Calibrator, I find that the ASD used was 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 January 9, 2013. 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.

January 10, 2013

s.22

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## REVIEW DECISION Immediate Roadside Prohibition (IRP) No.

s.22

### Introduction

On December 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 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....

In considering the evidence before me, I find that the officer did not comply with this 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 January 10, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Brian Mickelson, Mickelson & Whysall  
Fax: 604-637-1617

January 14, 2013

s.22

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**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 (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**

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

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did 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 an ASD demand.

## **Decision**

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

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

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

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.

s.15

Adjudicator

January 3, 2013

s.22

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

s.22

### Introduction

On December 19, 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**

### Was the ASD reliable?

The officer failed to provide any evidence of the calibration and service expiry dates of the device, so without that information, 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.

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.



January 4, 2013

s.22

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

s.22

### Introduction

On December 14, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your 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, Greg Cranston, 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 Bozak indicates that on December 14, 2012 at 1948 hours, he observed you driving on Narrows Road in Madeira Park.

There is no evidence before me to refute this.

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?

Mr. Cranston submits that Officer Bozak 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 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 she has not already done so, the owner 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 January 4, 2013. 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: Greg Cranston via fax

January 25, 2013

s.22

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

s.22

### Introduction

On January 12, 2013, 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, Laura Allen. 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 ASD used for the first test was reliable.

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.

The registered owner may go directly to the location where the 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 January 25, 2013, the date the vehicle was eligible for release. The registered owner is responsible for any storage costs beyond that date, and 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.

January 11, 2013

s.22

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

s.22

### Introduction

On December 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 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, your legal counsel, Anjalika Rogers, 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?

I have reviewed the police evidence and find that Officer Somerville has failed to provide evidence sufficient to establish that the ASD with serial number 038722 was reliable on December 23, 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 January 11, 2013. 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: Anjalika Rogers via fax

January 15, 2013

s.22

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

**Introduction**

On December 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 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 you are remorseful and 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 Somerville has failed to provide evidence sufficient to establish that the ASD with serial number 038723 was reliable on December 25, 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 January 15, 2013. 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.

January 16, 2013

s.22

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

s.22

### Introduction

On January 4, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### Preliminary Matters

At the beginning of the hearing I confirmed that full disclosure of the documents before me was provided to your lawyer, Kyla Lee. 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.

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

In the Notice and the Report to Superintendent, the officer reported that you were driving or in care or control of a motor vehicle on January 1, 2013. However, I find that the officer has not provided sufficient evidence to support that the incident occurred on January 1, 2013.

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 January 16, 2013, 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.

January 9, 2013

s.22

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## REVIEW DECISION Immediate Roadside Prohibition (IRP) No.

s.22

### Introduction

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

Section 215.5(1) of the *Motor Vehicle Act* (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 you. I have proceeded with this review based on that confirmation.

### Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did 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 were not given a demand forthwith or as soon as practicable. Consequently, I find the demand was invalid.

## **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.

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 January 9, 2013. 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: Kurt A. Froehlich  
250-492-4877

January 3, 2013

s.22

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

**Introduction**

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

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

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

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

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

**Preliminary Matters**

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

**Issues**

I only need address the one issue:

- Was the ASD reliable?

## **Facts, Evidence and Analysis**

### Was the ASD reliable?

The officer provided a certificate of a qualified ASD calibrator, which was dated three days before the device was tested. This is not possible. Given the unreliability of the certificate I am not satisfied that the device 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 [the date of this letter/ 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.

Adjudicator

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

January 2, 2013

s.22

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

**Introduction**

On December 12, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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



**Issues**

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 Matchett indicates that on December 12, 2012 at 2151 hours, he observed you driving on Comox Road in Courtenay.

In your written submissions 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. Currie submits that Officer Matchett 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 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 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 January 2, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

pc: Jennifer Currie via fax

January 29, 2012

s.22

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

**Introduction**

On January 10, 2013, 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 disclosure documents were provided 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**

There is one issue that is determinative of my review.

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

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

The officer reported the presence of two officers at the scene. He did not report if an ASD demand was made, what time it was made, or which of the officers made the demand. If I do not know which officer made the demand, I cannot be satisfied he had a reasonable suspicion for making the demand. Further, without clear evidence of the time of the demand, I cannot be satisfied it was made as soon as practicable after you were driving or in care or control of a vehicle.

Based on the evidence before me, I am not satisfied that an officer made a valid demand.

The officer reported that you refused to comply with a demand at 14:05 hours. However, since I am not satisfied the officer made a valid demand, I cannot find that you failed or refused to comply with an ASD demand on January 10, 2013, at 14:05 hours.

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

## **Decision**

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including January 29, 2013. 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.

JANUARY 15, 2013

s.22

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

**Introduction**

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

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

- you were a driver within the meaning of section 215.41(1);
- the 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 your lawyer, Brian Fitzpatrick confirmed that he had received full disclosure. In addition, despite you checking multiple grounds on the Application for Review Mr. Fitzpatrick advised me that he would be making submissions on two grounds specifically: the result of the ASD is not reliable; and the ASD did not register a “FAIL” reading.

### 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?"

Here, the officer provided a Certificate of Qualified ASD Calibrator for ASD serial number 101005 showing that the calibration date was expired.

I am not satisfied that the ASD used in this circumstance was reliable.

### 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 January 14, 2013. 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: Brian Fitzpatrick by fax 250 785-4346

January 29, 2013

s.22

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

### Introduction

On January 15, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### Preliminary Matters

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

### Issues

The following are the issues in this review:

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, but as your lawyer pointed out, both had calibration expiry dates that were prior to the incident date. Therefore, I am not satisfied that the ASDs 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.

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 January 29, 2013. 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  
Fax: (778) 297-3131



## AMENDMENT

January 3, 2013

s.22

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### REVIEW DECISION Immediate Roadside Prohibition (IRP) No.

s.22

#### Introduction

On December 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 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 indicate that you received full disclosure.

#### Issues

The following are the issues in this review:

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

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

### **Facts, Evidence and Analysis**

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

*Was the ASD reliable?*

Having considered the Certificate of Qualified ASD Calibrator, I find that the ASD used was 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.

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. At the time of the impoundment you were prohibited from driving. As such you are required to pay for the towing and storage costs for the first seven days. The Superintendent of Motor Vehicles will pay storage costs after the first seven days up to and including January 3, 2013. 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: John Bethell  
604-437-0342

JANUARY 15, 2013

s.22

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

### Introduction

On December 31, 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* 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 *Motor Vehicle Act* requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

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

### Preliminary Matters

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

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

Your lawyer, Dimitri Kontou, pointed out that Constable Wong, badge number 2865, indicated at the top of the Report to Superintendent (RTS), that she swears or solemnly affirms that the contents of the RTS are true, yet another officer, badge number 2644, signed the RTS. Mr. Kontou submitted that, as a result, Constable Wong’s report has not been properly sworn or solemnly affirmed so your driving prohibition should be revoked on the grounds that the officer did not comply with s. 215.47 of the *Motor Vehicle Act*.

Since the RTS has not been properly sworn or solemnly affirmed, I find that there is insufficient evidence before me to support the charge in the Notice that you were served with on December 31, 2012.

Having made this finding, 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 *Motor Vehicle 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  
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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 January 15, 2013, the date you were notified that 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

Adjudicator

cc: Dimitri Kontou  
(604) 687-3097

January 22, 2013

s.22

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

**Introduction**

On January 12, 2013, 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 acknowledge, from your submission, that you require your licence for employment reasons. However, under the Act, I am not authorized to consider hardship, personal circumstances, employment, or transportation needs in this review. The scope of the review is limited to the issues below. Similarly, I am not permitted to change the terms and conditions of the prohibition.

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

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

The investigating officer noted that he saw you in care or control of a motor vehicle at the undisputed time of 00:33 hours on January 12, 2012.

You stated that you were simply sitting in your vehicle while your friend was loading band equipment into it. You were parked in front of the club where he had been playing. While seated there, the police arrived and decided that you were the driver, whereas in fact your friend was going to drive as he had had nothing to drink. When he came out of the club he got belligerent with the police, which you say resulted in the impoundment because the police believed you to be the driver. Two band members provided supporting letters for you. While neither letter actually said that your friend was going to drive, I find that he was likely going to.

I find I prefer your evidence, accepting that the police erred when deciding that you were the driver. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act. Given this, I need not address 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 January 22, 2013. 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



January 10, 2012

s.22

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

s.22

### Introduction

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

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

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

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

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

### Preliminary Matters

At the beginning of the review, I confirmed with your lawyer, Kyla Lee, that she had received full disclosure of the documents before me. I have proceeded with my 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?
- Were the ASDs reliable?

### **Facts, Evidence and Analysis**

As it is determinative of my decision in this review, I address the following issue only.

#### Were the ASDs reliable?

The officer reported that on the first of two ASD tests, the first of your attempts to provide a sample was a “No go”, after which you were given “three more opportunities to provide and [sic] adequate sample after all showed a “No go”. The officer reported that on the fourth attempt you provided an adequate sample and the ASD registered a “FAIL.” While it is not clear whether the officer allowed three or four attempts before a “FAIL” result was obtained, it is clear that on each of the attempts leading up to the “FAIL” result, “No go” displays were obtained.

The Superintendent’s Report on Approved Screening Devices (ASDs), in addition to an RCMP Memorandum dated September 4, 2008 which Ms. Lee provided, describes the circumstances in which “No go” is displayed. These reports indicate that three or four “No go” results in a row are not possible and that a “VOID” must be displayed on a third inadequate attempt or after one minute. Further, if a “VOID” result is displayed, the mouthpiece must be ejected and reinserted. There is no evidence from the officer that this occurred. In view of the officer’s evidence as to the sequence of “No go” results and the eventual “FAIL” result, I am not satisfied the “FAIL” result was reliably obtained.

No result was obtained during a second testing opportunity presented to you, and so I do not need to consider the sequence of events in relation to the second test.

In summary, based on the evidence before me, I am not satisfied that the ASD used to obtain a “FAIL” result was reliable.

### **Decision**

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

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

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

s.22

IRP Review Decision

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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 January 10, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc. Kyla Lee

fax: 604.685.8308

January 9, 2013

s.22

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## REVIEW DECISION Immediate Roadside Prohibition (IRP) No.

s.22

### Introduction

On December 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 indicate that you received full disclosure.

### Issues

The following are the issues in this review:

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

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

### **Facts, Evidence and Analysis**

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

*Was the ASD reliable?*

Having considered the Certificate of Qualified ASD Calibrator, I find that the ASD used was 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 January 9, 2013. 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: Claire Hatcher  
604-687-3022

January 9, 2012

s.22

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

s.22

### Introduction

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

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

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

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

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

### Preliminary Matters

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

In your application for review, you checked the box next to the ground that you did not refuse or fail to comply; however, since your IRP was served on the basis of an ASD “FAIL” result, any grounds associated with a refusal or failure to comply are not relevant to the issues before me. Similarly, as you received a 90-day prohibition, the ground that your 7-day or 30-day prohibition should be reduced is not relevant.

In your letter dated January 4, 2013, you accepted responsibility for your actions, asked that your vehicle be released early, and requested a lesser punishment with no ignition interlock.

I acknowledge and appreciate your situation. However, under the Act I only have the authority to release the vehicle if the review is successful. Additionally, I have no authority with respect to any ignition interlock requirements that may be imposed if the review is unsuccessful. The scope of the review is limited to the grounds as defined in 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

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

In the Report to Superintendent (the "Report"), the investigating officer indicated that you were driving or in care or control of a vehicle at 2259 hours on December 21, 2012.

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

#### Did the ASD register a "FAIL"?

In the Report, the officer indicated that you provided ASD "FAIL" results at 2301 hours and 2303 hours.

There is no evidence before me to the contrary. I am satisfied that the ASD registered a "FAIL".

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

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

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

#### Was the second analysis provided by the officer?

The officer's evidence is that you provided a second result.

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

Was the second analysis performed on a different ASD?

The officer's evidence is that he used two separate ASDs to obtain samples of your breath.

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

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

The officer recorded both results as "FAIL".

There is no evidence before me to the contrary. I am satisfied that the Notice was served on the basis of the "FAIL" result.

Were the ASDs reliable?

The officer did not provide a Certificate of Qualified ASD Calibrator for ASD serial number 077917.

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 January 9, 2013. 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.



January 21, 2013

s.22

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

**Introduction**

On January 1, 2013, 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?*

Your lawyer, Dil Gosal, noted that the officer did not submit a Certificate of a Qualified ASD Calibrator. Mr. Gosal argued that in the absence of such evidence, I cannot be satisfied that the ASD was reliable. I agree.

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

### **Decision**

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

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

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

Adjudicator

cc: Dil Gosal  
604-510-5195

January 21, 2013

s.22

## **REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. 21-512498**

### **Introduction**

On January 12, 2013, 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 you. I have proceeded with this review based on that confirmation.

### **Issues**

The following are the issues in this review:

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

The investigating officer noted that he saw you in care or control of a motor vehicle at the undisputed time of 02:27 hours on January 12, 2013. 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 you fail or refuse to comply with an ASD demand?

I note that the ASD used during your test had an expired calibration date. Given this, 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.

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 January 21, 2013. 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.

January 23, 2013

s.22

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

**Introduction**

On January 3, 2013, 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**

At the beginning of the oral hearing, your lawyer, Brian Jackson, confirmed that he had received all of the disclosure documents. 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 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 an ASD demand?

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

Having carefully considered the evidence, I find that the officer did not make the ASD demand promptly. In other words, I find that the demand was not made pursuant to the *Criminal Code*. As such, I am satisfied that you did not fail or refuse to comply with an ASD demand.

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

**Decision**

Based on the evidence, I am satisfied that you did not fail or refuse 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.

The vehicle impoundment is also revoked. If you have not already done so, you or someone you authorize may go directly to the place that your 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 January 23, 2013. You are responsible for any storage costs beyond that date. You should 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.

January 16, 2013

s.22

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

s.22

### Introduction

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

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

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

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

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

### Issues

The following are the issues in this review:

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

### **Facts, Evidence and Analysis**

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

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

The officer indicated that he did not advise you of your right to a second test on a different ASD.

I am satisfied that you were not advised of your right to a second breath test 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 January 16, 2013. 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.



January 8, 2013

s.22

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

s.22

### Introduction

On December 19, 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 ASD used for the second test was reliable.

I am not satisfied that the ASD is 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.

January 16, 2013

s.22

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

s.22

### Introduction

On January 1, 2013, 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.

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

In the Report to Superintendent, the officer indicated that you were driving or in care or control of a motor vehicle on January 1, 2013, at 03:57 hours. However, I find that the officer has not provided sufficient evidence to support this allegation.

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.

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.

January 18, 2013

s.22

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

**Introduction**

On December 31, 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, Ajeet Kang, received full disclosure of the documents before me. At the start of the oral hearing Ms. Kang 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 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 Fedirchuk indicates that on December 31, 2012 at 2156 hours, he observed you driving on 152<sup>nd</sup> Street in Surrey.

In your sworn affidavit you acknowledge driving.

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.

Ms. Kang submits that Officer Fedirchuk did not make the ASD pursuant to section 254 of the *Criminal Code*; consequently, your driving prohibition should be revoked.

I concur.

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 31, 2012, you failed or refused to comply with an ASD demand, without a reasonable excuse. 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. You may go directly to the place that your 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 January 18, 2013. You are responsible for any storage costs beyond that date. You should 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: Ajeet Kang via fax

January 16, 2013

s.22

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

**Introduction**

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

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

### **Facts, Evidence and Analysis**

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

If you failed or refused to comply with the Demand, did you have a reasonable excuse?

Based on all the evidence before me, I am satisfied that you had a reasonable excuse to fail or refuse to comply with the ASD demand.

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.

The corresponding vehicle impoundment is also revoked. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 3, 2012, 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.

Adjudicator

Cc.: Dilraj Gosal  
Fax: [604] 510-5195



January 28, 2013

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

At the beginning of the review, I checked with your lawyer, Jag Dhillon, that he had received all of the documents before me. It was confirmed that the IRP Narrative was missing pages 2 and 4.

The investigating officer provided a Supplemental Report to Superintendent that contains the missing pages. This was disclosed to you on January 23, 2013, and Mr. Dhillon was provided an opportunity to provide additional submissions.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

There is one issue determinative of my review.

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

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 on December 7, 2012, at 01:35 hours, as the investigating officer reported.

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

## Decision

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.

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.

January 22, 2013

s.22

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

s.22

### **Introduction**

On January 5, 2013, 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);
- an 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 proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Was the ASD reliable?

In the Report to Superintendent (the “RTS”), Constable Thomas stated that you provided a breath sample into an ASD with serial number 101681 and that the ASD registered a “fail” result. The officer also provided a Certificate of Qualified ASD Calibrator regarding an ASD with this serial number. The evidence before me indicates that this ASD was functioning normally and was reliable.

Constable Thomas indicated that you requested a second analysis and provided a breath sample into a second ASD with serial number 101682. This ASD also registered a “fail” upon analyzing your breath sample. However, the officer did not provide a Certificate of Qualified ASD Calibrator for the second ASD. As a result, I cannot be satisfied that the ASD with serial number 101682 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 January 22, 2013. 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.

January 21, 2013

s.22

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

s.22

### **Introduction**

On January 11, 2013, 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 you. I have proceeded with this review based on that confirmation.

### **Issues**

The following are the issues in this review:

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

The investigating officer noted that he saw you exit the driver's side of a vehicle that he believed you were driving at the undisputed time of 00:51 hours on January 11, 2013.

You admit to getting out of the driver's door of a two-door vehicle, yet you deny driving. Several witnesses and yourself all provided statements indicating that you were actually in the back seat of the vehicle while it was being driven by your girlfriend. You did not drive at all on January 11, 2013. I find I prefer your evidence over that of the police, believing the officer to be mistaken in what he decided.

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

**Decision**

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

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

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: Jennifer Currie  
Stern Albert Shapray & Associates  
Fax: (604) 590-5626

January 9, 2012

s.22

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

s.22

### Introduction

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

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

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

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

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

### Preliminary Matters

At the beginning of the review, I confirmed with your lawyer, Kyla Lee, that she had received full disclosure of the documents before me. She acknowledged that she had 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?
- Were the ASDs reliable?

### **Facts, Evidence and Analysis**

Since it is determinative of my decision in this review, I address the following issue only.

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

As stated in the Superintendent's Report on Approved Screening Devices (ASDs) (the "Superintendent's Report"), ASDs are calibrated to register a "FAIL" reading at BAC levels of 100 mg% or greater. The Superintendent's Report also indicates that breath samples are taken at least 15 minutes after the last drink was consumed to allow for elimination of mouth alcohol.

In his Narrative Text Hardcopy (the "Narrative"), the officer stated that he observed two bottles of liquor on the passenger seat of the vehicle. He reported that he conducted one ASD test at 05:45 hours, the result of which was a "FAIL". He did not administer a second test.

Your evidence is that, despite having told the officer that your last drink was several hours earlier, your last drink was from one of the bottles at approximately 5:35 a.m., just before you were stopped by the officer. You said you did not tell the officer that you had taken a drink from the bottles, since you had taken only a few sips and you did not think it would make a difference.

Having reviewed the evidence before me, because of the possibility of a falsely elevated result from mouth alcohol prior to the ASD test, I am not satisfied that your BAC was at least 80 mg%.

### **Decision**

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including January 9, 2013. 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. Kyla Lee

fax: 604.685.8308

January 16, 2013

s.22

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

s.22

### Introduction

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

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

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

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

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

### Issues

The following are the issues in this review:

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

### **Facts, Evidence and Analysis**

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

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

I accept your evidence that you did not have the keys with you, the engine was not running, and you had no intention of driving.

I am satisfied that you were not a driver within the meaning of section 215.41(1) of the Act?

### **Decision**

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

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. 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 January 16, 2013. 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.

January 23, 2013

s.22

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

s.22

### Introduction

On January 7, 2013, 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, Michael Shapray. 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 January 23, 2013, 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.

January 18, 2013

s.22

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

**Introduction**

On January 6, 2013, 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, Alan Truong. 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 your BAC less than 80 mg% even though the ASD registered a “FAIL”?

Based on the evidence before me, I am not convinced that the ASD registered a “FAIL” due to alcohol in your blood and not in your mouth.

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

### **Decision**

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

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

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

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.



January 10, 2013

s.22

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

### Introduction

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

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

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

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

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

### Preliminary Matters

At the beginning of the oral hearing, I confirmed with you 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

Upon reviewing Constable Chassie’s evidence and your submissions, I find there is one determinative issue before me.

Did you fail or refuse to comply with a demand?

The evidence before me indicates the following:

- In his Narrative, Cst. Chassie stated that you were “counselled” that only one attempt to provide a breath sample would be allowed. In the oral hearing you stated that Cst. Chassie told you that you only had “one shot” at providing a breath sample and that if you did not you would be charged with refusing.
- After Cst. Chassie explained to you how to provide a sample, you told him that you had asthma but he advised you that was not a problem.
- The Narrative indicates that when you attempted to provide a sample of your breath into the ASD you were blowing weakly, so “the breath sample was discontinued” resulting in a “NoGo” reading.
- In the oral hearing, you stated that you were not using your asthma as an excuse but rather as an explanation as to why you blew weakly into the ASD.
- You stated in the oral hearing that after the “NoGo” registered you continued to tell Cst. Chassie about your asthma. You explained that after the ASD test you realized how hard you actually had to blow. You indicated that you asked Cst. Chassie more than once to try again, but he refused to allow you to try a second time.
- It is noteworthy to point out that Cst. Chassie provided a Certificate of a Qualified ASD Calibrator for the ASD used on you on December 22, 2012. After reviewing this document, I note that the ASD service expiry date for this ASD was December 17, 2012, which was five days prior to your use of the ASD.

In your specific case, I cannot reasonably conclude that you were given an adequate opportunity to blow into the ASD.

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

**Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by 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 January 10, 2013. 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.

January 18, 2013

s.22

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

**Introduction**

On August 12, 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 indicate you received full disclosure. You applied on the one ground.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

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

## Decision

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

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

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

Records show that your vehicle was impounded at your expense. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing costs. 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. Jodi Michaels, fax: 604-924-5322

January 23, 2013

s.22

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

**Introduction**

On January 4, 2013, 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, Jason Tarnow, 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 request a second analysis?
- If requested, was the second analysis provided by the officer and performed using a different ASD?
- Was the ASD reliable?
- Was the Notice served on the basis of the lower analysis result?

**Facts, Evidence and Analysis**Were you advised of your right to request a second analysis?

Mr. Tarnow submits that Officer Marcus has failed to provide evidence sufficient to establish that you were advised of your right to request a second breath test.

I concur.

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 your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including January 23, 2013. 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

pc: Jason Tarnow via fax

January 10, 2013

s.22

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**REVIEW DECISION Immediate Roadside Prohibition (IRP) No.**

s.22

**Introduction**

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

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

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

**Preliminary Matters**

Records indicate you received full disclosure. You applied on the one ground.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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 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.

Records show that your vehicle towed at your expense. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing costs. 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.



February 12, 2013

s.22

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

s.22

### Introduction

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

### Issues

The following are the issues in this review:

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

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

The investigating officer noted that a couple witnessed you asleep in the driver's seat of a vehicle that had its engine engaged. He decided that you were in care or control of a motor vehicle at the undisputed time of 14:28 hours on December 24, 2012.

Your lawyer, Jennifer Currie suggested that you were not in care or control of the vehicle because you had no intention of driving it anywhere. She provided several cases to support her position, all of which I have considered.

You stated that prior to going out that morning you arranged to have your mother pick you up at 16:00 hours because you knew you would be drinking at a staff Christmas breakfast. Your mother provided a statement concerning this. You had had no sleep the night before and at approximately 12:30 hours you decided to take a nap in your vehicle before going bowling across the street. You turned the engine on in order to keep warm, reclined the seat and put the emergency brake on. Two hours later you were woken up by the police.

You also provided a statement from a friend of yours who noted that you told him you were going to take a nap before bowling. He said that he tried calling and texting you at about 14:00 hours to see if you were ready but he got no response. Thirty minutes later it was decided to leave the restaurant and go bowling. While sitting in the back seat of the police car, you saw that your friend had phoned you. A few minutes later he came out of the Cactus Club and saw you sitting in the police vehicle.

I note that there is no police evidence before me that you had the emergency brake engaged or that the seat was reclined. I also note that you were seated in the back of the police car shortly after failing the ASD test at 14:58 hours, which is approximately half an hour after your friend said he left the restaurant, yet you saw him leave at about this time. I find this to be a significant contradiction in your evidence.

Despite this, I accept that you got into your vehicle to sleep and, having made arrangements with your mother beforehand, had no intention of driving. The cases provided by Ms. Currie suggest that if I accept that you had no intention to operate the vehicle then I must revoke the prohibition. I agree.

I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act. Given this, I need not address 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 January 14, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

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

January 17, 2013

s.22

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

s.22

### Introduction

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

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

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

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

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

### Preliminary Matters

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

In considering the evidence before me, I note that at paragraph three of the Report to Superintendent (the “Report”), the peace officer failed to identify himself. Consequently, it is my finding that the Report is not in the form established by the Superintendent and required by 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.

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle should go directly to the location where the 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 January 16, 2013. The owner responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

January 11, 2013

s.22

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

**Introduction**

On September 15, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your 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, Lolita Rudovica, 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?

Having reviewed the Certificates of Qualified ASD Calibrator before me, I find that Officer Fox has failed to provide evidence sufficient to establish that the ASDs in which you provided breath samples were reliable on September 15, 2012.

Based on the evidence, I am not satisfied that the ASD results were 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.

Our records indicate that your vehicle was released after the expiry of the impoundment period. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. 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. You may send your receipts and invoices to the address on page one of this letter.

Adjudicator s.15

pc: Lolita Rudovica via fax

January 7, 2013

s.22

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

### **Introduction**

On December 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 disclosure documents were provided to you. I have proceeded with my review based on this confirmation.

### **Issues**

The following are the issues in this review:



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

### **Facts, Evidence and Analysis**

There is one issue that is determinative of my decision in this review.

#### Did the ASD register a “FAIL”?

The investigating officer served you a Notice of Driving Prohibition on the basis that he had reasonable grounds to prohibit you from driving because a sample of your breath on an approved screening device registered a “FAIL” and your ability to drive was affected by alcohol.

Although the officer submitted a supplemental report in which he noted that the basis for the Notice was in error and that the prohibition period and type should be 90 days refusal and not 90 days “FAIL”, there is no actual version of the Notice before me that shows the basis for the Notice being that you failed or refused to provide a sample.

As there is no evidence before me that an ASD registered a “FAIL” in support of the Notice before me, I am not satisfied on a balance of probabilities that an 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.

January 24, 2013

s.22

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

s.22

**Introduction**

On January 6, 2013, 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 full disclosure of the documents before me. After the hearing, the investigating officer submitted a supplemental report, which was disclosed to Ms. Leamon. Ms. Leamon made additional submissions as a result of that disclosure.

The Report to Superintendent (“RTS”) was signed by officer Campbell, although Constable Morgan prepared the RTS and purportedly swore to its truth. The officer’s supplemental report indicated that the RTS was signed in error by officer Campbell.

Since the RTS was not sworn properly by the officer who prepared the report, I cannot consider it. The RTS refers to 9 pages which “forms part of this sworn document.” I find I that I cannot consider any of these 9 pages.

That being the case, there is insufficient evidence before me to support the allegations that form the basis of the prohibition.

### **Decision**

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including January 25, 2013. 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.

January 8, 2013

s.22

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

**Introduction**

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

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

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

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

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

**Preliminary Matters**

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

**Issues**

I will go directly to the relevant issue in this review:

- Was the ASD reliable?

## **Facts, Evidence and Analysis**

### Was the ASD reliable?

The officer failed to provide any information regarding the calibration and service expiry dates of the ASD used in your test. Without that information 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.

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.

January 24, 2012

s.22

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

**Introduction**

On January 6, 2013, 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 disclosure documents were provided to your lawyer, Andrew Tam. 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

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

In the Narrative Text Hardcopy ("Narrative"), the investigating officer indicated that at approximately 03:35 hours, he observed a vehicle parked running with its lights on in the 300 block on Oswego street. The officer reported that he first stopped another vehicle, before returning at 03:54 hours to observe the parked vehicle was still stopped, running, with its lights on.

The officer reported that he observed the occupant, whom he subsequently identified as you, with a phone in his lap, and that he was "completely passed out". The door was locked and it took several times banging on the window before you raised your head and looked over. The officer reported that you said you were waiting for your girlfriend to come back and that she was somewhere doing something but you were not sure where. The officer reported that you told him you had been in the car for over an hour and a half.

In your evidence, you stated that had been downtown, drinking. You telephoned your girlfriend, s.22 to see if she could drive you home in Central Saanich, where you both live together. She told you the location of her car and said you both could meet there and she would drive you home. However, s.22 was with a friend and she did not know how long she was going to be. The plan was for you to walk to the vehicle from downtown, about a 30 minute walk, and wait for her in the car. She would drive you home when she finished visiting with her friend. You walked to her car and arrived about 2:30 a.m. It was cold out. You had a key, got into the car and started it to stay warm.

s.22 provided evidence that substantially corroborates yours.

The Vehicle Impoundment notice indicates that the car is owned by s.22 and it indicates that her place of residence is the same as yours. In my view, your version of events is credible. I find the officer's evidence that he returned to your vehicle nearly 20 minutes after he first observed it, supports your evidence that you were waiting for your girlfriend, and that you would continue to wait for her, as you told the officer.

I am satisfied that you had made alternate arrangements and that you did not intend to drive. I am further satisfied that the vehicle could not have been accidentally set in motion.

Based on the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on January 6, 2013, at 03:54 hours.

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

## Decision

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.

s.22

IRP Review Decision  
Page 3

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

Adjudicator

cc. Andrew Tam  
fax: 250.480.0004



January 9, 2013

s.22

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

**Introduction**

On December 19, 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, Sylvia Andrews confirmed that she had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Was the ASD reliable?

In the Report to Superintendent (the "Report"), the officer indicated that you provide a breath sample into an ASD with serial number 065848. The officer provided a Certificate of Qualified ASD Calibrator (the "Certificate") for the ASD. In reviewing the Certificate I note that the calibration expiry date is 2012-12-17, or December 17, 2012. Given that you provided your sample of breath on December 19, 2012, two days after the ASD's calibration expired, I cannot be 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 January 8, 2013. 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: Sylvia Andrews  
Fax: 604-244-0617

January 17, 2013

s.22

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

s.22

### Introduction

On January 1, 2013, 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 you. I have proceeded with the review based on this confirmation.

You explained that you have been driving for two years and have a clean record. Although you agree that you should be punished, you believe the consequences you currently face are too severe. You noted that you are a student and part-time employee, and you require your vehicle and licence.

I acknowledge and appreciate your situation. However, under the Act I am not authorized to consider hardship, personal circumstances, or an individual’s driving history. The scope of the review is limited to the grounds as defined in 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**Were you a driver within the meaning of section 215.41(1) of the Act?

In the Report to Superintendent (the "Report"), the investigating officer indicated that you were driving or in care or control of a vehicle at 0347 hours on January 1, 2013.

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

Did the ASD register a "FAIL"?

In the Report, the officer indicated that you provided ASD "FAIL" results at 0351 hours and 0358 hours.

There is no evidence before me to the contrary. I am satisfied that the ASD registered a "FAIL".

Were you advised of your right to a second analysis?

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

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

Was the second analysis provided by the officer?

The officer's evidence is that you provided a second result.

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

Was the second analysis performed on a different ASD?

The officer's evidence is that he used two separate ASDs.

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

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

The officer recorded both results as “FAIL”.

There is no evidence before me to the contrary. I am satisfied that the Notice was served on the basis of the “FAIL” result.

Were the ASDs reliable?

The officer neglected to provide copies of the Certificate of a Qualified Technician for each ASD.

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.

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

January 11, 2013

s.22

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

**Introduction**

On December 26, 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, Grant Gray. 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 January 11, 2013, 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.

January 14, 2013

s.22

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

s.22

### Introduction

On December 26, 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 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 January 14, 2013, 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.

Adjudicator

cc: Sarah Leamon  
Fax: 604-685-8889

January 22, 2013

s.22

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

### **Introduction**

On January 1, 2013, 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 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**

- 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?

Having reviewed the evidence in its totality, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act, at the time in question.

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

**Decision**

Based on the evidence, I am not satisfied that on January 1, 2013 at 0012 hours, you were a driver within the meaning of section 215.41(1) of the Act. 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.

The vehicle impoundment is also revoked. If you have not already done so, you or someone you authorize may go directly to the place that your 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 January 22, 2013. You are responsible for any storage costs beyond that date. You should 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

January 16, 2013

s.22

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

**Introduction**

On December 31, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

In the hearing, Ms. Leamon referenced the case of *Regina v Brigitte Schultz* 2009 BCSC 1521. She argued that the results of an ASD test can only be used as an investigative tool or to confirm

or reject a peace officer's suspicion that a person's ability to drive is affected by alcohol. She stated that the results cannot be used to incriminate a driver or to form the basis of the prohibition.

I acknowledge Ms. Leamon's submissions; however, the scope of this review is limited to the grounds defined in the Act. Moreover, the Act does not grant me jurisdiction, nor do I have the authority, to resolve constitutional issues or to apply *Charter* remedies. The *Schultz* decision dealt with the use of an ASD result to prove a different charge under section 144(1)(b) of the Act. Additionally, the *Schultz* decision predates the amendments to the Act which were proclaimed on June 15, 2012. These amendments permit the police to rely on ASD results to issue a driving prohibition under section 215.41 of the Act. Your prohibition was issued under this legislation.

Ms. Leamon also referenced paragraph 63 of *Spencer v. British Columbia (Superintendent of Motor Vehicles)* and noted Justice McEwan's recommendations with regard to the role of tribunals.

As Ms. Leamon requested, I have read and considered *Spencer* and I am mindful of Justice McEwan's recommendations at paragraph 63. As previously noted, I will consider all relevant information before me in making my determinations.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Was the ASD reliable?

The officer's evidence is that you provided breath samples into two different ASDs with serial numbers 066139 and 101098. The officer provided a Certificate of a Qualified ASD Calibrator for ASD serial number 101098. However, I note that I do not have before me a Certificate of Qualified ASD Calibrator for ASD 066139. Without this evidence, I am unable to determine the calibration and service expiry date for this device. Consequently, I cannot be satisfied that ASD 066139 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 January 16, 2013. 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: Sarah Leamon

Fax: 604-685-8308

January 30, 2013

s.22

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

s.22

### Introduction

On January 11, 2013, 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 your first breath sample into an ASD at 20:10 hours registered a “FAIL”. However, I am not satisfied that the “FAIL” result was due to alcohol in your blood and not in your mouth.

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 January 30, 2013, 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.