



November 5, 2012

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

I have reviewed IRP application based on the Notice of Prohibition that was served to you on January 27, 2012.

I have considered the evidence and I am revoking your driving prohibition and monetary penalty as required by section 215.5(4) of the *Motor Vehicle Act*. The prohibition, monetary penalty and reinstatement fee have been removed from your driving record.

Yours truly,

s.15
Adjudicator

November 5, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On November 7, 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* (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 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.

Preliminary Matters

Records at this office indicate disclosure documents were disclosed to your lawyer, Brian Juriloff. I have proceeded with this review on the basis of this confirmation.

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 Act?

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

Decision

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

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

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

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 8, 2011, the date your vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

November 9, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No.

s.22

Introduction

On November 12, 2011, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (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 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.

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 Act?

Facts, Evidence and Analysis

Did the ASD register a fail?

In considering the investigating officer's evidence, I note that both ASDs were past their calibration expiry date. Therefore, based on the evidence before me, I am not satisfied that the ASD registered a fail.

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

Decision

I am not satisfied that the ASD registered a fail.

I therefore revoke your driving prohibition, the monetary and other penalties you received, and the vehicle impoundment as required by s. 215.5(4) of the Act.

s.15

Adjudicator

cc: H. Bruce Kaun
250-561-2075

NOVEMBER 28, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On November 14, 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.

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 his Report to Superintendent (RTS), Constable Cruz indicated that on November 14, 2011, at 21:59 hours you were operating or had care or control of a motor vehicle. However, after considering the evidence before me in its entirety, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the *Act*.

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

s.22

IRP Review Decision
Page 2

Decision

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

Records show that your vehicle was impounded and has since been released. Upon receipt of proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including December 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. You may send your invoice to the Superintendent of Motor Vehicles at the address noted below.

s.15

Adjudicator

cc: Stephen Price
(604) 530-6282



November 1, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

I have received your consent to re-hear your IRP application.

I have considered the evidence and I am revoking your driving prohibition and monetary penalty as required by section 215.5(4) of the *Motor Vehicle Act*. The prohibition, monetary penalty and reinstatement fee have been removed from your driving record.

I am also revoking your vehicle impoundment. I note that your vehicle has been released from impound. Upon receipt of your proof of payment, we will reimburse you for towing and storage charges you paid up to and including the day the vehicle was eligible for release. You may send your invoice to the Appeals Registry unit at the address listed below.

Yours truly,

s.15

Manager of Adjudication
Office of the Superintendent of Motor Vehicles

November 9, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On November 11, 2011, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (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 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.

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 Act?

Facts, Evidence and Analysis

Did the ASD register a fail?

In considering the investigating officer's evidence, I note that both ASDs were past their calibration expiry date. Therefore, based on the evidence before me, I am not satisfied that the ASD registered a fail.

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

Decision

I am not satisfied that the ASD registered a fail.

I therefore revoke your driving prohibition, the monetary and other penalties you received, and the vehicle impoundment as required by s. 215.5(4) of the Act.

s.15
Adjudicator

cc: Jennifer Currie
604-590-5626

November 29, 2012

s.22

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".

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

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 *Act*?

Facts, Evidence and Analysis

Did the ASD register a "fail"?

The Approved Screening Device (ASD) section of the Report to Superintendent indicates that the ASD used to test your breath sample had a service expiry date of November 7, 2011. The service date of the ASD expired 12 days prior to the date it was relied on to test your blood alcohol concentration. Therefore, I am not convinced that this ASD was operating correctly. Based on the evidence before me, I am not satisfied that the ASD registered a "fail".

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

Decision

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

Records indicate that your vehicle was impounded and has since been released. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including 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: Sarah E Leamon, Lawyer, via fax 604-685-8308



November 28, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On November 16, 2011, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (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.

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 are driver within the meaning of section 215.41(1) of the *Act*?

Your lawyer submits that issuance of the Immediate Roadside Prohibition was not in compliance with the provisions of section 215 of the *Motor Vehicle Act* as the breath demand was not made on a highway or industrial road, but occurred at the hospital bed. I agree.

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*.

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 *Act*.

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 17, 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: DILRAJ GOSAL, via fax 604 598 1117



November 9, 2012

s.22

Re: Immediate Roadside Prohibition s.22

On July 10, 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 prohibition and I am delegated the authority to conduct this review.

Having carefully reviewed the material before me, I have determined that I must revoke your driving prohibition, the monetary and other penalties you received, and the vehicle impoundment as required by s. 215.5(4) of the Act.

s.15

Adjudicator
Office of the Superintendent of Motor Vehicles

cc: Lolita Rudovica
By fax to: (604) 581-2017

November 28, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On March 20, 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.

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 *Act*?

Facts, Evidence and Analysis

Did the ASD register a "fail"?

The Approved Screening Device (ASD), section of the RTS, indicates that the ASD used to test your breath sample had a calibration expiry date of February 2, 2011. The calibration of the ASD expired forty six days prior to the date it was relied on to test your blood alcohol concentration. Therefore, I am not convinced that this ASD was operating correctly. Based on the evidence before me, I am not satisfied that the ASD registered a "fail".

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

Decision

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

Records indicate that your vehicle was impounded and has since been released. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including April 21, 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

November 28, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On November 22, 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.

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 *Act*?

Facts, Evidence and Analysis

Did the ASD register a "fail"?

The RTS indicates you provided two breath samples on two different Approved Screening Devices (ASD). The ASD section of the RTS indicates that the ASD used to test your second breath sample had a calibration expiry date of April 26 2011. The calibration date of this ASD expired 6 months prior to the date it was relied on to test your blood alcohol concentration. Therefore, I am not convinced that this ASD was operating correctly. I do not have two reliable ASD breath test results to consider. Based on the evidence before me, I am not satisfied that the ASD registered a "fail".

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

Decision

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

Records indicate that your vehicle was impounded and has since been released. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including 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: Ian McAndrews via fax 250 493 3964



November 28, 2012

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* (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.

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), Cst. Trimm indicates that on November 25, 2011, at 21:56 hours he observed you driving and you were the sole occupant in the vehicle. You do not dispute this.

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

Did the ASD register a “fail”?

The RTS indicates you provided two breath samples on two different Approved Screening Devices (ASD). The ASD, section of the RTS, indicates that the ASD used to test your first breath sample had a service expiry date of February 17, 2011. The service date of this ASD expired nine months prior to the date it was relied on to test your blood alcohol concentration. Therefore, I am not convinced that this ASD was operating correctly. I find that I do not have two reliable ASD breath test results to consider. Based on the evidence before me, I am not satisfied that the ASD registered a “fail”.

Decision

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

Records indicate that your vehicle was impounded and has since been released. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 14, 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: Stern Albert Shapray & Associates 604 590-5626



November 28, 2012

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

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

Section 215.5(1) of the *Motor Vehicle Act* (the *Act*) requires me to confirm your prohibition 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.

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), Cst. Qureshi indicates that on November 27, 2011, at 20:45 hours he observed you driving your vehicle. You do not dispute this.

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

Did the ASD register a “fail”?

The ASD section of the RTS, which shows the calibration and service expiry date of the ASD used to test your breath sample, is blank. Therefore, I am not convinced that this ASD was operating correctly. Based on the evidence before me, I am not satisfied that the ASD registered a “fail”.

Decision

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

Records indicate that your vehicle was impounded and has since been released. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including 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: Jennifer Currie via fax 604 590 5626

November 16, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On August 14, 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, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device, and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

I must revoke your driving prohibition if I am satisfied that you were not a driver within the meaning of section 215.41(1), that you did not fail or refuse to comply with a demand, or that you had a reasonable excuse for failing or refusing to comply. If I revoke your prohibition, I must also cancel the monetary penalty for which you would otherwise be liable under section 215.44(1) and revoke the 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.

Issues

There are three issues in this review:

1. Were you a driver within the meaning of section 215.41(1) of the Act?
2. If so, did you fail or refuse to comply with a demand?
3. If so, did you have a reasonable excuse?

Facts, Evidence and Analysis

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

Did you fail or refuse to comply with a demand?

In the Report to Superintendent, the officer stated that he formed a reasonable suspicion for the demand because you had been seen weaving in your lane, you were very confrontational when alcohol was spoken of, and there was a slight odour from the car.

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

Decision

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

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

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

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

NOVEMBER 9, 2012

s.22

c/o MITCH FOSTER
420 – 625 HOWE STREET
VANCOUVER BC V6C 2T6

REVIEW DECISION Immediate Roadside Prohibition (IRP) 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, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act and that the approved screening device (ASD) registered a warn or a fail.

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

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

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

Preliminary Matters

At the beginning of the hearing your lawyer, Mitch Foster, confirmed that he had received all of the disclosure documents before me. I have 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

Having reviewed the evidence of Constable Colgan 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 evidence before me, I find that you were not a "driver" within the meaning of section 215.41(1) of the Act. As a result, there is no need for me to consider whether or not the ASD registered a "fail".

Decision

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

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

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

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

s.15
Adjudicator

cc. Mitch Foster
604-687-4299 (fax)

November 16, 2012

s.22

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

Introduction

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

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

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

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

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

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

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

In the Report to Superintendent, the officer provided the following timeline in his evidence:

| | |
|---------------------------------|-------------|
| Time of driving/care or control | 22:05 hours |
| Suspicion formed | 22:09 hours |
| ASD demand | 22:10 hours |
| 1 st ASD test | 22:10 hours |

In the Narrative, under the heading “Reasonable Suspicion for ASD demand”, the officer stated that at 22:09 hours, he asked you if you had anything to drink and you replied, “[you] had 1 glass of wine”. The officer asked you when you finished your last drink and you replied, “10 to 12 minutes ago”.

Based on your answers to his questions, the time of your last drink would have been at approximately 21:57 or 21:59 hours. Given the evidence before him, it would seem reasonable for the officer to wait before administering the ASD test, but according to his evidence, he did not. He provided you with the first ASD test at 22:10 hours, 11 to 13 minutes after your reported last drink. The Superintendent’s Report on ASDs reflects current police practices. It states that breath samples are taken at least 15 minutes after the last drink was consumed to allow for the elimination of mouth alcohol. Considering the evidence before me, I am unable to conclude that the first ASD result was reliable.

Based on the evidence before me, I am satisfied that your BAC was less than 80 mg% even though the ASD registered a “FAIL”.

Decision

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

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

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

Additionally, the corresponding vehicle impoundment is also revoked. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 15, 2012. The owner is responsible for any storage costs beyond that date. If the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

November 9, 2012

s.22

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

s.22

Introduction

On October 20, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

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

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

Facts, Evidence and Analysis

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

In his evidence, Officer Dibblee indicates that on October 20, 2012 at 06:15 hours, a witness reported a person in a green Mazda pickup truck driving onto neighbouring yards. Police attended the scene at 06:27 hours and observed the vehicle parked, running, with you asleep at the wheel.

I have reviewed your written submissions and the statements from your witnesses. You deny driving on the morning in question. You also contend that although you were sitting in the driver's seat when police arrived, you were there to sleep and had no intention of driving your employer's vehicle.

I find your evidence that you were not driving on the morning in question and had no intention of driving, equally compelling as the police evidence. As a result, I am not satisfied by the police evidence that you were a driver within the meaning of section 215.41(1) of the Act.

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

Decision

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

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

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

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

Adjudicator s.15

November 8, 2012

s.22

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

Introduction

On October 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 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

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

Issues

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

Facts, Evidence and Analysis

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

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

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

Decision

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 8, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 29, 2012

s.22

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

s.22

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

The officer provided two Certificates of a Qualified ASD calibrator (the "Certificates"). After reviewing the Certificates, I find that the ASD serial number on one of the certificates is completely illegible. As such, I cannot be satisfied that Certificate pertains to the ASD noted on the RTS. I therefore cannot be satisfied as to the reliability of the ASD.

Decision

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 29, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 14, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

In the Report to Superintendent, the officer indicated that you provided a breath sample into an ASD which resulted in a “FAIL”. However, I find that I have not been provided with sufficient evidence with respect to the ASD used to be satisfied of the “FAIL” result.

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.

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 November 14, 2012, the date your vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 7, 2012

s.22

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

Introduction

On October 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

You applied all grounds, many of which are not applicable to your situation because of the reason for which you were prohibited. For your benefit, I have considered all the grounds available to you.

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Were you advised of your right to a second analysis?

The officer’s evidence is that you were not advised of your right to a second test and your evidence confirms this.

Based on the evidence before me, 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 November 7, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc: Jamie Butler
Fax: 604-739-9888

November 28, 2012

s.22

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

Introduction

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

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

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

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

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 only address the relevant issue.

- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?

Facts, Evidence and AnalysisDid the ASD register a "FAIL"?

Your lawyer, Lisa Helps, went straight to the heart of the matter and I agree with her.

The officer noted in his report and in the body of the occurrence report that both devices registered a "FAIL". However, in his attached synopsis and in the introduction of the occurrence report, he stated that both tests resulted in "WARN"s. I am unable to tell what the actual results were. Therefore, I am not satisfied that the ASD registered a "FAIL".

Decision

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

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

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

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

s.15

Adjudicator

cc: Lisa Helps
Fax: (604) 669-5558

AMMENDED

November 6, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (“IRP”)

s.22

Introduction

On October 16, a peace officer served you with a Notice of Driving Prohibition. However, after reviewing the Report to Superintendent, I note that the Approved Screening Device demand was given to you by a Canada Border Services Officer, who is not a “peace officer” under the *Motor Vehicle Act*. Consequently, it has been determined that this Immediate Roadside Prohibition is not valid and will be removed from your driving record.

I therefore revoke your driving prohibition and monetary penalty, 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.

The 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 November 6, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

Cc: Phillip W. Cote
Fax: [778] 395-6226

November 26, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

In the Report to Superintendent, the officer reported that you provided breath samples into two separate ASDs which both resulted in a “FAIL”. However, I find that I have not been provided with sufficient evidence with respect to the ASDs used to be satisfied of the “FAIL” result.

Consequently, 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.

The owner of the vehicle may go directly to the location where his vehicle is impounded for the immediate release of his vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 22, 2012, the date your vehicle was eligible for release. The owner is responsible for any storage costs beyond that date.

Adjudicator s.15

November 14, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

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

Issues

The following are the issues in this review:

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

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

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

Did the ASD register a “FAIL”?

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

Were you advised of your right to a second analysis?

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

Was the second analysis provided by the officer?

The officer noted that you did not request a second test.

In contrast, you stated that you did, albeit after a bit of a delay. There appears to be no dispute that the officer offered you the opportunity for a second test. Both your evidence and that of the police confirm that, in response to this offer, you stated that you did not know and that you would think about it. The officer left you in your vehicle where you waited for his return. In the meantime, you phoned your mother for her advice, knowing that she had a friend who was in the police force. She advised you to take the second test. On the officer's return, you immediately requested a second analysis, while the officer was in the process of serving you the Notice. The officer told you that you were too late. Your version of events is backed up by your witness and by your mother.

I accept the evidence of both you and the officer, and I also accept that the officer was within his right to tell you that your change of heart was too late, given that the Act requires your request to be forthwith. However, I find that the intention of the Act is to allow you to request the second test any time during the incident, up to and including the serving of the Notice.

Therefore, given the undisputed evidence, I find that you were denied the opportunity of a second analysis.

Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 15, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Jamie Butler
Butler & Company
Fax: (604) 739-9888

November 26, 2012

s.22

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

Introduction

On November 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 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 disclosure of the documents before me was provided to your lawyer, Geoffrey Simair. I have proceeded with this review based on that confirmation.

Under section 215.47 of the Act a peace officer who serves a Notice on a person under section 215.41 must promptly forward to the superintendent:

(a) the person's licence or permit or any document issued in another jurisdiction that allows the person to operate a motor vehicle, if the peace officer took the licence, permit or document into possession,

- (b) a copy of the notice of driving prohibition,
- (c) a certificate of service, in the form established by the superintendent, showing that the notice of driving prohibition was personally served on the person subject to the driving prohibition,
- (d) a report, in the form established by the superintendent, sworn or solemnly affirmed by the peace officer, and
- (e) in the case of a driving prohibition resulting from the analysis of a sample of breath, information relating to the calibration of the approved screening device on the basis of which the notice of driving prohibition was served.

Here, the officer failed to forward the documents listed above.

Decision

As a result, 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 owner may directly to the location where the vehicle is impounded for the immediate release of her vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 22, 2012. The owner is responsible for any storage costs beyond that date.

Adjudicator s.15

cc: Geoffrey Simair by fax: [250] 385-4506

November 15, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did 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 Diguangco's evidence and your lawyer's submissions, I find there is one determinative issue before me.

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

After considering all of the evidence before me, I have found that in the circumstances of your case, the ASD demand was not valid, so you were not required to comply with it.

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

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

Decision

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

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

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

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

November 28, 2012

s.22

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

Introduction

On November 17, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

You applied on the grounds that: your 7-day or 30-day driving prohibition should be reduced because you did not have the required number of previous IRPs. However, this ground is not applicable to your situation because the Constable alleged on the Notice of Driving Prohibition that he was prohibiting you from driving for 90 days because a sample of your breath on an ASD registered a “FAIL” and your ability to drive was affected by alcohol.

Issues

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

Did the ASD register a fail?

In considering the investigating officer’s evidence, I note that the second ASD was past its calibration expiry date. Therefore, based on the evidence before me, I am not satisfied that the ASD registered a “FAIL.”

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

Decision

I am not satisfied that the ASD registered a “FAIL.”

I therefore revoke your driving prohibition, the monetary and other penalties you received, and the 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 November 28 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 21, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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, Angelica Rogers, noted that the officer did not submit a Certificate of Qualified ASD Calibrator. She 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.

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 November 21, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc: Angelica Rogers
604-687-3022

November 14, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

Records at this office indicate that you received the full disclosure.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

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

Decision

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

s.15

Adjudicator

cc: David Milburn
604-526-8056

November 21, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

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

You noted that the IRP legislation was found to infringe on the rights of individuals and that since that ruling no amendments have been made. You are wrong in that the law was amended earlier this year. My decision will be made with full consideration of the current legislation.

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.

I am not permitted to consider your driving record in this review. Even if I was, it is not relevant to the issues that I must consider.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

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

Did the ASD register a “FAIL”?

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

Were you advised of your right to a second analysis?

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

Was the second analysis provided by the officer?

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

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

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

Were the ASD results reliable?

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

Decision

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

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

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

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 November 21, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 23, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

Records at this office indicate that you received the full disclosure.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

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

Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 22, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 7, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

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

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

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

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

Did the ASD register a “FAIL”?

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

Were you advised of your right to a second analysis?

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

Was the second analysis provided by the officer?

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

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

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

Were the ASD results reliable?

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

Decision

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

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

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

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

s.15

Adjudicator

November 26, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

There is one issue that is determinative of my review.

Was the ASD reliable?

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

Decision

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

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

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.

November 28, 2012

s.22

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

Introduction

On November 17, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your legal counsel, Marco Lilliu. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

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

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

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

I am not satisfied that the ASDs are reliable.

Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 28, 2012, the date your vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc: Marco Lilliu
Fax: 866-517-7896

November 14, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

Records at this office indicate that you received the full disclosure.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

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

Decision

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

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. 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: Kyla Lee
604-685-8308

November 28, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

I acknowledge that losing your driver’s licence will adversely impact you; however, I have no authority under the Act to consider your driving record or 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"?
- Were you advised of your right to a second analysis?
- If requested, was the second analysis provided by the officer and performed using a different ASD?
- Was the result of the ASD reliable?
- Was the ASD "FAIL" a result of your BAC exceeding 80 mg%?
- Was the Notice served on the basis of the lower analysis result?

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

In her Occurrence Report, Officer Fontana indicates that on October 4, 2012 at approximately 0030 hours, she and Officer Gray observed you driving eastbound on Davie Street in Vancouver. The officers followed your vehicle onto Seymour Street and as it continued northbound, the officers pulled up beside your vehicle. You then made a right turn eastbound onto Nelson Street where the police initiated a traffic stop.

During the oral hearing you acknowledged driving.

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

Was the ASD result reliable?

The police evidence indicates that you provided two breath samples into two different ASDs which both resulted in a "FAIL". However, upon reviewing the evidence before me, I find I am not satisfied as to the reliability of the ASDs.

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 November 28, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

If you have already paid for the release of your vehicle, upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date your vehicle was eligible for release. 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 s.15

November 14, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

Records at this office indicate that you received the full disclosure.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

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

Decision

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

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. 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

November 14, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

Records at this office indicate that you received the full disclosure.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

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

Decision

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

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. 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

November 14, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

Records at this office indicate that you received the full disclosure.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

Having considered the 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.

Adjudicator

November 14, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP) No.

s.22

Introduction

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

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

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

Preliminary Matters

Records at this office indicate that you received the full disclosure.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

Having considered the Certificates of Qualified ASD Calibrator, I agree with counsel's submission and I find that the ASDs used were unreliable.

Decision

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

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. 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: Kyla Lee
604-685-8308

November 7, 2012

s.22

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

Introduction

On October 17, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

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

In his evidence, Officer Li indicates that on October 17, 2012 at approximately 2310 hours, he observed you driving on East 12th Street in Vancouver.

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.

Was the ASD result reliable?

The police evidence indicates that you provided two breath samples into two different ASDs which both resulted in a “FAIL”. However, upon reviewing the evidence before me, I find I am not satisfied as to the reliability of the ASDs.

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 November 7, 2012. You are responsible for

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

Adjudicator s.15

pc: James Hogan

November 14, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

Records at this office indicate that you received the full disclosure.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

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

Decision

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

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. Receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

December 10, 2012

s.22

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

s.22

Introduction

On October 20, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Your lawyer, Kyla Lee, provided a copy of *Spencer v. the Superintendent of Motor Vehicles* to confirm that I must not give more credibility to the police evidence over that of yourself. I accept that.

Issues

The following are the issues in this review:

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

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

The investigating officer noted that she saw you in care or control of a motor vehicle on Birch Street in Vancouver. Ms. Lee confirmed you were driving. 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?

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 noted that he noticed an odour of liquor on your breath and that you admitted drinking, although you refused to tell him when your last drink was. Your driving was erratic; the officer noted that you were swerving in your lane and you crossed the centre line. After being stopped, you had trouble winding down the window and locating your driver's licence before you realized that you did not have it. You then provided false information to the officer by identifying yourself as your friend, the owner of the vehicle. However, you quickly changed your mind and provided your proper name. He formed a reasonable suspicion that you had alcohol in your body and read you the ASD demand. The officer provided conflicting times regarding the time he made the demand: 03:45 hours in his report and 03:53 hours in the attached narrative.

Ms. Lee pointed out that there is no evidence as to when the officer formed his required suspicion other than that in the report, which recorded the time as 03:45 hours. Therefore, she argued, if the demand was made at 03:53 hours then an eight minute delay cannot be considered forthwith. She provided several criminal cases to support her position.

I find it more likely than not that the demand was made at 03:53 hours. I also find that the officer likely formed his reasonable suspicion after pulling you over and talking to you. However, given that I am unable to accept any time other than 03:45 hours as to when the officer formed his required suspicion, I agree that there was an unnecessary delay in making the demand. Therefore, I am not satisfied that an ASD demand existed.

Decision

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

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

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

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

s.15

Adjudicator

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

November 13, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

You applied two grounds, one of which is not applicable to your situation because of the reason for which you were prohibited. For your benefit, I have considered all the grounds available to you.

The issues I must consider are set out below.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

There is one issue that is determinative of my review.

Were the ASDs reliable?

The officer provided two Certificates of Qualified ASD Calibrator in which J. Schwenneker certified that he was a qualified ASD Calibrator. Mr. Schwenneker certified that the ASDs were found to be within recommended limits and to the best of his knowledge, were functioning properly.

However, ASD serial number 101481 had a calibration expiry date of October 23rd, 2012. Because the ASD was expired, I find the test result was unreliable. In turn, I am not satisfied that the Notice was served on the basis of the lower test analysis result.

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 November 13, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 26, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

At the outset of the oral hearing it was established that Brent Ellingson would represent you with this matter.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

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

In his evidence, Officer Barr reported that he responded to complaints called to the Surrey RCMP involving a single motor vehicle incident. Constable Barr reported that he attended the scene and observed you sitting in the driver’s seat of the vehicle pushing the accelerator.

I have reviewed the officer’s evidence and I find that he failed to provide a time of operating or care or control of a motor vehicle. As a result, I am not satisfied by the police evidence that you were a driver within the meaning of section 215.41(1) of the Act.

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

Decision

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

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

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

Additionally, the corresponding vehicle impoundment is also revoked. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 20, 2012. The owner is responsible for any storage costs beyond that date. If the vehicle is not

reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

cc: by fax: Brent Ellingson [604] 596-8813

November 7, 2012

s.22

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

Introduction

On October 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.

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 before me, I am not satisfied that the officer has provided sufficient evidence to support the allegations set out in your Immediate Roadside Prohibition.

Decision

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 7, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 2, 2012

s.22

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

Introduction

On October 14, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your 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, Jonathan Israels, received full disclosure of the documents before me. At the beginning of the oral hearing Mr. Israels acknowledged that he had received disclosure. I have proceeded with the review based on this confirmation.

Issues

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

Facts, Evidence and Analysis

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

In his evidence, Officer Butterworth indicates that on October 14, 2012 at 0700 hours, he observed you driving on Knight Street in Vancouver.

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.

Was the ASD result reliable?

The police evidence indicates that you provided a breath sample into an ASD with serial number 024940 at 0709 hours, which resulted in a “FAIL”.

Mr. Israel submits that I cannot be satisfied that the “FAIL” result was reliable because the Certificate of Qualified ASD Calibrator for this ASD indicates that its service expiry date was May 17, 2012.

I concur.

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

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

Decision

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

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

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

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

Adjudicator s.15

pc: Jonathan Israels via fax

November 7, 2012

s.22

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

Introduction

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

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

Your evidence is that you blew as hard as you could into the ASD 4 different times, but it was not registering anything. You feel that the ASD was not working. Based on your evidence, along with the evidence provided by police with respect to the ASD that was used in your case, I am not satisfied that the ASD was reliable.

I am satisfied that you did not fail or refused to comply with the ASD demand.

Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 7, 2012, the date your vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 29, 2012

s.22

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

Introduction

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

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

- you were a driver within the meaning of section 215.41(1);
- the 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, Kyla Lee. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

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

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

Facts, Evidence and Analysis

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

Was the second analysis performed on a different ASD?

In the Report to Superintendent, the officer provided evidence that the second analysis was performed on a different ASD than was used for the first analysis. In the Narrative, the officer provided evidence that the same ASD was used for both tests.

In your affidavit, you indicated that you are absolutely certain that you blew into the same ASD for each test.

Based on the evidence before me, I am not satisfied that the second analysis was performed on a different ASD.

Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 29, 2012, the date your vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 1, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

The officer provided two Certificates of a Qualified ASD calibrator (the "Certificates"). After reviewing the Certificates, I find the certificates were partially completed and signed prior to information on the specific device being filled in. I therefore cannot be satisfied as to the reliability of the ASDs.

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.

November 21, 2012

s.22

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

s.22

Introduction

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

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

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

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

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

Preliminary Matters

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

I acknowledge, from your submission, that you would like me to reduce the penalty of your prohibition. 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 on Columbia Street in New Westminster. You confirmed you were driving. I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Did the ASD register a “FAIL”?

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

Were you advised of your right to a second analysis?

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

Was the second analysis provided by the officer?

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

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

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

Were the ASD results reliable?

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

Decision

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

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

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

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

Adjudicator

November 20, 2012

s.22

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

s.22

Introduction

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

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

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

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

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

Preliminary Matters

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

Your lawyer, Jack Harris, questioned whether or not the narrative was a sworn document. Given that it was incorporated into the sworn report, I find that it was.

Issues

The following are the issues in this review:

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

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

A witness to an accident reported it to the police. The investigating officer attended the scene on Young Road in Chilliwack at 16:38 hours. When he arrived you were standing by the open driver-side door of a vehicle that had been severely damaged in the crash. You told him that you had been driving when someone, pulled out ahead of you.

While Mr. Harris questioned how the officer could pinpoint the time of your driving. I find that his investigation likely provided the exact time. Regardless, I do not need to ascertain the time of driving in this review. I must simply be satisfied that you were a driver within the meaning of section 215.41(1) of the Act, which I am.

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 noted an odour of liquor on your breath at 16:44 hours and asked you if you had consumed any liquor. In response, you grabbed a bottle of vodka and said that you had just drunk half of it five minutes earlier. The officer advised you that you were being detained for the purpose of an impaired investigation. However, he did not read the ASD demand until eleven minutes later. During that time he searched you and escorted you to a police vehicle.

An officer is obliged to read the demand as soon as practicable after he has formed a reasonable suspicion that a driver has alcohol in their body. In your case, I find there was an unnecessary delay of eleven minutes before the demand was read. It is clear from his narrative that the officer formed his suspicion at approximately 16:45 hours when he told you that you were being detained for the purpose of an impaired investigation.

I am not satisfied that the ASD demand was valid, so you were not required to comply with it.

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.

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: Jack Harris, QC
Fax: (604) 859-1375

November 6, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

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

In your written submission you stated that it is difficult to make a living without a vehicle and according to the *Canadian Charter of Rights and Freedoms* (Charter) you have a right to make a living. I acknowledge that losing your driver's licence will adversely impact you; however, I have no authority under the Act to consider your driving record, the hardship you will experience, personal circumstances, employment, or transportation needs, in the course of this review. In addition, I have no authority under the Act to consider whether or not being issued an IRP based on an ASD "FAIL" result, is a contravention of your *Charter* rights.

I have been delegated authority by the Superintendent to conduct this review under section 117 of the Act. The extent of my authority is outlined in the Introduction on page of this decision. I have conducted my review accordingly.

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

Decision

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

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

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

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including October 7, 2012, the date the vehicle was eligible for release. Receipts and invoices with proof of payment must be attached. The owner must also enclose a copy of this letter to ensure the correct charges are refunded.

Adjudicator s.15



November 5, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

The investigating officer noted that he saw you in care or control of a motor vehicle on South Sumas Road in Chilliwack. However, the evidence shows that you did not drive your vehicle beyond your driveway, which I do not consider to be a highway. Therefore, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Because of 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 October 7, 2012, which was the date that the vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

November 15, 2012

s.22

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

s.22

Introduction

On October 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 “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

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....

Because the officer made the demand while you were in the hospital rather than at roadside, I find that he did not comply with the section of the Act that governs this review.

Decision

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

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

s.15

Adjudicator

cc: Jason Mann
Fax: (604) 736-5522

November 1, 2012

s.22

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

Introduction

On October 20, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your 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 Mulligan. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

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

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

In the Report to Superintendent, the officer indicated that you provided a breath sample into an ASD which resulted in a “FAIL”. However, I find that I have not been provided with sufficient evidence with respect to the ASD used to be satisfied of the “FAIL” result.

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.

November 30, 2012

s.22

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

Introduction

On November 11, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your 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, Cory Armour, 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 you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

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

In her evidence, Officer Ellis indicates that on November 11, 2012 at 0251 hours, she observed you driving on Richter Street in Kelowna.

In your written statement 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.

In her evidence, Officer Ellis indicates that you had a strong odour of liquor on your breath, you had bloodshot eyes, and you swayed when you stood. At 0251 hours, Officer Ellis formed the suspicion that you had alcohol in your body and arrested you for impaired driving. At 0258 hours, Officer Ellis made an ASD demand on you.

Mr. Armour submits that Officer Ellis did not make the ASD demand forthwith, pursuant to section 254 of the *Criminal Code* and had no valid reason for the delay. Consequently, the demand is unlawful and your driving prohibition should be revoked.

I concur.

Based on the evidence, I am not satisfied that the ASD demand was made pursuant to section 254 of the *Criminal Code*.

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 November 11, 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 November 30, 2012. 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: Cory Armour via fax

November 15, 2012

s.22

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

s.22

Introduction

On October 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 your lawyer, Sukk, at the Nordel Law Group. I have proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

In the Report to Superintendent, the officer indicated that you provided breath samples into two different ASDs, both of which resulted in a “FAIL”. However, I find that I have not been provided with sufficient evidence with respect to the ASDs used to be satisfied of the “FAIL” results.

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 November 15, 2012, the date your vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

November 15, 2012

s.22

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

s.22

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

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

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

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

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

Preliminary Matters

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

You applied for this review on all 13 grounds, five of which are not applicable to your situation because of the reason for which you were prohibited. For your benefit, I have considered all the grounds available to you.

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

Was the ASD reliable?

The officer provided two Certificates of a Qualified ASD calibrator (the "Certificates"). After reviewing the Certificates, I find the certificates were partially completed and signed prior to information on the specific device being filled in. I therefore cannot be satisfied as to the reliability of the ASDs.

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 vehicle impoundment associated with this IRP is also revoked. The owner of the vehicle will be notified in a separate letter.

November 8, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

Records at this office confirm that 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 you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

Facts, Evidence and Analysis

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

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

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

Having carefully considered the evidence before me, I do not find that the officer had the requisite grounds to make the ASD demand. Consequently, I cannot find that you failed or refused to comply with that demand.

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

Decision

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

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 November 8, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

November 16, 2012

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

At the beginning of the hearing your lawyer, Gurminder Gobindpuri confirmed that he 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:

Did you have a reasonable excuse?

Based on the medical evidence you presented at your hearing and the evidence you stated that you provided to the officer at the time of the incident, I am satisfied that you had a reasonable excuse for failing or refuse to comply with the ASD demand.

Decision

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

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

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

The corresponding vehicle impoundment is also revoked. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 15, 2012. The owner is responsible for any storage costs beyond that date. If the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc: Gurminder Gobindpuri
Fax: 604-859-5544

November 19, 2012

s.22

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

s.22

Introduction

On November 2, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records at this office indicate that disclosure documents were provided to your lawyer, Jeffrey Arndt. It was noted that no Certificate of Qualified ASD Calibrator was before me, and you did not receive one. I have proceeded with the hearing based on this confirmation.

The issues I must consider are set out below.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

There is one issue that is determinative of my review.

Were the ASDs reliable?

Having considered the evidence before me, I am not satisfied that the ASDs used in your case 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 November 20, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc. Jeffrey Arndt
250.746.1511

NOVEMBER 22, 2012

s.22

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

Introduction

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

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

- you were a driver within the meaning of section 215.41(1);
- 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

You applied for this review by checking all of the grounds set out on the application form. Some of these grounds do not apply to your situation because of the reason you were prohibited from driving. I will consider all the grounds that apply to your prohibition in this review.

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Paul Evans. 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 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

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

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

Based on all the evidence before me, I am not satisfied that you failed or refused 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.

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 November 22, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



November 21, 2012

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* (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.

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 are driver within the meaning of section 215.41(1) of the *Act*?

In her Report to Superintendent (RTS), Cst Winkels indicated that on November 25, 2011, at 0330 hours she observed you driving and there were no other persons in the vehicle. You do not dispute this. In your Affidavit you admit to driving.

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

Did the ASD register a “fail”?

The Approved Screening Device (ASD), section of the RTS, indicates that the ASD used to test your breath sample had a calibration expiry date of November 20, 2011. The calibration of the ASD expired four days prior to the date it was relied on to test your blood alcohol concentration. Therefore, I am not convinced that this ASD was operating correctly. Based on the evidence before me, I am not satisfied that the ASD registered a “fail”.

Decision

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

Records indicate that your vehicle was impounded and has since been released. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including 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. You may send your invoice to the Superintendent of Motor Vehicles at the address noted below.

s.15

Adjudicator

cc: Sarah Leamon via fax 604-685-8308