



March 8, 2013

s.22

Driver's Licence s.22

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

Introduction

On November 25, 2011 a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* requires me to confirm your prohibition if I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*, and that the approved screening device (ASD) registered a "fail".

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

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

Preliminary Matters

Records at this office indicate that document disclosure was provided to you prior to your scheduled oral hearing. I have confirmed that your lawyer has received the disclosure documents at the outset of this hearing.

Your lawyer submits that the "IRP" legislation infringes on the Charter insofar as it concerns the prohibition, penalty and costs arising from a screening device registering a fail reading over .08. He submits that the suspension should be treated as a nullity.

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

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

Issues

There are two issues in this review:

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

Facts, Evidence and Analysis

Did the ASD register a "fail"?

The RTS indicates that the officer detected a strong odor of alcohol and that you admitted to consuming two glasses of white wine. The RTS indicates that you provided a breath sample into an ASD and "failed" the test. The RTS indicates that you were informed of your right to a second test, but you did not request a second test. The RTS indicates that there was a delay of 15 minutes in administering the test because an ASD had to be delivered to the scene.

Your lawyer submits that there is no ASD type indicated within the RTS and therefore there is no way to know whether the device used by the officer is a device that is approved for use under the *Motor Vehicle Act*. I agree.

Based on the evidence before me, I am satisfied that an ASD did not register a "fail" on November 25, 2011 at 21:10 hours.

Decision

Based on the evidence before me, I am not satisfied that an ASD registered a "fail" on November 26, 2011. I therefore revoke your driving prohibition, as required by s. 215.5(4)(c)(1) of the *Act*.

Records indicate that your vehicle was impounded and has since been released. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 16, 2011, the date the vehicle was eligible for release.

Original receipts and invoices with proof of payment must be submitted for reimbursement. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.



s.15

Adjudicator

cc: J. Brian Jackson, Lawyer, via fax 604-682-7750

March 5, 2013

s.22

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

Introduction

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

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) 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.

Preliminary Matters

Records at this office indicate that disclosure documents were provided to your lawyer, Oliver Butterfield. I have proceeded with my review based on this confirmation.

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

In find there is one issue that is determinative of my decision in this review.

Did you have a reasonable excuse?

Based on the evidence before me, I am not satisfied that the investigating officer used a correctly functioning Approved Screening Device when he administered the tests. You stated that you followed the instructions of the officer and attempted to provide a sample to the best of your ability. The officer has not indicated if the device he used was an Approved Screening Device as required under the Act, and he has not provided sufficient evidence that, if it was an Approved Screening Device under the Act, it was correctly functioning.

In summary, based on the evidence before me, I am not satisfied that you failed or refused to provide a sample without a reasonable excuse.

Decision

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

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



March 8, 2013

s.22

Driver's Licence s.22

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

Introduction

On November 23, 2011 a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* requires me to confirm your prohibition if I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*, and that the approved screening device (ASD) registered a "fail".

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

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

Preliminary Matters

Records at this office indicate that document disclosure was provided to you prior to your scheduled oral hearing. At the beginning of this hearing disclosure of documents was confirmed.

Your lawyer, Mr. Westell, has requested any/ all certificates related to the calibration of the approved screening devices (ASD) used in this matter. He also submits the importance of evidence being sworn and points out that your evidence is sworn but the police evidence is not sworn. He submits that I should consider this with respect to credibility. He also asks that I consider the spirit of the *Sivia* decision in that there needs to be a meaningful review process where a driver can challenge the results of the screening device. He submits that in the absence of ASD certification documents, I should not be satisfied that an ASD is reliable.

With respect to your lawyers request for certificates, and his submission regarding sworn documents, there was no requirement for the officer to swear documents under the legislation that was valid at the time the prohibition was issued to you. Further to this issue, section 215.47(d) of the *Motor Vehicle Act* states that a police officer who serves a Notice of Driving Prohibition must promptly forward to the Superintendent a report in the form established by the Superintendent. The Report established by the Superintendent, at the time this prohibition was served on you, did not contain a section for the officer to swear or affirm. Similarly, documents affirming the calibration of ASD(s) did not exist at the time this prohibition was served on you. Consequently, I do not consider the Report to carry less weight or no weight.

With respect to your lawyers request that I consider the spirit of *Sivia v. British Columbia (Superintendent of Motor Vehicles)* 2012 BCSC 1030 and not be satisfied that an ASD is reliable, I must follow the legislation that was valid at the time the prohibition was issued to you. The court in *Sivia* found that the declaration of unconstitutionality should apply prospectively, and did not say that any prohibitions should be cancelled. The Court said that in the cases before it, the legislation was valid at the time the prohibition was issued and so the driver was responsible for the consequences. Your prohibition was served on November 23; 2011 therefore; the legislation was valid at the time the prohibition was issued to you. I do not have any authority to revoke or cancel a valid IRP except as provided in the statute.

Issues

There are two issues in this review:

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

Facts, Evidence and Analysis

Did the ASD register a "fail"?

After carefully considering the evidence before me, I am not satisfied that the ASD registered a fail.

As I have made this determination, there is no need to address the remaining issue.

Decision

Based on the evidence before me, I am not satisfied that an ASD registered a "fail" on November 23, 2011. I therefore revoke your driving prohibition, as required by s. 215.5(4)(c)(1) of the *Act*.

Records indicate that your vehicle was impounded and has since been released. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including December 16, 2011, the date the vehicle was eligible for release.

Original receipts and invoices with proof of payment must be submitted for reimbursement. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

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Adjudicator

cc: KEVIN B WESTELL, Lawyer, via fax 604-909-5174

March 22, 2013

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On June 17, 2011, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the "Act") requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act and that the approved screening device ("ASD") registered a warn or a fail.

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

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

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

Preliminary Matters

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

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

Did the ASD register a fail?

Based on the totality of the evidence before me, I am satisfied that an ASD did not register a fail on June 17, 2011, at 03:18 hours.

Decision

I am not satisfied that the ASD registered a fail on June 17, 2011, at 03:18 hours.

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

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. Original receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you. You may send your receipts and invoices to the address on page one of this letter.

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Adjudicator

cc: Paul Pearson, Mulligan Tam Pearson
Fax: 250-480-0004



Amendment

March 13, 2013

s.22

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

Introduction

On November 26, 2011, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the Act) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act and that the approved screening device (ASD) registered a warn or a fail.

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

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

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

Preliminary Matters

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

Your prohibition was served on November 26, 2011. You applied to the Superintendent for a review of that prohibition and the Superintendent extended the time for rendering a decision and stayed your driving prohibition until the conclusion of the *Sivia* case. The extension was necessary, in order to wait for the court's final decision. As the *Sivia* case is now concluded, the Superintendent is proceeding with completing your review.

IRP Review Decision
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Issues

There are two issues in this review:

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

Facts, Evidence and Analysis

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

Did the ASD register a "fail"?

In part four of the Report, Constable Macdonald recorded the Service Expiry as "2012-11-14" and in his attached Narrative he recorded the Service Expiry Date as "12-10-12". Consequently, there is no way to reconcile whether the ASD was expired.

Based on the evidence before me, I am not satisfied that an ASD registered a "fail" on November 26, 2011, at 1205 hours.

Decision

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

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

Adjudicator

cc. Kyla Lee
604-685-8308 (fax)



March 14, 2013

s.22

REVIEW DECISION Administrative Driving Prohibition (ADP) No. s.22

Introduction

On March 4, 2013, 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 94.6 of the *Motor Vehicle Act* requires me to confirm your prohibition if I am satisfied on a balance of probabilities

- that you consumed alcohol before or while you were operating or had care or control of a motor vehicle, and
- that alcohol consumption caused your blood alcohol concentration ("BAC") to exceed 80 milligrams of alcohol per 100 millilitres of your blood ("80 mg%") within 3 hours after operating or having care or control of the motor vehicle.

I must revoke your driving prohibition if I am satisfied that you did not have a BAC of over 80 mg% within 3 hours of operating or having care or control of a motor vehicle because of alcohol consumed before or while operating or having care or control of the motor vehicle.

Preliminary Issues

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

Issues

There are 3 issues in this review:

1. Did you operate or have care or control of a motor vehicle?
2. Did your BAC exceed 80 mg% within 3 hours of operating or having care or control of a motor vehicle?
3. If so, was your BAC due to alcohol you consumed before or while operating or having care or control of the motor vehicle?

IRP Review Decision
Page 2

Having reviewed the evidence of the officer and the submissions from your lawyer, I find there is one issue that is determinative of this review.

Did your BAC exceed 80 mg% within 3 hours of operating or having care or control of a motor vehicle?

In the grid on page two of the Report to Superintendent (the Report) the constable provided evidence that two of your BAC results under the heading "Result /Blood Alcohol Concentration" registered "210". Further, under the heading, "Time/Date of Demand(s)" the officer recorded 410 and 424. I find these times more likely than not represent the time of the result. However, as Mr. Loewen has pointed out the officer has failed to forward a copy of the Certificate of Qualified Technician; therefore, I cannot be certain. As such, I am unable to determine whether your BAC exceeded 80mg% within three hours of operating or having care or control of a motor vehicle.

Based on the evidence before me, I am not satisfied that your BAC exceeded 80 mg% within three hours after operating or having care or control of a motor vehicle.

Decision

I am satisfied that you did not have a BAC of over 80 mg% within three hours of operating or having care or control of a motor vehicle, because of alcohol consumed before or while operating or having care or control of the motor vehicle.

Your prohibition is revoked. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia. A refund of your review fee has been authorized and will be sent in approximately six to eight weeks. However, the refund may be used to offset any outstanding fines or debts owed to the Province of British Columbia.

Adjudicator s.15

cc: Brian Loewen
by fax [250] 542-4119



MARCH 27, 2013

s.22

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

Introduction

On March 9, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

IRP Review Decision
Page 2

- 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 submissions of Constable Holmes and your lawyer, I find there is one determinative issue in this review.

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

In the Report to Superintendent, Constable Holmes stated that you were driving or in care or control of the vehicle on March 9, 2013, at 0343 hours. In the Narrative Text Hardcopy, the officer said that at 0343 hours, you exited a store and spoke to him. Given the inconsistencies in the officer's evidence, I am not satisfied on a balance of probabilities that you were a driver within the meaning of section 215.41(1) of the Act. Having made this finding, I do not need to consider any other issues.

Decision

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 27, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc. Stephen Suntok
250-385-4506 (fax)



March 7, 2013

s.22

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

Introduction

On February 21, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

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

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 further acknowledge your attendance to counseling but note that this has no bearing on the issues that I must decide.

Issues

I will go directly to the relevant issue:

- Was the ASD reliable?

Facts, Evidence and Analysis

Were the ASDs reliable?

I must have evidence that both ASDs used were reliable. The officer has failed to provide any information on ASD #101606 regarding the calibration and service expiry dates. Therefore, I am not satisfied that the ASD used in the second test 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 March 7, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



March 28, 2013

s.22

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

Introduction

On March 13, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your 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.

Issues

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

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

In reviewing the police evidence, I find that Officer Olson has failed to provide evidence sufficient to establish that you were advised of your right to request a second breath test.

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

Decision

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

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

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

If the owner has not already done so, they may go directly to the location where the vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 28, 2013. The owner is responsible for any storage costs beyond that date. The owner should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

March 7, 2013

s.22

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

Introduction

On February 24, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

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 "WARN". The officer recorded the second test was done on ASD number 101189; however, he failed to provide a certificate for this ASD. Consequently, I am not satisfied that the ASD was reliable.

Decision

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

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

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

Adjudicator s.15

cc: Kevin Schechter by fax: [250] 344-7374



March 25, 2013

s.22

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

Introduction

On March 4, 2013, 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, 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 (ASD), 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.

Preliminary Matters

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

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?

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

Facts, Evidence and Analysis

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

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

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

Decision

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

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

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

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

s.15

s.15

Adjudicator

cc: Jeffrey Green
250-361-9181



MARCH 5, 2013

s.22

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

Introduction

On February 17, 2013, a peace officer served you with a Notice of Driving Prohibition (Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

You applied on the ground that you did not refuse or fail to comply with the officer’s demand to provide a breath sample; however, that ground is not applicable to your situation because the officer alleged that a sample of your breath on an ASD registered a “fail” result and your ability to drive was affected by alcohol. Therefore, I have conducted this review with all of the grounds that were applicable to your situation, in mind.

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

IRP Review
Page 2

Issues

The following are the issues in this review:

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

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

Facts, Evidence and Analysis

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

I have carefully reviewed the evidence submitted by Constable Hobbs and your submission, and the submissions of s.22 with respect to this issue.

Based on the evidence before me, I am satisfied that you were not a driver within the meaning of section 215.41, of the *Motor Vehicle Act*, on the date and time as reported by the officer.

Having made that finding, I do not need to consider anything further.

Decision

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

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

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

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 March 5, 2013, the date you were notified that your vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.22

IRP Review
Page 3

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.

s.15

Adjudicator



March 12, 2013

s.22

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

Introduction

On December 23, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your 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, Jeremy Carr. I have proceeded with the hearing based on this confirmation.

Issues

The following are the issues in this review:

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

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

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

Having reviewed the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on December 23, 2012, at 03:27 hours, as the investigating officer reported.

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

Decision

I therefore revoke your driving prohibition and monetary penalty as required by s. 215.5(4) of the Act. As a result, the prohibition has been removed from your driving record and you may resume driving once you have obtained a driver's licence.

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

Adjudicator

cc. Jeremy Carr
fax: 604.687.8996



March 4, 2013

s.22

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

Introduction

On February 11, 2013, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

IRP Review Decision
Page 2

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

In the Report to Superintendent (the "RTS"), the officer indicated that you provided breath samples into ASDs with serial numbers 101613 and 069352. The officer provided Certificates of Qualified ASD Calibrator (the "Certificates") for both ASDs. Mr. Harris drew my attention to the expiry date of the Airgas dry gas alcohol standard used to check the calibration of ASD 101613, noting that it was dated "2012-12-06". He stated since an expired standard was used it is not possible to conclude that ASD 101613 was properly serviced or calibrated at the time of your test, and I concur. Accordingly, I cannot be satisfied that the first ASD was reliable.

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

Decision

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

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

The vehicle impoundment is also revoked. The registered owner of the vehicle will be notified in a separate letter.



MARCH 27, 2013

s.22

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

Introduction

On March 9, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

After considering the submissions of Constable Segers and your lawyer, I find there is one determinative issue in this review.

Did the ASD register a “WARN”?

In the Notice, Constable Segers checked a box indicating that you were served with a 30 days WARN prohibition. The Notice states you received this because a sample of your breath on an ASD registered WARN, your ability to drive was affected by alcohol, and this is your third or subsequent prohibition due to a WARN reading within a five year period. I find the officer did not provide sufficient evidence to support the prohibition you received.

I am satisfied that the ASD did not register a “WARN”. 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 March 27, 2013. You are responsible for any

s.22

IRP Review Decision
Page 3

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. Melissa Klages
250-837-7194



March 7, 2013

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Did you have a reasonable excuse?

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

Decision

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

s.15



s.15

Adjudicator

cc: Joseph Saulnier
604-687-6298



March 14, 2013

s.22

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

Introduction

On January 27, 2013, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records indicate that you received full disclosure.

Issues

The following are the issues in this review:

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

IRP Review Decision

Page 2

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

Facts, Evidence and Analysis

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

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

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

Decision

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

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

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

Records show that your vehicle was impounded 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: Emil Doricic
604-688-8356



March 28, 2013

s.22

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

Introduction

On March 9, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

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

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.

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.

You may go directly to the location where the vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 28, 2013, the date the vehicle was eligible for release. You are responsible for any storage costs beyond that date, and 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.



March 19, 2013

s.22

Driver's Licence s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On March 01, 2013, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Your lawyer submits that the Border Service Officer that made the demand for a breath sample is not a peace officer under the *Motor Vehicle Act* and therefore the prohibition should be revoked.

Section 215.41(3.1) of the Act states that: 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

I agree that the Border Services Officer is not a "peace officer" under the *MVA*. Consequently your Immediate Roadside Prohibition is revoked and will be removed from your driving record.

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 March 19, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

s.15

Adjudicator

cc: Olivia Nowland, Articled Student, via fax 604-637-1617



MARCH 27, 2013

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

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

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

Preliminary Matters

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

IRP Review Decision
Page 2

- 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 Perkins 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 all the evidence before me, I am not satisfied that there is sufficient evidence to establish a reliable date and time of driving. Accordingly, I am satisfied that you were not a driver within the meaning of section 215.41(1) of the Act.

Having made this finding, I do not need to consider any 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 March 27, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

March 14, 2013

s.22

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

Introduction

On January 12, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

- you were a driver within the meaning of section 215.41(1);
- the 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. For your benefit, I will consider all grounds that apply in your case.

RP Review Decision
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Records at this office confirm that full disclosure of the documents before me was provided to you at the time you applied for this review. Additionally, our records show that disclosure was faxed to your lawyer, Jennifer Currie.

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

Was the ASD reliable?

In the Report to Superintendent (the "Report"), the officer indicated that you provided breath samples into ASDs with serial numbers 100970 and 100969. The officer provided Certificates of Qualified ASD Calibrator (the "Certificates") for both ASDs. Ms. Currie drew my attention to the expiry date of the Airgas dry gas alcohol standard used to check the calibration of ASD 100969, noting that it was dated "2012-12-06". She stated that according to attached expert report by Nizar Shajani, a dry gas Alcohol Standard has to be used before the expiry period, and I concur. Accordingly, I cannot be satisfied that the first ASD was reliable.

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

Decision

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

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

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

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 March 14, 2013, the date you were notified that your vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

IRP Review Decision
Page 3

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.

Adjudicator s.15

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



MARCH 27, 2013

s.22

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

Introduction

On March 9, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

A Report to Superintendent (the “RTS”), was submitted by Constable Hoard as evidence to support the IRP. I note, however, that the RTS was not properly sworn or solemnly affirmed by the officer, as required by section 215.47(d) of the Act. As a result, I am not authorized to consider the evidence in the RTS and I have no jurisdiction to proceed with this review.

Decision

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

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

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



March 20, 2013

s.22

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

Introduction

On March 2, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Mr. Cranston stated that it has come to his attention that adjudicators who hear and review all IRP appeals do not use their real names when signing off on the appeals. He stated that this practice can no longer continue if it is in fact true, as you have a right to know the name of the adjudicator so that an accurate record of proceedings can exist for any subsequent legal

IRP Review Decision
Page 2

proceedings. Mr. Cranston stated that you request that the adjudicator in your case use his or her real name when signing off on your review.

I acknowledge Mr. Cranston's submissions; however, I must advise that any concerns you or he have in this regard must be made separately in writing to the attention of the Superintendent of Motor Vehicles.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

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

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.

Decision

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

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

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

Adjudicator

cc: Greg Cranston
Fax: 604-205-9455

March 20, 2013

s.22

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

Introduction

On February 27, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

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

IRP Review Decision
Page 2

- 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?

After considering the evidence on this issue, I find your evidence equally compelling as the police evidence.

Based on the evidence, 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

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 or someone you authorize may go directly to the location where your vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 20, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

pc: Claire Hatcher via fax



MARCH 27, 2013

s.22

RECONSIDERATION

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 (Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

In light of new information received on your file, the Superintendent of Motor Vehicles has decided to reopen your case and reconsider the review.

IRP Review
Page 2

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the *Motor Vehicle 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 there is one issue that is determinative in this review, I will only address that issue.

Were the ASDs reliable?

Having carefully considered the evidence before me, I am not satisfied that the ASDs used to conduct your breath tests 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 *Motor Vehicle Act*.

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

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

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter how to claim reimbursement of the towing and storage costs.

Adjudicator

cc: Jonathan Israels
(604) 488-1413



March 20, 2013

s.22

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

Introduction

On February 27, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

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 carefully considered all of the evidence before me, I am satisfied that the ASD was not reliable.

Decision

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

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

Please note that a separate letter has been sent advising the registered owner that the impounded vehicle is eligible for release.

s.15

Adjudicator

cc: Claire Hatcher
Fax: 604-687-3022



March 15, 2013

s.22

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

Introduction

On January 9, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

During the hearing Ms. Leamon referred to the *Spencer* decision and asserts that:

- Police are not deemed to have a credibility advantage and the case must be determined impartially on the evidence.
- The evidence is not to be unfairly parsed to create standards that are unknown to and unknowable by you.

IRP Review Decision
Page 2

- Such parsing as takes place, recognizes the deficiencies or gaps in the police record as well as those in your evidence.
- If there is insufficient evidence to decide the case, it must be resolved in favour of you, in line with the proper allocation of the burden of proof and the concept of a balance of probabilities.

I concur and have proceeded with the review on this basis.

Ms. Leamon also submits that ASD test results cannot legally be admitted or relied upon by the Superintendent to impose an IRP. Ms. Leamon asserts that to prohibit you by using an ASD is a violation of your constitutional rights that have been granted under the *Canadian Charter of Rights and Freedoms (Charter)*; consequently, your prohibition should be revoked. Ms. Leamon provided the following court decision in support of her submissions:

Regina v. Brigitte Schultz [2009] BCSC 1521

Ms. Leamon contends that the essence of this decision is that the courts have held that the results of roadside screening devices are not to be utilized as evidence to incriminate drivers. This is because without the right to counsel, the ASD can only be used as an investigative tool to confirm or reject the police officer's suspicion that a driver might be impaired. That is, evidence obtained from roadside screening devices should be limited to determining whether there existed a proper basis to make a demand for a breath sample under the provisions of the *Criminal Code*.

While I appreciate Ms. Leamon's submissions, 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. Ms. Leamon is aware that this matter was brought before the Supreme Court of BC in 2011 and the decision resulted in amendments to the *Act* that were proclaimed on June 15, 2012. Your prohibition was issued under this new legislation.

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 one of this decision. I have conducted my review accordingly.

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

Facts, Evidence and Analysis

Were the ASDs reliable?

Ms. Leamon submits that Officer Alviz has failed to provide evidence sufficient to establish that the ASDs used in your case were reliable on January 9, 2013.

I concur.

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 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.

Our records indicate that the vehicle you were driving has already been released from impoundment. Upon receipt of the owner's proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date the vehicle was released. Original receipts and invoices with proof of payment must be attached. The owner may send her receipts and invoices to the address on page one of this letter. She will be advised of this under separate letter.

Adjudicator s.15

pc: Sarah Leamon via fax



March 6, 2013

s.22

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

Introduction

On February 14, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Facts, Evidence and Analysis

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

IRP Review Decision
Page 2

Was the ASD reliable?

The officer did not provide a Certificate of a Qualified ASD Calibrator in relation to ASD number 101684, which he reportedly used for the ASD test.

Since I do not have a Certificate of a Qualified ASD Calibrator for the ASD used for your ASD test, I cannot be satisfied that the ASD used in your case was correctly calibrated and reliable.

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

Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 6, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle. 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

cc. Jaspreet Malik
fax: 604.543.9112



MARCH 21, 2013

s.22

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

Introduction

On March 1, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “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 and your lawyer, Sarah Leamon. I proceeded with this review based on that confirmation.

Issues

The following are the issues in this review:

IRP Review Decision
Page 2

- 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 reviewed the evidence of Constable Johnson 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 am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act. Having made this finding, I do not need to consider any other issues.

Decision

As a result of my findings, I revoke your driving prohibition and monetary penalty, 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.

Adjudicator

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



March 26, 2013

s.22

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

Introduction

On March 17, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Mr. Harris directed my attention to the jurat in the Report to Superintendent (the “Report”), where the commissioner did not provide a signature. He referred to the case of *Murray v. Superintendent of Motor Vehicles*, where the judge held that an Adjudicator has no jurisdiction to proceed with a review hearing if there is no sworn or solemnly affirmed Report.

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As the Report has not been signed by the commissioner, I find that I have no jurisdiction to proceed with the 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.

You may go directly to the location where the vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 26, 2013, the date the vehicle was eligible for release. You are responsible for any storage costs beyond that date, and 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: Jack Harris
Fax: 604-859-1375



March 14, 2013

s.22

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

Introduction

On February 23, 2013, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records indicate that you received full disclosure.

Issues

The following are the issues in this review:

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

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

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

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

Decision

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

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

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

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 March 14, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



MARCH 26, 2013

s.22

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

Introduction

On March 9, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

Having reviewed the evidence of Constable Samra 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?

In the Report to Superintendent (the “RTS”), Constable Hoard indicated that he witnessed you driving or in care or control of the vehicle on March 9, 2013, at 0350 hours.

Based on all the evidence before me, I am satisfied on a balance of probabilities that you were not a driver within the meaning of section 215.41(1) of the Act. Having made this finding, I do not need to consider any other issues.

Decision

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

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

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

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



March 14, 2013

s.22

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

Introduction

On February 22, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

At the beginning of the oral hearing I confirmed with your lawyer, Kyla Lee, 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 Stefani's and Constable Chow'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, I cannot be satisfied that the ASD demand was 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. 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 March 14, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

MARCH 12, 2013

s.22

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

Introduction

On March 2, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

In the Report to Superintendent (the "Report"), the officer indicated that you provided breath samples into ASDs with serial numbers 101951 and 040220. The officer provided Certificates of Qualified ASD Calibrator (the "Certificates") for both ASDs. I note that the ASD Calibration Expiry Date of the ASD # 101951, is dated "2013-01-11". Accordingly, I cannot be satisfied that the ASD was reliable.

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

Decision

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

Adjudicator s.15

cc Sarah Leamon by fax [604] 685 8308



March 21, 2013

s.22

Driver's Licence s.22

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

Introduction

On March 9, 2013, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* ("MVA") 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 MVA 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 faxed to your lawyer on March 13, 2013. I have proceeded with the review based on this confirmation.

In your application for review, you checked all boxes under “Grounds for Review”; however, since your IRP was served on the basis of an ASD “fail” result, many of the grounds you selected are not applicable. I have proceeded with the review considering all the grounds that are applicable to your situation.

Issues

The following are the issues in this review:

- Was the ASD reliable?
- Were you a driver within the meaning of section 215.41(1) of the *MVA*?
- 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?

Facts, Evidence and Analysis

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

Was the ASD reliable?

Based on all the evidence before me, I am not satisfied that the ASD was reliable. Given 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 March 21, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

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.

s.15



s.15

Adjudicator

cc: SUKHBINDER S NUNRHA, Lawyer via fax 604-594-8280



March 5, 2013

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

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

The investigating officer reported that you were driving or in care or control of a vehicle in a parking garage. You indicated the parking lot was for your apartment, and the evidence indicates the parking lot is located where you reside. You included photos that indicate an incident which involved another vehicle occurred while in the parking lot.

Under the Act, "driver" includes a person having the care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle is in motion.

Under the Act, a "highway" includes:

...

(b) every road, street, lane or right of way designed or intended for or used by the general public for the passage of vehicles, and

(c) every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited

I am not satisfied that your apartment parking lot is a highway under the Act.

Having reviewed the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on February 15, 2013, at hours, as the investigating officer reported.

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

Decision

I therefore revoke your driving prohibition and monetary penalty as required by s. 215.5(4) of the Act. As a result, the prohibition has been removed from your driving record and you may resume driving once you have obtained a driver's licence.

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

s.22

IRP Review Decision
Page 3

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 6, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator



March 7, 2013

s.22

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

Introduction

On February 16, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

Was the second analysis provided by the officer?

In the Narrative the officer reported that he provided a second analysis. In the RTS, the officer reported that you provided a second sample for analysis at 04:06 hours.

The officer reported that in administering the first test you failed to provide a sample with 3 “No Go” and 1 “VOID”. I note that the Superintendent’s Report on Approved Screening Devices (ASDs) (the “Superintendent’s Report”) states:

“The Alco Sensor IV DWF will display a “NOGO” when there is an interruption to the airflow before the person has blown the minimum 1.2 litres of air. The “NOGO” display is an alert to the ASD operator to indicate that airflow has been interrupted. This occurs when the person blowing into the ASD blocks the airflow into the device, or stops blowing, after initially providing some airflow. After 3 attempts or after 1 minute, the word “VOID” will be displayed. Once a “VOID” occurs, the mouthpiece has to be ejected and reinserted for the ASD to reset.”

Ms. Lee provided an RCMP Memorandum, the subject of which is “Proper Operation of the Approved Screening Device”. The information in this document is consistent with the Superintendent’s Report on this point.

This evidence indicates that the sequence of 3 NoGo’s followed by a VOID as the officer reported for the first ASD could not have happened on a correctly functioning ASD or properly administered test. I agree with Ms. Lee that the first test was not reliable. This means in turn, the second test was effectively the first reliable test, and that in turn you were not given a second test.

Decision

I therefore revoke your driving prohibition and monetary penalty as required by s. 215.5(4) of the Act. As a result, the prohibition has been removed from your driving record and you may resume driving once you have obtained a driver’s licence.

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

s.22

IRP Review Decision
Page 3

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 7, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc. Kyla Lee
fax: 604.685.8308

March 28, 2013

s.22

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

Introduction

On March 8, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

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

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

Facts, Evidence and Analysis

Was the ASD reliable?

Mr. Coumont submits that Officer McConaghy has failed to provide evidence sufficient to establish that the ASD used in your case was reliable on March 8, 2013.

I concur.

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 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.

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 March 28, 2013. You are responsible for any storage costs beyond that date. You should know that if this vehicle is not retrieved within 30 days of the expiry of the impoundment, the impound lot may take steps to dispose of the vehicle.

Adjudicator s.15

pc: Ronald Coumont via fax



March 15, 2013

s.22

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

Introduction

On February 25, 2013, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

I note that the Report to Superintendent has not been sworn or solemnly affirmed. As such, I find that I have no jurisdiction to proceed given that the statutory evidentiary requirements of section 215.47 are not met.

Decision

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

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

s.22

IRP Review Decision
Page 2

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

Please also note that the vehicle impoundment has been revoked. A letter has also been sent to the registered owner.

s.15

Adjudicator

cc: Sukhbinder Nunnha
Fax: 604-594-8280



March 22, 2013

s.22

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

Introduction

On March 4, 2013, 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, 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 (ASD), 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.

Preliminary Matters

I note that the Report to Superintendent has not been sworn. As such I find that I have no jurisdiction to proceed given the statutory evidentiary requirements of section 215.47 are not met.

IRP Review Decision
Page 2

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.

s.15



s.15

Adjudicator

cc: Lolita Rudovica
604-581-2017



MARCH 28, 2013

s.22

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

Introduction

On March 16, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records at this office 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

Having reviewed the evidence of the investigating officer, and Ms. Lee's submissions, I find there is one determinative issue in this review.

A Report to Superintendent (the "RTS"), was submitted by the officer as evidence to support the IRP. I note, however, that the RTS was not properly sworn or solemnly affirmed by the officer, as required by section 215.47(d) of the Act. As a result, I am not authorized to consider the evidence in the RTS and I have no jurisdiction to proceed with this review.

Decision

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

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

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 March 28, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

s.15

Adjudicator

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



March 13, 2013

s.22

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

Introduction

On March 2, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

I note that the Report to Superintendent has not been sworn. As such I find that I have no jurisdiction to precede given the statutory evidentiary requirements of section 215.47 are not met.

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 not already done so, the owner may go 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 March 13, 2013. The owner is responsible for any storage costs beyond that date. The owner should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

cc: David Jenkins by fax [250] 565-8001



March 7, 2013

s.22

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

Introduction

On February 23, 2013, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

I note that the Report to Superintendent has not been sworn. As such I find that I have no jurisdiction to precede given the statutory evidentiary requirements of section 215.47 are not met.

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 March 7, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

s.15

Adjudicator



March 18, 2013

s.22

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

Introduction

On February 27, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

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

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

In his Narrative Text Hardcopy, the officer indicated that he initiated a traffic stop as a vehicle exited the parking lot of a local pub. He identified you as the driver and conducted two ASD tests within 5 minutes of the stop. He reported that you did not reply when he asked you the time of your last drink.

Your evidence is that you finished your last ounce or so of wine immediately before departing the pub.

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

Decision

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

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

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

s.22

IRP Review Decision
Page 3

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 18, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator



March 7, 2013

s.22

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

Introduction

On February 17, 2013, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records at this office indicate that disclosure documents were provided to you. 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%?

IRP Review Decision
Page 2

- 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 are two issues that are determinative of my decision in this review.

Were you advised of your right to a second analysis?

The officer reported that he advised you that you had a right to request a second test. The officer reported that you understood. On the Report to Superintendent, the officer checked off both “yes” and “no” to the question “Did the driver request a second ASD test?” Beside the check box “no” what appear to be the letters “ITW” are written. There is no evidence before me as to what the officer meant by these letters. In the Narrative Text Hardcopy, the officer has provided no evidence as to what your response was after you stated you understood your right to a second test, or why a second test was not provided.

In your oral and written evidence, you stated that you requested a second test. You said that after the first test, you said “that can’t be right, we need to check it again.” You said you felt you were answering yes to a second test.

Was the second analysis provided by the officer?

The RTS indicates that no second test was provided. Aside from the letters “ITW” beside the box “no” which the officer has checked concurrently with the box “yes”, the officer has not explained why a second test was not provided. As noted, you stated that you agreed to a second test, but were never given one.

Based on the evidence before me, I am not satisfied that the officer’s evidence shows that you did not request a second test. I am also not satisfied that you withdrew your request after having made 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.

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

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

s.22

IRP Review Decision
Page 3

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 7, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator



March 5, 2013

s.22

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

Introduction

On February 11, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Joe Gordon. 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%?

IRP Review Decision
Page 2

- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

Facts, Evidence and Analysis

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

Was the ASD reliable?

The officer's evidence is that you provided breath samples into an ASD with serial number 038140. However, I do not have before me a valid Certificate of Qualified ASD Calibrator for the ASD. Without this evidence, I am unable to determine the service and calibration expiry dates for this device. Consequently, I cannot be satisfied that ASD 038140 was reliable.

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

Decision

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 5, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



March 13, 2013

s.22

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

Introduction

On February 20, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

- you were a driver within the meaning of section 215.41(1) of the Act;
- 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 (the “ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

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

Preliminary Matters

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

In reviewing the evidence, I note that the Report to Superintendent is unsworn; consequently, I have no jurisdiction to proceed with the review.

Having made this finding, I will not be addressing the issues in this review.

Decision

Having no jurisdiction to proceed with this review, 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 or someone you authorize, may go directly to the location where your vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 13, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15



March 27, 2013

s.22

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

Introduction

On March 6, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your 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.

In reviewing the evidence, I note that the Report to Superintendent is unsworn; consequently, I have no jurisdiction to proceed with the review.

Having made this finding, I will not be addressing the issues in this review.

Decision

Having no jurisdiction to proceed with this review, 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 or someone you authorize, may go directly to the location where your vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 27, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15



March 13, 2013

s.22

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

Introduction

On October 26, 2012, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

Decision

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

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



Adjudicator

cc: Jeremy Knight, Jensen Law Corporation
Fax: 250-374-7777

March 20, 2013

s.22

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

Introduction

On January 19, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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 request a second analysis?
- If requested, was the second analysis provided by the officer and performed using a different ASD?
- Was the result of the ASD reliable?
- Was the ASD “FAIL” a result of your BAC exceeding 80 mg%?
- Was the Notice served on the basis of the lower analysis result?

Facts, Evidence and Analysis

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

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

Decision

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

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

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

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



March 28, 2013

s.22

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

Introduction

On March 8, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Were you advised of your right to a second analysis?

I am satisfied that you were not advised of your right to a second analysis.

Decision

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

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

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

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.



MARCH 25, 2013

s.22

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

Introduction

On February 22, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

Having reviewed the evidence of Constable Doane 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 all the evidence before me, I am satisfied on a balance of probabilities that you were not a “driver” at the relevant time, as you were not served with the Notice on a highway or industrial road.

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

Decision

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

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

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

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

Adjudicator

cc. Cory Armour
250-762-3163 (fax)



March 1, 2013

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

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

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.

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.

Adjudicator

cc: Christopher Drinovz
Fax: 604-792-8711



March 1, 2013

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

IRP Review Decision
Page 2

- 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 produced reliable results.

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.

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.



March 14, 2013

s.22

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

Introduction

On February 22, 2013, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records indicate that you received full disclosure.

Issues

The following are the issues in this review:

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

RP Review Decision
Page 2

- 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 a Qualified ASD Calibrator, I find that the ASD used was unreliable.

Decision

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

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

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

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

s.15

s.15

Adjudicator

cc: Kyla Lee
604-685-8308



March 12, 2013

s.22

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

Introduction

On February 22, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

In the Report to Superintendent (the "Report"), the officer indicated that you provided breath samples into ASDs with serial numbers 101829 and 052928. The officer provided Certificates of Qualified ASD Calibrator (the "Certificates") for both ASDs. I note that the ASD Service Expiry Date of the ASD 052928, is dated "2013-02-02". Accordingly, I cannot be satisfied that the ASD was reliable.

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

Decision

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

Adjudicator s.15

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



March 27, 2013

s.22

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

Introduction

On March 16, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

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

I am not satisfied that the ASD 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.

You may go directly to the location where the vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 27, 2013, the date the vehicle was eligible for release. You are responsible for any storage costs beyond that date, and 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.

March 21, 2013

s.22

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

On March 3, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your 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, Dennis Stofer. I have proceeded with the hearing based on this confirmation.

Issues

The following are the issues in this review:

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

- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Were the ASDs reliable?

Facts, Evidence and Analysis

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

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

Having reviewed the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on March 3, 2013, as the investigating officer reported.

Having made this finding, I do not need to consider other issues in this review. However, I also note that I cannot be satisfied on the evidence before me that the "FAIL" readings did not result from alcohol you consumed after you were driving or in care or control of the vehicle.

Decision

I therefore revoke your driving prohibition and monetary penalty as required by s. 215.5(4) of the Act. As a result, the prohibition has been removed from your driving record and you may resume driving once you have obtained a driver's licence.

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.

Adjudicator

cc. Dennis Stofer
fax: 250.724.5169



MARCH 5, 2013

s.22

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

Introduction

On February 16, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Brian Juriloff. 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 Beaulieu 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 all the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act. Given 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 March 5, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

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.



March 20, 2013

s.22

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

Introduction

On March 9, 2013, 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?

IRP Review Decision
Page 2

Facts, Evidence and Analysis

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

Was the ASD reliable?

In the Report to Superintendent (the "Report"), the officer indicated that you provided breath samples into ASDs with serial numbers 101522 and 056515. The officer provided Certificates of Qualified ASD Calibrator (the "Certificates") for both ASDs. Ms. Lee drew my attention to the expiry date of the Service Expiry Date of ASD 056515, noting that it was dated "2013-02-27". Accordingly, I cannot be satisfied that the first ASD was reliable.

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

Decision

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

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

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

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 March 20, 2013, the date you were notified that your vehicle was eligible for release. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

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.

Adjudicator s.15

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



March 8, 2013

s.22

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

Introduction

On February 16, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

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

Decision

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

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 JPC Holdings Ltd has not already done so, they may go directly to the location where the vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 8, 2013. JPC Holdings Ltd 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.

s.15

Adjudicator

cc: Brian Juriloff
Fax: 604-504-5880



March 25, 2013

s.22

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

Introduction

On March 2, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

IRP Review Decision
Page 2

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

In the Report to Superintendent (the “RTS”), the officer indicated that you provided breath samples into ASDs with serial numbers 072954 and 65850. The officer provided two Certificates of Qualified ASD Calibrator (the “Certificates”). However, I note that the officer has provided two copies of the Certificate that corresponds to ASD serial number 072954, and has not provided any ASD information, specifically a Certificate for ASD serial number 65850. As such, I cannot be satisfied that the second ASD used, ASD serial number 65850, was properly serviced or calibrated at the time of your second ASD test. Accordingly, I cannot be satisfied that the ASD was reliable.

Decision

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

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



March 7, 2013

s.22

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

Introduction

On February 16, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records at this office indicate that disclosure documents were provided to your lawyer, Howard Smith. I have proceeded with the hearing based on this confirmation.

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

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

The investigating officer indicated that a witness reported that a male was driving a vehicle before stopping the vehicle and changing seats with a female, who was the passenger at that time. The officer subsequently stopped the vehicle while you were a passenger in the vehicle. The officer reported that the witness identified you as the original driver.

You provided sworn evidence from three individuals in addition to yourself, that when you departed a friend's place, your spouse was the driver and that at no time were you driving. Your evidence is that when you were stopped by the police, there were no other vehicles nearby except for police cars, and no individual standing nearby.

Having reviewed the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on February 16, 2013, at 15:55 hours, as the investigating officer reported.

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

Decision

I therefore revoke your driving prohibition and monetary penalty as required by s. 215.5(4) of the Act. As a result, the prohibition has been removed from your driving record and you may resume driving once you have obtained a driver's licence.



March 22, 2013

s.22

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

Introduction

On March 10, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

Was the ASD reliable?

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

I am not satisfied that the ASD was reliable.

Decision

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

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

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

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.

March 5, 2013

s.22

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

Introduction

On February 14, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (the “ASD”) registered a “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.

Issues

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

Facts, Evidence and Analysis

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

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

Decision

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

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

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



March 8, 2013

s.22

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

Introduction

On February 19, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

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

Mr. Pearson submits that because the Report to Superintendent is unsworn, I have no jurisdiction to proceed with the review.

I concur.

Having made this finding, I will not be addressing the issues in this review.

Decision

Having no jurisdiction to proceed with this review, 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 or someone you authorize, may go directly to the location where your vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 8, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

pc: Paul Pearson



March 5, 2013

s.22

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

Introduction

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

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

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

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

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

Preliminary Matters

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

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

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

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

Based on the totality of the evidence before me, I am satisfied that your BAC was less than 80 mg%.

Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 5, 2013. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



March 19, 2013

s.22

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

On March 1, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records at this office indicate that disclosure documents were provided to your lawyer, Philip Riddell. I have proceeded with the hearing based on this confirmation.

Issues

The following are the issues in this review:

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

IRP Review Decision
Page 2

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

Facts, Evidence and Analysis

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

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

Having reviewed the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on March 1, 2013, at 05:00 hours, as the investigating officer reported.

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

Decision

I therefore revoke your driving prohibition and monetary penalty as required by s. 215.5(4) of the Act. As a result, the prohibition has been removed from your driving record and you may resume driving once you have obtained a driver's licence.

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



March 12, 2013

s.22

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

On January 30, 2013, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

Records at this office indicate that disclosure documents were provided to your lawyer, Philip Riddell. I have proceeded with the hearing based on this confirmation.

Issues

The following are the issues in this review:

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

IRP Review Decision
Page 2

- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Were the ASDs reliable?

Facts, Evidence and Analysis

There is one issue determinative of my review.

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

Having reviewed the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on January 30, 2013, at 18:19 hours, as the investigating officer reported.

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

Decision

I therefore revoke your driving prohibition and monetary penalty as required by s. 215.5(4) of the Act. As a result, the prohibition has been removed from your driving record and you may resume driving once you have obtained a driver's licence.

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

Adjudicator

cc. Philip Riddell
fax: 604.520.6035