

November 2, 2012

s.22

---

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

**Introduction**

On July 31, 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 94.6 of the *Motor Vehicle Act* requires me to confirm your prohibition if I am satisfied on a balance of probabilities that

- you were operating, or had care or control of a motor vehicle, and
- you failed or refused to comply with a demand made under s. 254 of the *Criminal Code* to provide a breath or blood sample ("a demand"), and
- you did not have a reasonable excuse.

I must revoke your driving prohibition if I am satisfied 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 with a demand.

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

**Preliminary Issues**

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

**Issues**

There are three issues in this review:

1. Did you operate or have care or control of a motor vehicle?
2. If so, did you fail or refuse to comply with a demand?
3. If so, did you have a reasonable excuse?

## **Analysis, Facts and Evidence**

I find there is one issue determinative of my review.

### Did you have a reasonable excuse?

Having carefully considered all of the evidence before me, including the various medical documents and reports you provided, I accept that you had a reasonable excuse for failing or refusing to comply with a demand.

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

## **Decision**

Considering the evidence before me, I am satisfied that you did not fail or refuse, without a reasonable excuse, to comply with a demand made to you in respect to the operation or care and control of a 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.

s.15

Adjudicator

cc: Oliver Butterfield  
Fax: 250-860-2766

November 6, 2012

s.22

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

**Introduction**

On October 17, 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 94.6 of the *Motor Vehicle Act* (the "Act") requires me to confirm your prohibition if I am satisfied on a balance of probabilities that

- you were operating, or had care or control of a motor vehicle, and
- you failed or refused to comply with a demand made under s. 254 of the *Criminal Code* to provide a breath or blood sample ("a demand"), and
- you did not have a reasonable excuse.

I must revoke your driving prohibition if I am satisfied 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 with a demand.

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

**Preliminary Issues**

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Bert King. 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. If so, did you fail or refuse to comply with a demand?
3. If so, did you have a reasonable excuse?

## **Facts, Evidence and Analysis**

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

### Did you fail or refuse to comply with a demand?

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

In the Report to Superintendent (the "Report"), the officer indicated that the time of driving or care or control was 19:05 hours on October 17, 2012. On page 2 of the Report, the officer indicated that the time of the breath demand was 19:54 hours.

In reviewing the evidence before me, I note that there is a delay of 49 minute from the time of driving/care or control to the time of the breath demand. It is unclear to me what transpired during this time. With respect to the issues of a delay, the courts have determined that it is not the length of the delay but the reason for the delay. As I am unable to determine the reason for the delay, I am unable to determine if the delay in making the breath demand was reasonable. On this basis, I am not satisfied that the officer made a valid demand.

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

## **Decision**

I am satisfied that you did not fail or refuse to comply with a demand made to you in respect of the operation or care or control of a motor vehicle.

I therefore revoke your driving prohibition, as required by s. 94.6 of the Act. 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.

s.15

Adjudicator

cc: Bert King  
Fax: 250-753-6123