

June 7, 2012

s.22

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

Introduction

On May 22, 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 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 indicate that disclosure has been provided to you on May 16, 2012. I have proceeded with the hearing based on this information.

Issues

There are 3 issues in this review:

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

Facts, Evidence, and Analysis

Did you have a reasonable excuse?

A reasonable excuse is some matter unconnected to the grounds for the prohibition that justifies or excuses actions which would otherwise constitute the offence. A person who relies upon a reasonable excuse has the burden of proving that excuse, on a balance of probabilities.

In his Report to Superintendent (Report), Constable Chou noted under the section 'Medical and/or physical condition(s)' that you had a damaged s.22 The injury related to an s.22

The constable stated in the Report that you were able to provide a breath sample into an ASD at the roadside but were unable to provide a suitable sample for analysis into a BAC Datamaster, at the Nanaimo detachment. You made two unsuccessful attempts there. You requested the opportunity to provide a blood sample instead of breath samples. The constable asserted that you did not have any medical or physical conditions that prevented you from giving suitable breath samples.

You submitted in your letter to the Superintendent that you made the constable aware that you had a medical condition making it almost impossible for you to exhale your breath with the pressure required to provide a proper breath sample for analysis. Nevertheless, you did make your best effort to comply and blew adequately into an ASD.

When you were at the RCMP detachment you attempted to provide a breath sample into a BAC Datamaster. You were advised by the officer that he obtained a reading, but that it was not accurate. You blew twice more, and then requested a blood test. Constable Chou asked about your medical condition, and you explained the background to your injury. You showed the constable your s.22 You stated that after your last attempt, the constable said: "You can't do this." You asked him if he was now willing to take a blood test and you were told, no: "We don't do that."

In support of your contention that you were unable to provide a sample because of your medical/physical condition, you provided a short note from s.22 Dated May 31, 2012, the body of the note reads as follows:

s.22 that prevents him from blowing with any pressure.
This relates to an old injury with a failed repair. He will be seeking a repair in the near future. I hope this suffices for your purposes.

A reasonable medical excuse includes a situation where a person is unable to provide a sample because of some condition that either makes it extremely difficult or likely involves a significant risk to the health of the person on whom the demand has been made. It is clear from the evidence that you raised the issue of your medical condition with the constable and you explained the nature of the injury, due to an old occupational accident. While you may have been able to provide an ASD sample, the medical report from your physician supports your

contention that you were unable to provide a proper breath sample for analysis. You are unable to blow with any pressure.

In the absence of supporting medical evidence, the constable was not satisfied that he had reasonable grounds to believe that, due to your physical condition, you were incapable of providing a breath sample. In his evidence, he maintained that you did not have any medical or physical conditions that prevented you from giving suitable breath samples. Your request for a blood test was denied.

I find that you had a medical condition that made it impracticable to obtain a proper breath sample for analysis by means of an approved instrument. Given the evidence presented, I find that on a balance of probabilities, you did have a reasonable excuse for failing to comply with a demand on May 22, 2012, at 00:43 hours and 00:53 hours.

Decision

Based on the evidence before me in its entirety, I am satisfied on a balance of probabilities that you had a reasonable excuse for failing to comply with a demand for a sample of your breath with respect to the operation or care or control of a motor vehicle on May 21, 2012 at 23:20 hours.

I therefore revoke your driving prohibition as required under s. 94.6 of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia.

A refund of your review fee has been authorised and will be sent to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

Adjudicator s.15

June 20, 2012

s.22

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

Introduction

On June 1, 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 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.

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

Preliminary Issues

At the beginning of the oral review, I listed the documents I received from the police which were sent to your lawyer, Paul Del Rossi. He acknowledged receiving them.

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?

Facts, Evidence and Analysis

In the oral hearing, Mr. Del Rossi drew my attention to the fact that the Report to Superintendent was unsigned and unsworn and argued that I cannot consider it as evidence in this review. He also drew my attention to the fact that there are two Certificates of Qualified Technician for two different breath instruments. He remarked that one did not contain evidence of any breath samples while the other contained evidence of only one. He questioned the reason for two certificates and argued that neither could be relied upon as evidence in this matter.

I concur with Mr. Del Rossi and find that there is insufficient evidence to determine the issues before me.

Decision

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.

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Adjudicator

cc: Paul Del Rossi
Fax: 604-590-5626

June 1, 2012

s.22

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

Introduction

On May 12, 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 prohibition and I am delegated the authority to conduct this review.

Section 94.6 of the *Motor Vehicle Act (Act)* requires me to confirm your prohibition if I am satisfied 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 (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 Matters

Our records indicate that copies of all documents related to this prohibition were faxed to the office of your legal counsel, Keith Sabey. During the oral hearing Mr. Sabey acknowledged that he had received disclosure. I have proceeded with the review based on this 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 breath demand?
3. If so, did you have a reasonable excuse?

Facts, Evidence and Analysis

Officer Taylor's Report to Superintendent is not in the form established by the Superintendent as required under section 94.3 of the *Act*. Consequently, his evidence is not properly before me and cannot be considered.

Decision

I am satisfied that you did not fail or refuse to comply with a demand made on you to supply a sample of your breath under section 254 of the *Criminal Code* in respect of the operation or care or control of a motor vehicle on May 12, 2012.

I therefore revoke your driving prohibition as required by section 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. If any outstanding fines or debts are owed to the Province of British Columbia, the refund may be used to offset those debts.

Adjudicator s.15

cc: Keith Sabey via fax

June 14, 2012

s.22

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

Introduction

On May 24, 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 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 Report to Superintendent (“RTS”).

Preliminary Matters

Records at this office indicate that your lawyer has been provided with disclosure documents. I have proceeded with the review based on this confirmation.

After reviewing the documents in the file before me, it appears that your lawyer is Jason Mann, but you consulted with Joe Carangi of WGM Lawyers. Mr. Carangi provided a letter on your behalf, in which he stated that you consulted him and asked him to write a letter as you were unable to clearly express yourself. However, it is important to note that you as the applicant are responsible for all relevant evidence in support of your case. As the Adjudicator in this case, I can only consider direct evidence from you and other evidence supplied by you. I cannot admit information and statements, tendered by the lawyer, as evidence on disputed matters.

In his letter, Mr. Carangi provided some evidence, but there was no supporting statement from you to confirm this evidence, or any direct evidence from you. To date, I have not received evidence from you. I will not consider the evidence tendered by Mr. Carangi as there is no evidence that he was witness to the event. I will consider the submissions Mr. Carangi made on the evidence provided by police.

In his letter, Mr. Carangi indicated that the loss of your licence would be devastating to you, as you are a Passenger's Service Agent. As such, you require your driver's licence to ensure that you are able to keep your employment.

I acknowledge that a 90-day driving prohibition can have far reaching implications for a person who needs to drive for various employment and other personal reasons. However, in the context of this administrative review the Act does not authorize me to consider an individual's personal circumstances and employment needs. The issues that I must determine in this review are outlined in detail below

Issues

There are 3 issues in this review:

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

Facts, Evidence and Analysis

Did you operate or have care or control of a motor vehicle?

In the RTS, Constable Marshall ("Cst. Marshall") is identified as the investigating officer and has identified you as the driver of the vehicle. Cst. Marshall indicated that he was dispatched to a single vehicle collision, after two (2) callers reported a car crash. The RTS indicates that you advised Cst. Marshall that you were driving when a raccoon ran out and caused you to lose control of the vehicle. Cst. Marshall stated that the date and time of driving or care or control of the vehicle was May 24, 2012, at 01:30 hours.

I have not received any submission directly from you on this issue. However, the letter provided by Mr. Carangi states that it is understood that you were involved in a single vehicle accident on May 24, 2012, and that it is alleged you lost control of the vehicle after you attempted to avoid a raccoon.

There is no evidence before that refutes Cst. Marshall's evidence that you were driving the vehicle at 01:30 hours on May 24, 2012.

I am satisfied that you operated or had care or control of a motor vehicle on May 24, 2012, at 01:30 hours.

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 demand existed and, if so, whether you failed or refused to comply with that demand.

Cst. Marshall served you with a Notice of Driving Prohibition, alleging that you operated or had care or control of a motor vehicle and you failed or refused to comply, without a reasonable excuse, with a demand for a sample of your breath under section 254 of the *Criminal Code*.

After reviewing the RTS submitted by the Cst. Marshall, I note that on the second page under the section labeled "Demand(s) for Sample(s)", in the grid Cst. Marshall indicated that you provided a sample of your breath into an Approved Screening Device which registered a fail result at 01:43 hours. The grid also states that a breath sample demand was issued to you at 03:03 hours. However, after considering all the evidence before me, including the Intox EC/IR II: Subject Test document, I note that it is reasonable to conclude that the time of 03:03 hours is actually the time that you failed or refused to comply with the demand, not the time that the breath demand was made on you.

Consequently, in the absence of any further evidence, I cannot determine that the breath demand was made as soon as practicable. As such, I find that you were not given a valid demand.

Given this finding I do not need to consider whether you failed or refused to comply with that demand.

Decision

Based on the evidence before me in its entirety, I am not satisfied on a balance of probabilities that you failed or refused to comply with a demand for a sample of your breath with respect to the operation or care or control of a motor vehicle.

I therefore revoke your driving prohibition as required under section 94.6 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 the Enhanced Driver's Licence.

A refund of your review fee has been authorised and will be sent to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the Province of British Columbia your refund may be used to help offset those debts.

s.15
Adjudicator

Cc: Jason Mann
Fax: [604] 736-5522

June 12, 2012

s.22

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

Introduction

On June 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 94.6 of the *Motor Vehicle Act* ("Act") requires me to confirm your prohibition if I am satisfied that it is more likely than not 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 this review, I must consider all relevant information provided to me, including the Report to Superintendent ("RTS").

Preliminary Matters

Records at this office indicate that your lawyer, Richard Peck, has been provided with all of the required disclosure documents related to this prohibition. I have proceeded with the review based on this confirmation.

In his written submission, Mr. Peck acknowledges that the Police Supplemental To File Report ("the Supplemental") indicates that Constable Rodriguez ("Cst. Rodriguez") checked the wrong box on the Notice. However, a new Notice was never served on you in advance of this hearing and therefore the original Notice should form the basis upon which this review is conducted. He noted that the Notice does not indicate you refused to provide a breath sample; rather it alleges that you provided breath samples in excess of the legal limit. He submitted that the basis for this prohibition is unfounded, and that the RTS fails to establish that your blood alcohol concentration ("BAC") exceeded 80 milligrams of alcohol per 100 millilitres of your blood (80 mg%).

I acknowledge Mr. Peck's submission and I agree that you were not served with a corrected Notice. However, I find the fact that Mr. Peck, on your behalf, received a copy of the Supplemental through the disclosure process on June 6, 2012, was sufficient notice to you of the correction, and that you and Mr. Peck had a reasonable opportunity to know the reasons for the prohibition and to prepare for this review. As a result, I will proceed with this review on the basis of the Supplemental with respect to the correction of the Notice.

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

Did you operate or have care or control of a motor vehicle?

In the Narrative Police Statement – 3 (“Statement – 3”), Sergeant Christensen (“Sgt. Christensen”) indicated that he observed a s.22 (“the vehicle”), travelling Northbound on Arbutus from King Edward and that it was travelling at a speed of “110 to 120 KMH”. Sgt. Christensen activated his emergency lights but the vehicle appeared to accelerate rather than slow down. Sgt. Christensen then activated his “full emergency equipment (lights and siren)”, made a u-turn and attempted to stop the vehicle. Statement – 3 indicates that the vehicle went “north on Maple”, then pulled to the curb and stopped. Just as Sgt. “Christensen pulled behind the vehicle [you were] in the process of getting out of the vehicle.” It was then that Sgt. Christensen approached you. You were identified by your BC driver's licence. Sgt. Christensen turned you over to Cst. Rodriguez who continued with the investigation. In the RTS, Cst. Rodriguez has recorded the date and time of driving or care or control as June 2, 2012, at 03:08 hours.

Neither you nor Mr. Peck has provided me with any evidence that refutes Sgt. Christensen's or Cst. Rodriguez's evidence that you were the driver.

I am satisfied that you operated or had care or control of a motor vehicle on June 2, 2012, at 03:08 hours.

Was a proper demand issued to you and did you fail or refuse to comply with the demand?

You were issued an ADP because you failed or refused to comply with a Demand for a sample of your breath under section 254 of the *Criminal Code* (“the Code”), without a reasonable excuse. Mr. Peck argued that the RTS and accompanying documents fail to establish that a Demand was made in accordance with the requirements of section 254 of the Code.

In the RTS and the Narrative Synopsis – 2 (“the Synopsis”), Cst. Rodriguez stated that after operating a motor vehicle, you provided a breath sample into an approved screening device (“ASD”), which registered a “fail”.

This result would have assisted Cst. Rodriguez in forming the grounds to believe that you operated the vehicle while your ability to do so was impaired by alcohol. The Code requires a peace officer to make the breath demand as soon as practicable, once these grounds are formed. In your situation, however, I find that there is no indication of when, if at all, a breath demand was made. Consequently, I cannot be satisfied of the validity of the breath demand. Having made this finding, there is no need for me to consider the other issues.

Decision

Based on the evidence before me in its entirety, I am not satisfied on a balance of probabilities that you failed or refused to comply with a demand for a sample of your breath with respect to the operation or care or control of a motor vehicle on June 2, 2012.

I therefore revoke your driving prohibition as required under section. 94.6 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 the Enhanced Driver's Licence.

A refund of your review fee has been authorized and will be sent to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

June 19, 2012

s.22

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

Introduction

On June 10, 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.

Preliminary Issues

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

Did you operate or have care or control of a motor vehicle?

In the Report to Superintendent ("RTS"), the investigating officer indicated that he observed an individual in the driver's seat of a vehicle, driving. The officer identified you as the driver of the vehicle at 01:35 hours, on June 10, 2012.

You have not disputed the officer's evidence on this point.

Based on the evidence before me, I am satisfied that you operated or had care or control of a motor vehicle on June 10, 2012, at 01:35 hours.

If so, 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 demand existed and I must determine whether you failed or refused to comply with that demand.

The officer reported several physical symptoms and that you admitted that you consumed alcohol at a bar. You did not dispute this part of the officer's evidence. The officer's evidence is that he issued an ASD demand and an ASD test, which resulted in a fail at 01:43 hours.

However, the officer has not reported the time at which he made his subsequent breath demand, as he is required to do. Consequently, I cannot determine whether or not the breath demand was made as soon as practicable. As such, I find that you were not given a valid breath demand.

Given this finding I do not need to consider whether you failed or refused to comply with that demand or other issues in this review.

Decision

Based on the evidence before me in its entirety, I am not satisfied on a balance of probabilities that you failed or refused to comply with a demand for a sample of your breath with respect to the operation or care or control of a motor vehicle.

I therefore revoke your driving prohibition as required under section 94.6 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 the Enhanced Driver's Licence.

A refund of your review fee has been authorized and will be sent to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the Province of British Columbia your refund may be used to help offset those debts.

June 20, 2012

s.22

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

Introduction

On June 2, 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 indicate that your lawyer, Mark Nohra, received all of the disclosure documents on your behalf. I have proceeded with the review based on this 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 and Evidence and Analysis

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

In the Report to Superintendent ("Report") the investigating officer, Constable MacNeil stated that he stopped a vehicle for "failing to obey stop sign". The officer stated that he identified you as the driver of the vehicle, and recorded the time of driving as 21:08 hours on June 2, 2012.

Neither you nor Mr. Nohra challenged this issue.

Based on the evidence before me, I am satisfied you were a driver within the meaning of section 215.41(1) of the Act, at 21:08 hours, on June 2, 2012.

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 was made, and I must determine whether you failed or refused to comply with that demand.

I first turn to the second page of the constable's report. In the section labeled "Demand(s) for Sample(s)", in the column labeled "Time/Date of Demand(s)" and the row labeled "Approved Screening Device" (ASD), the constable provided a time and date of 2110 hours on June 2, 2012.

Returning to the grid in the section labeled "Demand(s) for Sample(s)", in the column labeled "Time/Date of Refusal", the constable wrote, "See Prime Report."

On the first page of the Report in the section labeled "Physical symptoms of driver" the officer checked the box for "odour of liquor in vehicle", "drowsy eyes", and "slow speech".

In the attached Prime Report, Constable MacNeil stated that with several symptoms of alcohol impairment; such as driving evidence, failing to pull over immediately, drowsy eyes, slow speech, and odour of liquor, Constable MacNeil had suspected that you were operating a motor vehicle while impaired by alcohol.

Beneath the grid, he checked the boxes to indicate that you understood and refused to comply with the demand.

On the third page of the report, in the section labeled "How did driver refuse", the constable wrote the following:

See attached Prime Report

In the attached Prime Report, Constable MacNeil stated that when you were told you could not drive away and would be providing a breath sample to determine if you were impaired, you began taking slow deep breaths, staring straight ahead. Constable MacNeil stated that you admitted that you were experiencing s.22 . Constable MacNeil called an ambulance and they attended at 9:20 p.m.

Mr. Nohra submitted that at no time did you refuse to provide a breath sample, the constable did not indicate anywhere in the grid, or anywhere in his narrative that you said you would not provide a sample, nor did he write a time of the refusal. Mr. Nohra submitted case law for my determination.

In paragraph 22 of your affidavit you stated that at no point did you ever refuse, you desperately wanted to provide the breath sample so you could end the situation that was causing the s.22 s.22

Did you have a reasonable excuse?

While Constable MacNeil believed your s.22 was contrived, the vast majority of the evidence supports that you were suffering from an s.22. The Patient Care Report indicates that you were suffering from a s.22 in s.22 (the paramedic) statement he stated that you just wanted to blow so you could go. Additionally, he stated that while there was a strong smell of alcohol in the vehicle he did not recall any alcohol on your breath. There is also evidence that you have a medical history of s.22.

Consequently, I am not satisfied on a balance of probabilities that you failed or refused, without a reasonable excuse, to comply with a demand made on you to supply a sample of your breath or blood under section 254 of the *Criminal Code*.

Decision

I therefore revoke your driving prohibition as required under s. 94.6 of the *Motor Vehicle Act*. You may resume driving after 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 to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

Adjudicator s.15

cc: Mark Nohra
Fax: 604 669-0616

June 1, 2012

s.22

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

Introduction

On May 11, 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 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 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 Matters

Our records indicate that copies of all documents related to this prohibition were provided to your legal counsel, David Greenbank. I have proceeded with the hearing based on this confirmation.

Your hearing was scheduled for May 23, 2012 at 9:30 a.m. As no written submissions were received from you or Mr. Greenbank, I have proceeded with the review based on the evidence before me.

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 breath demand?
3. If so, did you have a reasonable excuse?

Facts, Evidence and Analysis

I will start with the second issue:

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

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

Based on Officer Bozak's evidence, I am not satisfied that a breath demand was made on you under section 254 of the *Criminal Code*.

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

Decision

I am satisfied that you did not fail or refuse to comply with a demand made on you to supply a sample of your breath under section 254 of the *Criminal Code* in respect of the operation or care or control of a motor vehicle on May 11, 2012.

I therefore revoke your driving prohibition as required by section 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. If any outstanding fines or debts are owed to the Province of British Columbia, the refund may be used to offset those debts.

s.15

Adjudicator s.15

pc: David Greenbank via fax

June 29, 2012

s.22

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

Introduction

On June 5, 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 94.6 of the *Motor Vehicle Act* (the Act) requires me to confirm your prohibition if I am satisfied:

- 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.

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 indicate that disclosure was provided to you and I have proceeded with the hearing based on this information.

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?

Facts, Evidence and Analysis

Did you operate or have care or control of a motor vehicle?

In his Report to Superintendent (Report), Constable Sharpe, of the Prince George RCMP, stated that he witnessed a vehicle travelling down Moldowan Forest Service Road. The vehicle stopped and the driver was observed getting out of the driver side of the vehicle. The keys were in the ignition and the vehicle was running. Constable Sharpe noted the time of driving / care or control was 18:31 hours on June 5, 2012.

For the purposes of the Act a driver includes a person having the care or control of a motor vehicle on a highway, whether or not the motor vehicle is in motion. The definition of highway, in section 1 of the Act, excludes 'industrial roads'. An 'industrial road' means:

industrial road as defined in the *Industrial Roads Act*, and includes a forest service road as defined in the *Forest Act* and land designated as a development road under section 139 (1) of the *Petroleum and Natural Gas Act*.

By adding forest service roads into the definition of industrial road and applying the definition of highway under the Act, Moldowan Forest Service Road may not be considered as a highway.

I find that the constable has not provided reliable evidence that you operated or had care or control of a motor vehicle on a highway. Having made this finding, there is no need for me to consider whether or not your BAC exceeded 80 mg% within 3 hours of allegedly operating or having care or control.

Based on the available evidence I am not satisfied, on a balance of probability, that you were operating or in care or control of a motor vehicle at 18:31 hours on June 5, 2012.

Decision

I therefore revoke your driving prohibition as required under s. 94.6 of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia.

A refund of your review fee has been authorised and will be sent to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

Adjudicator

s.15

June 21, 2012

s.22

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

Introduction

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

Section 94.6 of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition if I am satisfied that it is more likely than not 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.

Preliminary Comments

At the beginning of the oral hearing, I confirmed with you that you had received all of the disclosure documents. I have proceeded with the review based on this 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

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

Did you fail or refuse to comply with a demand?

Constable Brissard served you with the Notice alleging that you operated or had care or control of a motor vehicle and that you failed or refused to comply with a demand for a sample of your breath or blood under section 254 of the *Criminal Code*. However, given the specific set of facts in your situation, I find insufficient evidence for me to be satisfied that a demand was made forthwith. Consequently, I am satisfied that you did not fail or refuse to comply with a demand.

Decision

Based on the evidence before me in its entirety, I am satisfied on a balance of probabilities that you did not fail or refuse to comply with a demand for a sample of your breath or blood with respect to the operation or care or control of a motor vehicle.

I therefore revoke your driving prohibition as required under s. 94.6 of the Act. You may resume driving after 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 to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

June 26, 2012

s.22

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

Introduction

On June 7, 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 prohibition and I am delegated the authority to conduct this review.

Section 94.6 of the *Motor Vehicle Act (Act)* requires me to confirm your prohibition if I am satisfied that it is more probable than not that you failed or refused, without a reasonable excuse, to comply with a demand made on you to supply a sample of your breath under section 254 of the *Criminal Code* in respect of the operation or care or control of a motor vehicle.

I must revoke your prohibition if I am satisfied that you did not fail or refuse to comply with a demand made on you to supply a sample of your breath under section 254 of the *Criminal Code* in respect of the operation or care or control of a motor vehicle, or you had a reasonable excuse for failing or refusing to comply with the demand.

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

Preliminary Matters

Our records indicate that copies of all documents related to this prohibition were provided to the office of your legal counsel, Jennifer Currie. I have proceeded with the hearing based on this 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 breath demand?
3. If so, did you have a reasonable excuse?

Facts, Evidence and Analysis

Did you operate or have care or control of a motor vehicle?

Ms. Currie submits that you were not in care or control of the motor vehicle on June 7, 2012 at 0110 hours because you had no intention to drive. She has provided statements from you, your s.22 in which you all provide evidence that you and s.22 were sitting in your vehicle listening to music, waiting for your s.22 to pick you up.

In reviewing the evidence as a whole, I find that you were not operating or in care or control of a motor vehicle at the time in question.

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

Decision

I am satisfied that you did not fail or refuse to comply with a demand made on you to supply a sample of your breath under section 254 of the *Criminal Code* in respect of the operation or care or control of a motor vehicle on June 7, 2012, or you had a reasonable excuse for failing or refusing to comply with the demand.

I therefore revoke your driving prohibition as required by section 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. If any outstanding fines or debts are owed to the Province of British Columbia, the refund may be used to offset those debts.

s.15

Adjudicator s.15

pc: Jennifer Currie via fax

June 28, 2012

s.22

REVIEW DECISION Administrative Driving Prohibition No. s.22

Introduction

On June 10, 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 you. 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

Did you operate or have care or control of a motor vehicle?

The investigating officer noted that he saw you driving on 11th Avenue in Burnaby. You confirmed you were driving. Therefore, I am satisfied that you operated or had care or control of a motor vehicle at 03:34 hours on June 10, 2012, as noted in the report.

If so, did you fail or refuse to comply with a demand?

For a breath demand to be valid it must be made as soon as practicable after the officer has formed reasonable grounds to believe that you committed, or at any time within the preceding three hours had committed, an offence under section 253 as a result of the consumption of alcohol.

The officer must have formed the required reasonable grounds because of the failed result on the approved screening device. There was a delay of twelve minutes before he read the breath demand. No explanation for this delay was provided by the officer. You noted that he had decided to wait for his supervisor during this time. I accept your explanation. I do not find this to be a suitable reason for the officer to delay reading you the breath demand, and therefore, I do not find the demand to be valid.

Decision

Given the evidence before me, I am satisfied that you did not fail or refuse 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: Alan Truong
Metrotown Law Group
Fax: (604) 568-4597

June 21, 2012

s.22

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

Introduction

On June 7, 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 prohibition and I am delegated the authority to conduct this review.

Section 94.6 of the *Motor Vehicle Act (Act)* requires me to confirm your prohibition if I am satisfied 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 (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.

Preliminary Matters

Our records indicate that the investigating officer in this matter has not provided copies of documents related to this prohibition.

Decision

There is insufficient evidence from the investigating officer to support the prohibition served on you on June 7, 2012. Therefore, I cannot be satisfied that you failed or refused to comply with a demand made on you to supply a sample of your breath under section 254 of the *Criminal Code* in respect of the operation or care or control of a motor vehicle on June 7, 2012.

I therefore revoke your driving prohibition as required by section 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. If any outstanding fines or debts are owed to the Province of British Columbia, the refund may be used to offset those debts.

s.15
Adjudicator

cc: Martin Johnson
fax: 250.868.3080

JUNE 15, 2012

s.22

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

Introduction

On May 27, 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* (Act) requires me to confirm your prohibition if I am satisfied that it is more likely than not 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 Comments

Records at this office indicate that disclosure was provided to your lawyer, Philip Riddell, on your behalf. I have proceeded with the review based on this 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

Having reviewed the evidence of Corporal Bayer and your lawyer's submissions, I find there is one issue that is determinative of this review.

Was a proper Demand issued to you and did you fail or refuse to comply with the Demand?

Corporal Bayer served you with a Notice, alleging that you operated or had care or control of a motor vehicle and that you failed or refused to comply with a Demand for a sample of your breath or blood under section 254 of the *Criminal Code*. I find that there was insufficient evidence that a Demand was made in accordance with the requirements of section 254.

Given the particular set of facts in your situation, I find that Corporal Bayer did not provide sufficient evidence for me to be satisfied that a valid Demand was made forthwith. Consequently, I am not satisfied that you failed or refused to comply with a Demand.

Decision

Based on the evidence before me in its entirety, I am not satisfied on a balance of probabilities that you failed or refused to comply with a Demand for a sample of your breath or blood with respect to the operation or care or control of a motor vehicle.

I therefore revoke your driving prohibition as required under s. 94.6 of the Act. You may resume driving after 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 to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

s.15
Adjudicator

cc. Philip Riddell
604-520-6035 (fax)

June 12, 2012

s.22

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

Introduction

On May 24, 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 94.6 of the *Motor Vehicle Act* (the "Act") requires me to confirm your prohibition if I am satisfied:

- 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.

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

Preliminary Issues

Records at this office indicate that disclosure was provided to your lawyer, Mark Bussanich. He confirmed that he had received the documents, and I have proceeded with the review based on this information.

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?

Facts, Evidence and Analysis

Did you operate or have care or control of a motor vehicle?

In his Report to Superintendent ("RTS"), the investigating officer indicated that a witness had advised the police of a male "passed out on st. for 4 hrs sleeping." The officer reported that police attended and observed an individual in a vehicle "passed out with the lights on." The officer reported that she awoke the individual whom she identified as you. She reported that your vehicle keys were in your pocket. The officer reported that you were driving or in care or control of a vehicle at 23:06 hours, on May 23, 2012. She reported the location as 100 block W 22nd Street, North Vancouver.

In your affidavit, you said that you had driven your vehicle and parked it across the street from the residence of your s.22 where you arrived at approximately 7:00 p.m. You stay with her every Wednesday because it is a day on which you do not have s.22 obligations. You were aware s.22 would not be home until approximately 9:30 p.m., and you had made arrangements to meet a friend for dinner. You locked your vehicle and walked to a restaurant, where you stayed for about one hour. You then walked to a bar on Lonsdale Ave, where you stayed for about one hour. You then walked to s.22 residence. You did not recall checking the time, but thought that you should get back to s.22 residence at around 9:30 since that is when you expected her to be there. When you arrived at her residence, you rang the buzzer, but there was no answer. You did not have keys to her residence. You sent s.22 a text message, and did not get an immediate response. You decided to wait in your vehicle for s.22 return. You sat in the driver's seat, turned on the interior light, and reclined the seat. You said your intention was to rest in the vehicle and to keep watch for s.22 return, but instead you fell asleep almost immediately. You later awoke to the police at your vehicle. During your dealings with police, you said you saw s.22 speaking to one of the officers.

s.22 provided an affidavit in which she corroborated your plans to spend the night at her residence and that you would arrive around 9:30 p.m. She said she received a text from you asking if she was awake, but she was not at her residence at that time. She said she responded to the message a few minutes after receiving it. She said she arrived at her residence a short time later. When she received the text message, she assumed you were trying to confirm that she was home before leaving wherever you were. When she arrived at her residence, she did not check to see if your vehicle was parked nearby. She did not hear anything from you after she responded to your text message. She went outside around 11:00 p.m. to see if your vehicle was present and was worried you had not come to her residence. She then saw the police dealing with you, and she spoke briefly with them.

Mr. Bussanich submitted that you were not driving or in care or control of your vehicle. He submitted that first, there is no evidence that you were actually driving after you consumed alcohol that evening, or within three hours of consuming alcohol. Secondly, there was no risk that you could have inadvertently put your vehicle in motion. Further, Mr. Bussanich argued that the evidence shows that you did not intend to drive, nor was there a risk that you could have changed your intention not to drive. Mr. Bussanich argued that situations in which a change of intention can be shown are those in which the vehicle is some substantial distance away from

its final destination. In your case, Mr. Bussanich submitted, you were parked across the street from your final destination, s.22 residence.

First, I am satisfied there is no evidence you were actually driving after you consumed alcohol that evening, or within three hours of consuming alcohol. As a result, the issue I must decide is whether you were in care or control of your vehicle when the officer located you. I note the inconsistency between your evidence and the evidence from the officer that a witness reported you were “passed out on st. for 4 hrs sleeping”. Mr. Bussanich did not address this inconsistency in his submissions. However, I find the inconsistency is in your favour because it indicates you were not driving within three hours of when your BAC was shown to exceed 80 mg%.

I agree with Mr. Bussanich’s analysis of care or control in your circumstances. For me to find that you were in care or control of the vehicle, I must find that you either intended to drive when you were in your vehicle, or if you did not intend to drive, then that there was a risk that you would change your mind and decide to drive; or that you could have accidentally set the vehicle in motion.

I am satisfied that you had made arrangements to meet s.22 at her residence as you and she have stated. I note the location of your vehicle as the officer reported it on 100 block W 22nd Street in North Vancouver, is consistent with your evidence as to its location in relation to s.22. As a result, I am satisfied that you parked your vehicle at s.22 residence prior to walking to a restaurant and pub where you consumed alcohol, and that your intention was to walk back to s.22 residence to spend the night there. I find therefore that you did not originally intend to drive after you consumed alcohol that evening.

I am also satisfied that, after learning s.22 was not home when you arrived, you chose to wait in your vehicle for s.22 in anticipation of her arrival, despite that you did not receive a reply from her, before you fell asleep, to your text in which you asked if she was home or awake. I am satisfied that you were still expecting her return when you fell asleep. Your evidence is consistent with hers that after police arrived, s.22 spoke with police; this leads me to conclude that she had in fact returned home some time after you fell asleep. As a result, I find the risk that you would change your mind and drive when you awoke was sufficiently small such that, on a balance of probabilities, you were not in care or control of a vehicle on the basis of that risk.

Finally, the officer’s evidence is that your keys were in your pocket, and you described a sequence of actions that were required to set the vehicle in motion. This evidence leads to my conclusion that your vehicle could not have been accidentally set in motion.

In summary, based on the evidence before me, I am not satisfied on a balance of probabilities that you were driving or in care or control of a vehicle at the relevant time.

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

Decision

I therefore revoke your driving prohibition as required under s. 94.6 of the Act. You may resume driving after 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 to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

s.15

Adjudicator

Cc: Mark Bussanich
Fax: 604 681 0652

June 21, 2012

s.22

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

Introduction

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

Section 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 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.

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

Facts, Evidence and Analysis

In the Notice you were served on June 10, 2012, Constable Vokins alleged that by reason of an analysis of your breath or blood, you consumed alcohol in such a quantity prior to or while operating or having care or control of a motor vehicle that the concentration of alcohol in your blood exceeded 80 mg% within 3 hours of operating or having care or control of a motor vehicle.

In the oral hearing, your lawyer, Michael Shapray drew my attention to the fact that Cst. Vokin did not submit a Report to Superintendent or any other evidence to support this claim.

Decision

After reviewing the evidence before me, I concur with Mr. Shapray and conclude that there is no evidence before me to support Cst. Vokins' claim. On this basis I am not satisfied on a balance of probabilities that alcohol you consumed caused your BAC to exceed 80 mg% within 3 hours after operating or having care or control of the motor vehicle.

I therefore revoke your driving prohibition as required under s. 94.6 of the Act. You may resume driving after 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 to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

s.15

Adjudicator

cc: Michael Shapray
Fax: 604-590-5626

June 11, 2012

s.22

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

Introduction

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

Section 94.6 of the *Motor Vehicle Act* (the Act) requires me to confirm your prohibition if I am satisfied:

- 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.

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 indicate that disclosure was provided to your lawyer, Sarah Leamon. She confirmed the same, and I have proceeded with the hearing based on this information.

Your lawyer observed that on May 28, 2012, the Appeals Registry sent a fax cover page to the attention of the Burnaby RCMP, noting their file number 12-21151, and requesting that any Report to Crown Counsel, and/or a Certificate of Analysis of a Qualified Technician (Certificate), be forwarded to the Appeals Registry. No such documents were supplied by the Burnaby RCMP.

Ms Leamon maintained that while the superintendent may seek and obtain requisite documents from the police for a hearing, the Act does not grant the Superintendent investigative powers. Your lawyer referred me to the case of *Brosseau v Alberta Securities Commission*, [1989] 1 SCR 301. She asserted that, in the absence of authority conferred by statute, the

superintendent may not go beyond adjudicatory functions contained in the Act. To the extent that the superintendent has resorted to investigation, Ms Leamon argued that there is a 'reasonable apprehension of bias.' Directing the police to produce their evidence, she contended, goes beyond the superintendent's authorised adjudicatory functions and breaches the duty to be fair. She submitted that there was a reasonable apprehension of bias. Ms Leamon cited the case of *Fowler v Superintendent of Motor Vehicles et al* [2000] BCSC 1901, and emphasised the point that an adjudicator, as a delegate of the superintendent, is not authorised to act as an investigator. There is a duty to obtain required documentary evidence from the police, but there is no basis for undertaking a review of the evidence prior to a hearing.

While I accept that the Appeals Registry requested that the police provide a prescribed document and other relevant information, it was justified. The investigating officer noted on page 2 of his Report to Superintendent (Report) that a Certificate was attached, indicating the existence of that prescribed document. While on page 1 of the Report, the officer did not indicate whether both a Report to Crown Counsel and the details of the Incident formed part of the Report. The Appeals Registry was addressing an ambiguity regarding the existence of police evidence. If a Certificate exists, the police are obliged under section 94.3 of the Act to provide it to the superintendent and an adjudicator is required to take it into consideration on a review. In *McLachlin v The Superintendent of Motor Vehicles* 2005 BCSC 230, cited by your lawyer, the court found that by making an enquiry for a Certificate, the adjudicator did not breach the rules of natural justice or the duty of fairness. And although a Report to Crown Counsel is not a prescribed document under the Act, requesting clarification as to the existence of that document was within the ambit of the superintendent's adjudicative function.

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?

Facts, Evidence and Analysis

Did you operate or have care or control of a motor vehicle?

In his Report to Superintendent (Report), Constable Faresin, of the Burnaby RCMP, stated that you admitted to being a driver. An independent witness provided your description to the constable and advised him that you were the driver. The witness maintained continuity with you from the moment that the vehicle hit a utility pole until the police arrived. Constable Faresin noted that the time of driving / care or control was 04:33 hours on May 21, 2012.

In the absence of contradictory evidence from you, I accept the police evidence and I find it more probable than not that you operated or had care or control of a motor vehicle at 04:33 hours on May 21, 2012.

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

The constable provided BAC Datamaster C breath test tickets that showed your BAC was 60 mg% at 06:20 hours and 50 mg% at 06:52 hours on May 21, 2012. The breath tickets indicate that Lesley Carol Norman is qualified to operate an approved instrument and is a qualified technician. The qualified technician obtained two samples of your breath *that enabled proper analysis to be made to determine the concentration, if any, of alcohol in your blood. Ms Norman indicated that the BAC Datamaster C was in proper working order, and signed the tickets as acknowledgement that the information was true. I note that both samples were taken within three hours of your operating or having care or control of a motor vehicle.

The Superintendent's Report on Calculating BAC, explains how the Superintendent calculates BAC within three hours of the time of driving in a review. As noted in the Superintendent's Report, the 'elimination rate is about the same for all people regardless of height, weight, sex or amount of fatty tissues.' Your lawyer has not challenged the investigating officer's evidence, on page 2 of his Report, that you did not consume any alcohol after the time of driving.

Given that the human body begins to eliminate alcohol as soon as it is consumed, and that the elimination rate is similar for all people, the normal range of values is considered to be 10 to 20 mg% per hour. Based on this, the maximum and minimum BAC values may be extrapolated to infer your BAC at the time of driving.

Where S = Blood Sample Reading (50 mg%)
 E = Elimination Rate (10 to 20 mg%)
 T = Time of 129 minutes between the time of driving and time of the breath
sample

Then the minimum BAC at time of driving = $50 + (10 \times 129/60) = 71.5$

Your minimum BAC level at the time of driving, on May 21, 2011 at 04:33 hours, given a time interval of 129 minutes, and an elimination rate of 10 mg% per hour, would have been 71.5 mg%.

Your lawyer referred to the Shajani report and argued that the methodology used by the superintendent to calculate your BAC was not reliable. He submitted that any scientific measurement may be subject to error. According to Mr Shajani, qualified technicians are trained that one reading may be +/- 10mg%. It could follow that a reading of 60mg% was actually 50mg%. While Ms Leamon has suggested that there may be up to a +/- 10 mg% error in a breath sample reading using an approved instrument, she has provided no persuasive evidence to support such a contention in this incident.

Ms Leamon referred to the Shajani report to argue that given your BAC test results, there are three possibilities as to what your BAC level was, within 3 hours after operating a vehicle: 1) the same; 2) higher; or 3) lower, depending on various factors. The superintendent acknowledges that absorption rates are affected by the type and amount of food in the stomach, the alcohol

concentration of the beverage, the rate of alcohol consumption, and the presence of certain drugs, diseases or emotional states. The body begins to eliminate alcohol, however, as soon as it is consumed. Ms Leamon had the opportunity to lead evidence on how absorption affected you so that your BAC at the time of driving would not have exceeded 80mg%.

The extrapolation of your BAC is based on the time of driving, 04:33 hours. Ms Leamon argued that based on the Shajani report calculations, the minimum BAC, given a time interval of 129 minutes and an elimination rate of 10 mg% per hour, would have been 73 mg%. If an error factor of 10mg% was introduced, this would lead to a result of 63mg%.

Based on the evidence before me, including the calculation of your BAC, 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 therefore revoke your driving prohibition as required under s. 94.6 of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia.

A refund of your review fee has been authorised and will be sent to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

s.15
Adjudicator

cc Sarah Leamon
(Fax: 604 685 8308)

FILE COPY

June 15, 2012

s.22

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

Introduction

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

Section 94.6 of the *Motor Vehicle Act* (the "Act") requires me to confirm your prohibition if I am satisfied that it is more likely than not 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.

Preliminary Comments

At the beginning of the oral hearing, I confirmed with your lawyer, Anjalika Rogers, that she had received all of the disclosure documents on your behalf. I have proceeded with the review based on this 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

Having reviewed all of the evidence before me, including your lawyer's submissions, I find there is one issue that is determinative of this review.

Did you fail or refuse to comply with a demand?

Constable Pehlivanian served you with the Notice, alleging that you operated or had care or control of a motor vehicle and that you failed or refused to comply with a demand for a sample of your breath or blood under section 254 of the *Criminal Code*. However, given the specific set of facts in your situation, I find insufficient evidence for me to be satisfied that a demand was made forthwith. Consequently, I am satisfied that you did not fail or refuse to comply with a demand.

Decision

Based on the evidence before me in its entirety, I am satisfied on a balance of probabilities that you did not fail or refuse to comply with a demand for a sample of your breath or blood with respect to the operation or care or control of a motor vehicle.

I therefore revoke your driving prohibition as required under s. 94.6 of the Act. You may resume driving after 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 to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

June 26, 2012

s.22

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

Introduction

On June 9, 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* (Act) requires me to confirm your prohibition if I am satisfied that it is more likely than not 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 Report to Superintendent (RTS).

Preliminary Comments

Records at this office indicate that disclosure was provided to your lawyer, Kelly Merrigan, on your behalf. I have proceeded with the review based on this confirmation. I also note that the written submissions were made by Lolita Rudovica.

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

Did you operate or have care or control of a motor vehicle?

In the RTS, Constable Connolly (Cst. Connolly) indicated that you were driving or in care or control of a motor vehicle on May 25, 2012, at 01:45 hours. You did not dispute being the driver.

Based on the evidence before me, I am satisfied that you operated or had care or control of a motor vehicle on May 25, 2012, at 01:45 hours.

If so, 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 demand existed, and I must determine whether you failed or refused to comply with that demand.

In the RTS, Cst. Connolly noted that there was a strong odour of liquor on your breath, your person and in the vehicle. Your eyes were bloodshot and you were spitting and had a dry mouth. Your speech was slurred, your balance was wobbling and you were staggering and falling. You did not dispute Cst. Connolly's evidence in this regard.

On page two of the RTS, Cst. Connolly stated that he made a demand of you on May 25, 2012, at 03:08 hours. I note that this was over an hour and fifteen minutes after you were found to be driving or in care or control of a motor vehicle. There is no explanation for the delay between Cst. Connolly forming the grounds to believe that your ability to drive was impaired by alcohol, contrary to section 253 of the *Criminal Code*, and making the demand. Consequently, I find that the demand was not made forthwith or as soon as practical, so it was not a valid demand.

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

Decision

Based on the evidence before me in its entirety, I am not satisfied on a balance of probabilities that you failed or refused to comply with a valid demand for a sample of your breath or blood with respect to the operation or care or control of a motor vehicle.

I therefore revoke your driving prohibition as required under section 94.6 of the Act. You may resume driving after 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 to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

s.15
Adjudicator

cc. Lolita Rudovica
Fax. [604] 581-2017

June 7, 2012

s.22

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

Introduction

On May 22, 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* (“Act”) requires me to confirm your prohibition if I am satisfied it is more likely than not 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 section 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 Matters

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

While I have received and reviewed your submissions, after considering the totality of the evidence before me, I have determined that your case hinges on one issue, which is whether or not you failed or refused to comply with a demand.

Facts, Evidence and Analysis

Did you fail or refuse to comply with a demand?

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

The peace officer failed to record the time of the demand. In accordance with section 254 of the *Criminal Code*, it is essential that the police evidence demonstrate that a demand existed and that it was made forthwith or as soon as practicable. In your case, I do not find that a demand was made pursuant to section 254 of the *Criminal Code*. Consequently, I cannot find that you failed or refused to comply with a demand made on you to supply a sample of your breath. As such, I must revoke your prohibition.

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 section 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

June 29, 2012

s.22

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

Introduction

On June 9, 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 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 indicate that disclosure was provided to your lawyer, Mr David Silverman. He confirmed receiving the police evidence and I have proceeded with the hearing based on this information.

Issues

There are 3 issues in this review:

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

Facts, Evidence, and Analysis

Having reviewed the evidence of Constable Sabulsky and your lawyer's submission, I find there is one issue that is determinative of this review.

Was a proper demand issued to you and did you fail or refuse to comply with the demand?

Constable Sabulsky served you with a Notice, alleging that you operated or had care or control of a motor vehicle and you failed or refused to comply, without a reasonable excuse, with a demand for a sample of your breath under section 254 of the *Criminal Code*. I have considered both the Report to Superintendent (Report) submitted by the constable and Mr Silverman's submission in relation to whether there was insufficient evidence that a demand was made in accordance with the requirements of section 254.

If the peace officer has reasonable grounds, pursuant to section 254(3) of the *Criminal Code*, he must make a demand for a breath sample, 'as soon as practicable.' On page 2 of the Report, I note that the grid showing the time and date for the demand of a sample was not filled in. Consequently, it is not possible to determine if a demand was made as soon as practicable. The requirements for a valid demand are specific and must comply with section 254 of the *Criminal Code*.

Since there is no evidence to determine the time when a breath demand was made, I cannot be satisfied as to its validity.

Decision

Based on the evidence before me in its entirety, I am not satisfied on a balance of probabilities that you failed or refused to comply with a demand for a sample of your breath with respect to the operation or care or control of a motor vehicle on June 9, 2012 at 02:20 hours.

I therefore revoke your driving prohibition as required under s. 94.6 of the Act. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia.

A refund of your review fee has been authorised and will be sent to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owed to the province of British Columbia your refund may be used to help offset those debts.

Adjudicator

s.15

cc: David Silverman
Fax: (604 859 3361)

June 12, 2012

s.22

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

Introduction

On June 18, 2011, a peace officer served you with a Notice of Driving Prohibition (Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act (Act)* requires me to confirm your prohibition, along with the corresponding monetary penalty, 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 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), or 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).

Preliminary Matters

Our records indicate that copies of all documents related to this prohibition were provided to your legal counsel, John Green. During the oral hearing Mr. Green acknowledged receiving disclosure. I have proceeded with the 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 an ASD demand?
3. If so, did you have a reasonable excuse?

Facts, Evidence and Analysis

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

In the evidence provided by Officer Tessier, he indicates that on June 18, 2011 at 22:03 hours, he observed you driving. In the Notice, Officer Tessier indicates the location of driving was on Chaster Road in Duncan.

In your sworn affidavit you acknowledge driving on June 18, 2011 at approximately 10:00 p.m., when you were stopped by police.

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

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

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

Mr. Green submits that the police evidence fails to establish that you failed or refused to comply with the demand.

I concur.

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

Decision

Based on the evidence before me, I am satisfied that you did not fail or refuse to comply with an ASD demand on June 18, 2011. 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.

If you have not already done so, you may go directly to the location where your vehicle was impounded for the immediate release of your vehicle. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay towing and storage costs up to and including June 15, 2012. Original receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you. You may send your receipts and invoices to the address on page one of this letter.

Adjudicator s.15

pc: John Green via fax

June 26, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On June 9, 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 and that the approved screening device (ASD) registered a “warn” or a “fail”.

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

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

In reaching my decision on this review, I must consider all relevant information provided to me, including the Report to Superintendent (RTS).

Preliminary Matters

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

Issues

There are two issues in this review:

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

As it is determinative of the matter, I will only consider the second issue.

Facts, Evidence and Analysis

Did the ASD register a “warn”?

In the RTS, Constable Balfour (Cst. Balfour) stated that an ASD test was administered on you and that a “fail” result registered at 03:27 hours. Cst. Balfour stated that you were informed of your right to a second ASD test and that you chose to exercise that right. Cst. Balfour stated that a second ASD test was administered at 03:29 hours and the result of that test was a “warn”.

In accordance with section 215.42 of the Act, the second analysis must be performed with a different ASD than was used in the first analysis. In your specific case, I note that Cst. Balfour used the same ASD for the first and second ASD test, and for that reason, I do not find the results reliable.

Decision

I am not satisfied that an ASD did register a “warn” on June 9, 2012, at 03:29 hours. I therefore revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

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

June 7, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On May 18, 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* (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 fail.

I must revoke your driving prohibition, cancel the monetary penalty, and revoke any vehicle impoundment if I am satisfied that you were not a driver within the meaning of section 215.41(1), or that the ASD did not register a 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 indicate that disclosure was provided to you. You referred to the police evidence in your submission, and I proceeded with the hearing based on this information.

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 approved screening device register a 'fail'?

Facts, Evidence and Analysis

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

In the Report to Superintendent (Report), Constable Deziel, of the Vancouver Police Department, indicated that on May 18, 2012, she identified you as the driver of a vehicle. The officer apparently observed a vehicle being driven at 02:35 hours on that day. However, I note that the officer recorded the date of the prohibition as May 16, 2012 in her Synopsis.

In your submission, you admitted to driving down to Vancouver on May 15, 2012. You had one glass of wine with dinner at 6:00 pm in Abbotsford. You drove down to Vancouver at approximately 10:00 pm for a friend's birthday. You socialised at a nightclub. At approximately 2:30 am on May 16, 2012, you went into a s.22 franchise. After having food to eat, you left and headed back to Abbotsford, where you live. You were driving east on First Avenue and you were pulled over by the police for speeding.

Constable Deziel consistently referred to the date of the incident on the Notice, Report, Vehicle Impoundment Notice and associated Report, as May 18, 2012. In your submission you argued that the date of the incident was written incorrectly by the officer. Indeed the officer's handwritten documentation does not accord with the word processed Synopsis. The Synopsis was apparently authored two days before the incident purportedly occurred. Since I cannot rely upon the stated date you were alleged to have been a driver, May 18, 2012, I am unable to find that you were a driver within the meaning of section 215.41(1) of the Act.

Decision

Based on the evidence before me, I find that it is more likely than not that you were not a driver within the meaning of section 215.41(1) of the Act on May 18, 2012.

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

The vehicle impoundment is also revoked. I note that your vehicle has already been released from the impound lot. Upon receipt of your proof of payment, we will reimburse you for your towing and storage charges paid up to and including May 22, 2012, the day the vehicle was eligible for release. You may send your invoice to the Office of the Superintendent of Motor Vehicles at the address noted on the previous page.

Adjudicator

s.15

JUNE 1, 2012

s.22

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

Introduction

On May 12, 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* (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* (the Demand) to provide a sample of breath for 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

Records at this office indicate that full disclosure was provided to your lawyer, Sumandeep Singh, on your behalf. I have proceeded with the hearing 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

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

In the Report to Superintendent (RTS), Constable Froese indicated having witnessed you driving on May 12, 2012, at 2010 hours. You admitted to being the driver on the night in question.

Based on the evidence before me, I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act on May 12, 2012, at 2010 hours.

Did you fail or refuse to comply with a Demand?

I must first determine whether a demand existed. In your affidavit, you said that you never consume alcohol and that you were the designated driver for your brother-in-law and his friends on May 12, 2012. You said that they were drinking alcohol and you were driving the car.

Mr. Singh argued that the police officer did not have reasonable and probable grounds to believe that you had consumed alcohol or to make the Demand. Although case law, including the *Spencer* case cited by your lawyer, has established a very low standard for what constitutes reasonable grounds, I am inclined to agree with your lawyer, given the specifics of this case.

Based on all the evidence before me in this particular set of circumstances, I find on a balance of probabilities that the officer did not have a sufficient evidentiary basis to form a reasonable suspicion that you had alcohol in your body, having operated a vehicle within the preceding three hours. I am, therefore, satisfied that the Demand was invalid. Having made this finding, I do not need to consider other issues.

Decision

I am not satisfied that you failed or refused to comply with a valid Demand, because I find the Demand was invalid. I therefore revoke your driving prohibition and monetary penalty as required by section 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.

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

s.15
Adjudicator

cc. Sumandeep Singh
604-593-5311 (fax)

JUNE 5, 2012

s.22

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

Introduction

On May 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 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) 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 analysis by means of an approved screening device (ASD) (the Demand), 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 beginning of the oral review I listed the documents that were sent to your lawyer, Sarah Leamon, in disclosure. Ms. Leamon acknowledged that she had received them. I have proceeded with the hearing 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

Upon reviewing Constable Simms's evidence, I note that you were prohibited from driving for failing or refusing to comply with a Demand, and not having a reasonable excuse for failing or refusing to comply with a Demand. In the Report to Superintendent, however, the officer's evidence is that you did, in fact, comply with the Demand. There is no evidence before me to support the driving prohibition that was served on you. 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

I am satisfied that you did not fail or refuse to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an ASD on May 17, 2012, at 0149 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.

If the registered owner of the vehicle has not already done so, he may go directly to the location where his vehicle is impounded for the immediate release of his vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. The registered owner is responsible for any storage costs beyond that date. If the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

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