

February 2, 2012

s.22

REVIEW DECISION Administrative Driving Prohibition No. s.22

Introduction

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.

As there is no evidence before me from the peace officer, I must revoke your prohibition.

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: Daniel Henderson
fax: 604-249-8709

February 1, 2012

s.22

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

Introduction

On January 11, 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, Mr John Bethell. I have proceeded with the hearing based on this information.

On January 13, 2012, you applied for a written review of your ADP. The review application states that all written material you wish to be considered must be received by the Superintendent's Office by the scheduled time for the review. The applicant's lawyer is responsible for supplying all relevant evidence in support of their client's case.

Your hearing was rescheduled for January 23, 2012, at 9:30 am. As of that date and time, I received only your written application for review setting out the grounds upon which you have made your application. Your lawyer made no submissions. Based on the peace officer's evidence before me, I have reviewed your ADP.

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 Oliveira, of the Surrey RCMP, stated that he observed you standing to the rear of a vehicle at 18:18 hours on January 11, 2012. You were getting into the vehicle when approached by the constable. The key for the vehicle was in your pocket. You were the only person 'around the vehicle' when the police came upon you.

I find that the constable has not provided reliable evidence that you operated or had care or control of a motor vehicle. 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 in care or control of a motor vehicle at 18:18 hours on January 11, 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

cc John Bethell
(fax: 604 437 0342)

February 23, 2012

s.22

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

Introduction

On February 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 ADP. Under section 117 of the *Motor Vehicle Act*, the Superintendent has delegated the authority to conduct this review to me.

Section 94.6 of the *Motor Vehicle 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.

Preliminary Matters

During the oral hearing, I confirmed with you that you had received all of the required disclosure documents. I 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. 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 the Synopsis, Cst. Canuel stated that there was a complaint received from s.22 that you were driving a s.22 and that you were intoxicated. s.22 had stated she was drinking with you and that she received a text from you stating that you were driving around “wherever the the road takes [you] *[sic]*”. A second complaint was reported regarding a male and female fighting in a vehicle. Cst. Canuel stated that when he arrived on scene he observed you, s.22 and another male beside the vehicle. In the Synopsis, Cst. Canuel stated that the date and time of driving or care or control of the vehicle was on February 1, 2012, at 00:11 hours.

During the oral hearing, you explained that at no time were you driving your vehicle while you were drinking. You stated that the text to her was not meaning that you were driving and it was twisted and taken out of context. You explained that s.22 was your girlfriend at the time of the incident and that you and she had gotten into a fight that evening. You stated that your vehicle was parked by Lee’s Music because your s.22 and you had dropped him off there hours earlier and that you were picked up from there by your friend, s.22. You stated that you had left your vehicle there because you knew you would be drinking that evening and you were not planning on driving at all. You stated that you were with s.22 during the fight you had with s.22 and that when s.22 left she stated she was going to “smash your truck up” and damage it. You stated that you were worried about your truck and that you wanted to make sure it was not damaged, and that you wanted to try to stop her from doing something like that. You stated that s.22 drove you to your vehicle and when you and he arrived s.22 was already there. s.22 and you starting arguing and yelling, and it was then that Cst. Canuel and two other officers arrived. While two officers were speaking to s.22 you and s.22 arranged for you to call him to come and pick you up after everything was dealt with. However, you did not end up calling s.22 because you were s.22.

s.22 provided a written submission, confirming that he had driven you to your vehicle that evening because you were worried about it and that you were to call him for a ride back home but he never heard from you.

I note that Cst. Canuel’s evidence is that s.22 reported that you were driving your vehicle. However, when Cst. Canuel arrived on scene you were not in your vehicle and in fact, you were walking away from it. You and s.22 have both stated that it was s.22 who drove you to the location of your vehicle. Other than s.22 alleged report, there is no other detailed evidence in the Report to Superintendent or the Synopsis of you driving or having care or control of the vehicle. Further, Cst. Canuel stated in the Synopsis that there were two males at the scene when he arrived. I find that this is supportive of your evidence that s.22 was present and that he drove you to the location.

Based on the evidence before me, I am not satisfied that you operated or had care or control of a motor vehicle on February 1, 2012, at 00:11 hours.

Having made this finding, I need not consider the remaining issues.

Decision

I therefore revoke your driving prohibition, as required under s. 94.6 of the *Motor Vehicle Act*. You may resume driving but only 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 owing 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 February 5, 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 it is more likely than not that:

- you consumed alcohol before or while you were operating or had care or control of a motor vehicle, and
- alcohol consumption caused your blood alcohol concentration ("BAC") to exceed 80 milligrams of alcohol per 100 milliliters 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, including the peace officer's report.

Preliminary Matters

Records at this office indicate that disclosure documents regarding this matter were provided to your lawyer, Mr. Geoffrey Simair, on your behalf. I have proceeded with the hearing 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. 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 the Report To Superintendent ("the Report"), Constable Smith identified himself as the investigating officer, and indicated that he witnessed you driving. He observed a vehicle come off the ferry and drive on Long Harbour Road. He pulled the vehicle over and you were identified as the driver. The constable has noted the time and date of driving/care or control as 23:25 hours, on February 4, 2012.

You have provided no evidence to the contrary. Based on the evidence before me, I find that you operated or had care or control of a vehicle at 23:25 hours on February 4, 2012.

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

In the Report, the officer noted that he detected a moderate odour of liquor on your breath, your face was flushed, and that your eyes were watery and bloodshot. He has also noted that your speech was slurred and that your balance was uncertain. The officer has also indicated that you admitted consuming alcohol, but no details as to the amount and timing of your consumption were provided.

According to the grid on page 2 of the Report, you provided two samples with a BAC of 90 mg%, on an approved instrument; however, the officer has not recorded the time of the test results. Consequently, I cannot be sure that these results are within 3 hours of your reported time of driving/care or control. The officer has indicated that a Certificate of Analysis has been provided.

The Certificate Of A Qualified Technician ("the CQT") provided also indicates that you provided two samples of 90 mg%, and the times of the tests has been recorded. However, I note that another name as well as yours is noted on the CQT form, and no explanation has been provided. Your lawyer contends that the CQT was generated for the other person noted, and is not yours. I find that as I have no explanation for why a second name is listed on the form, I cannot be certain it was for you, and ultimately I cannot rely upon it.

As a result, I find that I cannot be satisfied that your BAC exceeded 80 mg% within 3 hours of your operating or having care or control of a motor vehicle.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that before or while operating or having care or control of a motor vehicle, you consumed alcohol that caused you to have a BAC of over 80 mg% within three hours after you operated or had care or control of a motor vehicle on February 4, 2012, at 23:25 hours.

I therefore revoke your driving prohibition, as required by section 94.6 of the *Motor Vehicle 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 Geoffrey Simair
Fax #: (250) 385 - 4506

February 29, 2012

s.22

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

Introduction

On February 11, 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 Marvin Stern. He confirmed the same, 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 Shemilt and the submissions from your lawyer, 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 Shemilt 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 your lawyer's argument that there was insufficient evidence that a demand was made in accordance with the requirements of section 254.

Your lawyer argued that the constable's demand was not lawful: He neither had the requisite grounds for a reasonable suspicion nor reasonable and probable grounds that you had operated or had care/ control of a motor vehicle within the preceding three hours. The constable did not have personal or direct knowledge of the collision. The witness simply indicated you were in care or control, but did not indicate a time of the accident or the basis for his assertion that you were in care or control of a motor vehicle. Mr Stern also submitted that there is no evidence from which to determine the time of a demand. He drew my attention to page 2 of the Report and noted 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 forthwith. The requirements for a valid demand are specific and must comply with section 254 of the *Criminal Code*.

For a demand to be valid, it must be made forthwith or as soon as practicable. Constable Shemilt noted on page 1 of the Report that the time of care or control was 14:31 hours on February 11, 2012. A demand was made by the constable and you would not respond. A time of refusal was indicated at 14:46 hours. Since there is insufficient evidence to determine the time as to when a breath demand was made, I am not satisfied that a valid demand was made.

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 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: Marvin Stern
Fax: (250 590 5626)

February 2, 2012

s.22

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

Introduction

On January 13, 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

The Office of the Superintendent of Motor Vehicles faxed disclosure documents to your lawyer, Lorne Wise, on January 19, 2012. I have before me a fax communication result report confirming successful transmission of the disclosure documents. I have proceeded with the hearing based on this confirmation.

In his submission, Mr. Wise took issue with the reason for the traffic stop and submitted that the officer did not provide grounds for the traffic stop. In your affidavit, you stated that you require your driver's licence for work. I can appreciate concerns with the reasons police stopped you to conduct their investigation, and I can also appreciate the need to maintain a licence for work purposes. However, I do not have the authority under the *Act* to consider these issues in this review. My authority is outlined in the introduction of this letter, and the scope of the review is limited to the grounds defined in the *Act*. The issues that I can consider are listed 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, did you fail or refuse to comply with a demand?
3. If so, did you have a reasonable excuse?

Facts, Evidence and AnalysisDid you operate or have care or control of a motor vehicle?

In the ADP Report to Superintendent ("ADP Report"), Peace Officer Young is identified as the investigating officer. The investigating officer checked the box to indicate that he witnessed you as the driver of the vehicle. The officer indicated that you were seated in the driver's seat while the vehicle was moving forward and the keys were in the ignition. The officer stated, in the ADP Report, that the date and time of driving or care or control was January 13, 2012, at 00:15 hours.

In your affidavit, you acknowledge 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 January 13, 2012, at 00:15 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.

Under section 254 of the *Criminal Code* there are two different demands that an officer may make. The first demand is for a breath sample into an approved screening device ("ASD"). The ASD demand is found under section 254(2) of the *Criminal Code*. A 'fail' result on the ASD is used by police officers to form the reasonable and probable grounds required for a second breath demand ("the breath demand"). The breath demand is for breath samples into what is known as a Datamaster C. It is usually located at the police station and is operated by a qualified technician. This Datamaster C analyzes the concentration, if any, of alcohol in a person's blood. The breath demand is found under section 254(3) of the *Criminal Code*.

The evidence before me indicates that you acknowledged that you consumed alcohol. The officer also indicated that you had an odour of liquor on your breath. This evidence provides the officer with a reasonable suspicion that you had alcohol in your body. As such, the ASD demand was a valid demand. Furthermore, the evidence before me indicates that you provided a breath sample into the ASD which registered a 'fail' result. This would provide the officer the required reasonable and probable grounds to make the second breath demand under section 254(3) of the *Criminal Code*. However, in your case, the officer has not recorded any information regarding a second demand. I see no evidence from the officer that he made a breath demand under section 254(3) of the *Criminal Code*.

I note that the officer served you with a Notice of Driving Prohibition because you failed or refused to comply with a demand made under section 254 of the *Criminal Code*. This means that you would have had to have failed or refused to comply with one of the two demands under section 254 of the *Criminal Code*. The evidence before me clearly shows that you provided a breath sample for the first ASD demand. As a result, I find that you could not have failed or refused the ASD demand. While the 'fail' result of the ASD test provides the officer the required reasonable and probable grounds to make the second breath demand, there is no evidence before me that the officer made this second breath demand. As such, I find that you could not have failed or refused to comply with a breath demand where there is no evidence that one was made.

Based on the entirety of the evidence before me, I am not satisfied that you failed or refused to comply with a demand.

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

Decision

Based on the evidence in its entirety, I am not satisfied that you failed, without a reasonable excuse, to comply with a demand made to you in respect of the operation or care or control of a motor vehicle on January 13, 2012, at 00:15 hours.

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 /

cc: Lorne Wise
fax: 604-272-0785

February 22, 2012

s.22

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

Introduction

On February 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 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 three 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 three hours of operating or having care or control of a motor vehicle because of alcohol consumed before or while operating or having care or control of the motor vehicle. In reaching my decision on this review, I must consider all relevant information provided to me.

Preliminary Issues

I have no police evidence in front of me, and therefore, I must revoke the prohibition.

Decision

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

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

s.15

Adjudicator

February 24, 2012

s.22

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

Introduction

On February 8, 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 Albert. He confirmed the same, 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 Critchley and the submissions from your lawyer, 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 Critchley 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*. However, I have considered both the Report to Superintendent (Report) submitted by the constable and your lawyer's argument there was insufficient evidence that a demand was made forthwith or as soon as practicable pursuant to section 254. Constable Critchley noted on page 1 of the Report that the time of driving/ care or control was 00:28 hours on February 8, 2012. A demand was made by the constable and you understood its meaning. A time of refusal was indicated at 01:52 hours.

Mr Albert submitted that there is no evidence from which to determine the time of the demand. He drew my attention to page 2 of the Report and noted that the grid showing the time and date for the demand of a sample was left blank.

For a demand to be valid, it must be made forthwith or as soon as practicable. Since there is insufficient evidence to determine the time as to when a breath demand was made, I am not satisfied that a valid demand was made.

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 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 Albert
Fax: (250 590 5626)

February 14, 2012

s.22

REVIEW DECISION Administrative Driving Prohibition No. s.22

Introduction

On February 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* (“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

The Office of the Superintendent of Motor Vehicles faxed disclosure documents to your lawyer, Harry Hunter, on February 8, 2012. I have before me a fax communication result report confirming successful transmission of the disclosure documents. I have proceeded with the hearing based on this confirmation.

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 type of demand or 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

cc: Harry Hunter
fax: 604-986-9286

June 19, 2012

s.22

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

Introduction

On January 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* 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 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 Matters

Records at this office indicate that disclosure documents regarding this matter were provided to your lawyer, Mr. Richard Hewson, on your behalf. I have proceeded with the hearing based on this confirmation.

Your lawyer has informed me that he has been instructed to not make any submissions on this review. As such, I will proceed with this review on the evidence before me.

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 ("the Report"), Constable Laing identified himself as the investigating officer and stated that you were witnessed driving. An ambulance driver observed a vehicle drive into the rail/sidewalk of a bridge. She stated that she approached the vehicle and asked the driver to stop and not leave the scene. She stated that the driver stumbled and appeared to be intoxicated. She then reported the incident to the police and waited until the police arrived. In the Report, the officer stated that you were identified as the driver. The officer has reported the time and date of driving/care or control as 23:07 hours, on January 21, 2012.

You have provided no evidence to the contrary. Based on the evidence before me, I find that you operated or had care or control of a motor vehicle at 23:07 hours, on January 21, 2012.

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 also determine whether you failed or refused to comply with that demand.

In the Report, the constable stated that he detected a strong odour of liquor on your breath and that you had a flushed face and bloodshot eyes. He also noted that your speech was slurred and that you were having balance problems. The officer has indicated that he read you a breath demand at 00:08 hours.

The officer has reported that your time of driving was at 23:07 hours, yet the breath demand did not occur until 00:08 hours. In accordance with section 254 of the *Criminal Code*, it is essential that the police evidence demonstrate that a demand was made as soon as practicable. Without an explanation for the delay I do not find that the 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.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that failed or refused to comply with a demand made on you.
I therefore revoke your driving prohibition, as required by section 94.6 of the *Motor Vehicle Act*.
You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

Adjudicator s.15

c.c. Richard Hewson
fax (250) 558-9935

FEBRUARY 2, 2012

s.22

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

Introduction

On January 13, 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.

Preliminary Issues

Records at this office indicate that disclosure was not available at the time of the hearing to fax to your lawyer, Hugh McCallum. I have proceeded with the hearing based on this confirmation.

Mr. McCallum submitted that in the absence of the police documents there are insufficient grounds to uphold the administrative prohibition. I concur, consequently, based on the evidence before me, I am not satisfied that your BAC exceeded 80 mg% within 3 hours of operating or having care or control of a motor vehicle.

Decision

I am not satisfied that you had 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.

I therefore revoke your driving prohibition, as required by s. 94.6 of the *Motor Vehicle 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.

Adjudicator s.15

cc: Hugh McCallum by fax: [604] 534-1021

February 1, 2012

s.22

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

Introduction

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.

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 officer noted that he saw you driving on Highway #1 in West Vancouver. There is no evidence to the contrary. Therefore, I am satisfied that you operated or had care or control of a motor vehicle at 21:18 hours on January 19, 2012, as noted in the report.

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

The officer read you an approved screening device (ASD) demand, with which you complied at 21:20 hours. He then read you a breath demand thirteen minutes later. The *Criminal Code* requires the following:

If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under section 253 as a result of the consumption of alcohol, the peace officer may, by demand made as soon as practicable...

Given that the ASD result would immediately provide the officer with the required reasonable grounds, then I find that he had to make the demand as soon as practicable thereafter. Instead he waited thirteen minutes while dealing with other issues regarding your detention, which I find were not reasonable for him to do, prior to the demand. Therefore, I do not find that the demand was valid and I need not address any other issue.

Decision

Considering the evidence before me, I am satisfied that you did not fail or refuse, without a reasonable excuse, to comply with a demand made to you in respect to the operation or care or 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: Michael Shapray
Stern Albert Shapray
Fax: (604) 590-5626

February 3, 2012

s.22

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

Introduction

On January 15, 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* (the *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.

Preliminary Matters

Our records indicate that copies of all documents related to this prohibition were provided to your legal counsel, Anjalika Rogers. During the oral hearing Ms. Rogers acknowledged that she had received disclosure. 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?

In the Report to Superintendent regarding your Administrative Driving Prohibition (the Report) Officer Boechler indicates that on January 15, 2012 at 01:56 hours, he observed you operating a motor vehicle on St. Johns Street in Port Moody.

You did not provide any evidence regarding this issue.

Based on the evidence, I find that you were operating or had care or control of a motor vehicle at the time in question.

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.

In his Report under 'Reasonable and Probable Grounds for Demand', Officer Boechler indicates that you were observed weaving and swerving while driving. After stopping your vehicle, Officer Boechler detected a strong odour of liquor on your breath and on your person. He also observed that your speech was fair, your balance was uncertain and you were swaying and staggering.

In the grid on page two of the Report, Officer Boechler indicates that he read the breath demand at 02:16 hours; however, you refused to comply. Below the grid, Officer Boechler indicates that you understood the demand; however, you refused to comply with it.

On page three of the Report, Officer Boechler indicates that you told him that you would not provide breath samples without speaking with your lawyer. After you spoke to your lawyer, you stated, "My lawyer advised me to refuse this." You were advised of the consequences of refusing and said that you understood; however, you did not provide breath samples.

Ms. Rogers notes that there were 20 minutes between the time of driving and the time Officer Boechler made the breath demand. She submits that your prohibition should be revoked because the demand was not made as soon as practicable and Officer Boechler has not explained the reason for the delay.

I concur.

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

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.

I therefore revoke your driving prohibition as required by section 94.6 of the *Motor Vehicle 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

pc: Anjalika Rogers via fax

February 20, 2012

s.22

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

Introduction

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

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

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

I must revoke your driving prohibition if I am satisfied that you did not fail or refuse to comply with a demand or that you had a reasonable excuse for failing or refusing to comply with a demand.

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

Preliminary Issues

Records at this office indicate that full disclosure of the documents before me was provided to you. 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 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 Lansdowne Road in Richmond. There is no evidence to the contrary. Therefore, I am satisfied that you operated or had care or control of a motor vehicle at 22:57 hours on January 30, 2012, as noted in the report.

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

Any approved screening device demand must be made as soon as practicable after an officer has formed a reasonable suspicion that a driver has alcohol in his body. As your lawyer, Paul Doroshenko, pointed out, there is no evidence before me as to when the officer who pulled you over formed that suspicion or made the demand. Therefore, I am not satisfied that a valid demand was ever made and so I need not consider the remaining issue.

Decision

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

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

s.15

Adjudicator

cc: Paul Doroshenko
Acumen Law Corporation
(604) 685-8308

February 28, 2012

s.22

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

Introduction

On February 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.

Preliminary Matters

Our records indicate that copies of all documents related to this prohibition were provided to the office of your legal counsel, Kris Pechet. 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?

In the Report to Superintendent regarding your Administrative Driving Prohibition (Report) Officer Motley indicates that on February 7, 2012 at 19:44 hours, he observed you operating a motor vehicle on Golden Ears Way in Maple Ridge.

In Mr. Pechet's submissions, he acknowledges that you were driving at the time in question.

Based on the evidence, I find that you were operating or had care or control of a motor vehicle on February 7, 2012 at 19:44 hours.

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.

Mr. Pechet submits that Officer Motley has provided no evidence to confirm that the demand for a sample of breath was made on you as soon as practicable because he has not provided the time of the demand.

I concur.

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

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 February 7, 2012.

I therefore revoke your driving prohibition as required by section 94.6 of the *Motor Vehicle 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

pc: Kris Pechet via fax

February 14, 2012

s.22

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

Introduction

On January 25, 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 ADP. Under section 117 of the *Motor Vehicle Act*, the Superintendent has delegated the authority to conduct this review to me.

Section 94.6 of the *Motor Vehicle 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.

Preliminary Matters

Records at this office indicate that the disclosure documents were received by your lawyer, Michael Shapray on your behalf. I 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. 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 written submission, Mr. Shapray stated that the time of 13:55 hours as indicated on the Report to Superintendent (RTS) is not the time of driving or care control. Mr. Shapray notes that Cst. Koehle has provided evidence in his attached Narrative that indicates he arrived “just after 1:30 pm” and you were already in the ambulance being attended to by paramedics. He stated that I cannot rely on this time of driving because it is clear from the evidence that you never operated or had care or control of the motor vehicle anywhere near the time of 13:55 hours. In support of his submission Mr. Shapray provided me with the case of *R. v. McLachlan*.

After reviewing the evidence before me, I note that Cst. Koehle stated in the RTS that you crashed into a parked car and that the first officer on scene, Cst. Yuzyk, observed you in the driver's seat and that you were in possession of the keys. Cst. Koehle recorded a time of 13:55 hours on the RTS and on the Notice of Driving Prohibition (the Notice) as the time of driving or care or control. However, Cst. Koehle has also indicated in the Narrative in some detail, that he was the second officer to arrive on scene and that when he attended the scene it was around 13:30 hours. On this point, Cst. Koehle also stated in the Narrative that when he attended the scene you were already strapped to a gurney in the ambulance and were being worked on by paramedics.

I have not been provided with information which pertains to how long you had been with the paramedics or any details as to when it was that the first officer, Cst. Yuzyk, observed you in the driver's seat of the vehicle, or a time for when the vehicle crashed into the parked car. Given the contradiction in the times and in the absence of any further evidence I find that there is no reliable time of driving or care or control, and without a reliable time of driving, I am unable to determine if your BAC exceeded 80 mg% within three (3) hours of your operation or care or control of a motor vehicle.

Decision

Based on the evidence before me in its entirety, I am not satisfied on a balance of probabilities that before or while operating or having care or control of a motor vehicle you consumed alcohol resulting in your BAC exceeding 80 mg% within 3 hours of operating or having care or control of a motor vehicle.

I therefore revoke your driving prohibition, as required under s. 94.6 of the *Motor Vehicle Act*. You may resume driving but only 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 owing 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

February 24, 2012

s.22

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

Introduction

On February 8, 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, Keven Schecter. 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 Johnson and the submission from your lawyer, 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 Johnson 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 to provide a sample of your breath under s. 254 of the *Criminal Code*. However, I have considered both the Report to Superintendent (Report) submitted by the constable and your lawyer's argument there was no evidence that a demand was made forthwith pursuant to section 254(2) of the *Criminal Code*.

Constable Johnson noted on page 1 of the Report that the time of driving/ care or control was 03:00 hours on February 8, 2012. You refused to provide a sample of breath for analysis at 03:51 hours. There was no indication in the Report as to the time of a demand or an explanation as to why a demand, if any, was issued after a delay. Since I cannot determine that the demand was issued forthwith, or as soon as practicable, I find that you were not issued with a valid demand. Consequently, I am not satisfied that you failed or refused to comply with a proper 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 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: Keven Schechter
Fax: (250 344 7374)

June 19, 2012

s.22

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

Introduction

On February 16, 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 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 Matters

Records at this office indicate that disclosure documents regarding this matter were provided to your lawyer, Mr. Richard Hewson, on your behalf. I have proceeded with the hearing 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 ("the Report"), Constable Medernach identified himself as the investigating officer and stated that he witnessed you driving. The officer noted that he followed a vehicle for approximately two kilometers before conducting a traffic stop, and observed the vehicle weaving and fluctuating in speed "from 70's to 110's". In the Report, he stated that you were identified as the driver and the sole occupant. The officer has reported the time and date of driving/care or control as 22:46 hours, on February 5, 2012.

You have provided no evidence to the contrary. Based on the evidence before me, I find that you operated or had care or control of a motor vehicle at 22:46 hours, on February 5, 2012.

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 also determine whether you failed or refused to comply with that demand.

In the Report, the constable stated that he detected a moderate odour of liquor on your breath, person and vehicle, and that you had watery and bloodshot eyes. He also noted that your speech was slurred and that you were having balance problems. The officer has indicated that he read you a breath demand at 00:15 hours.

The officer has reported that your time of driving was at 22:46 hours, yet the breath demand did not occur until 00:15 hours. In accordance with section 254 of the *Criminal Code*, it is essential that the police evidence demonstrate that a demand was made as soon as practicable. Without an explanation for the delay I do not find that the 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.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that failed or refused to comply with a demand made on you.

I therefore revoke your driving prohibition, as required by section 94.6 of the *Motor Vehicle 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

c.c. Richard Hewson
fax (250) 558 - 9935

June 19, 2012

s.22

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

Introduction

On February 26, 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 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 Matters

At the beginning of the oral review on March 9, 2012, I listed the disclosure documents which were provided to your lawyer, Mr. David Baker, on your behalf regarding this matter. He acknowledged that he had received them.

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

In the Report To Superintendent ("the Report"), Corporal Orregaard identified himself as the investigating officer and stated that he witnessed you driving. He stated that he observed a vehicle weaving and hit the curb. He conducted a traffic stop, and you were identified as the driver. The officer has reported the time and date of driving/care or control as 00:55 hours on February 26, 2012.

You have provided no evidence to the contrary. Based on the evidence before me, I find that you operated or had care or control of a motor vehicle at 00:55 hours, on February 26, 2012.

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 also determine whether you failed or refused to comply with that demand.

In the Report, the constable stated that he detected an overpowering odour of liquor on your breath, person, and in the vehicle. He also noted that your eyes were watery and bloodshot, your speech was slurred, and you were vomiting.

In accordance with section 254 of the *Criminal Code*, it is essential that the police evidence demonstrate that a demand was made as soon as practicable. As the officer has not provided the specific time or any details regarding the demand, and the reported time of your refusal is almost an hour after your time of driving, I cannot find that the 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.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that you failed or refused to comply with a demand made on you.

I therefore revoke your driving prohibition, as required by section 94.6 of the *Motor Vehicle 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 David Baker Fax #: (604) 303 - 6922

MARCH 27, 2012

s.22

REVIEW DECISION Administrative Driving Prohibition (ADP) No

s.22

Introduction

On March 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* (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

At the beginning of the oral review, I listed the documents I received from the police which were sent to your lawyer, Anjalika Rogers, on your behalf. Ms. Rogers acknowledged that she had received them. I have proceeded with the hearing based on this confirmation.

Issues

Having reviewed the evidence of Constable Regush and the submissions of Ms. Rogers, I find there is one issue that is determinative of this review. Did you fail or refuse to comply with a demand?

Facts, Evidence and Analysis

Did you fail or refuse to comply with a demand?

In this issue I must determine whether a demand existed and whether you failed or refused to comply with that demand. In order to find whether a demand existed, I must determine whether a demand for a sample of your breath was made as soon as practicable after the officer formed the reasonable and probable grounds for making the demand, as required by section 254 of the *Criminal Code*.

The constable's evidence of the time of driving was 0139 hours. The time of the breath demand on page two of the Report to Superintendent was 0213 hours, which was 34 minutes later. Constable Regush did not explain what happened during this time span. Based on the specific circumstances of your situation, I am unable to determine if the demand was made as soon as practicable after the officer formed the reasonable grounds for making the demand.

Based on the evidence before me, I find that there is insufficient evidence to conclude that a proper demand was made to you pursuant to section 254 of the *Criminal Code*. I am, therefore, not satisfied that you failed or refused to comply with a demand for a breath sample.

Having made this finding, there is no need for me to address 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 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 owing to the Province of British Columbia, your refund may be used to help offset those debts.

March 14, 2012

s.22

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

Introduction

On February 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, including the peace officer's report.

Preliminary Issues

Records at this office indicate that disclosure was provided to your lawyer, Mr Paul Doroshenko. He confirmed the same, and I have proceeded with the hearing based on this information.

Your lawyer observed that on March 5, 2012, the Appeals Registry sent a fax cover page to the attention of the Squamish RCMP, noting their file number SQ12-1061, and stating that the Certificate of Analysis of a Qualified Technician (Certificate) was received but the 'lot number' was missing. As part of disclosure to your lawyer, an amended Certificate was forwarded on March 8, 2012, showing the addition of the lot number 20712.

Your lawyer argued that the peace officer's duties, which are laid out in section 94.3 of the Act, require that:

A peace officer who serves a notice of driving prohibition on a person under section 94.1 must promptly forward to the superintendent:

(e) a copy of any certificate of analysis under section 258 of the *Criminal Code* with respect to the person.

Mr Doroshenko 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. He 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, Mr Doroshenko argued that there is a 'reasonable apprehension of bias.' Directing the police to change or amend their evidence, he contended, goes beyond the superintendent's authorised adjudicatory functions and breaches the duty to be fair. He submitted that there was a reasonable apprehension of bias. Mr Doroshenko cited the case of *Fowler v Superintendent of Motor Vehicles et al* [2000] BCSC 1901, and in particular paragraphs 17 and 18:

[17] And finally ***Brosseau v. Alberta Securities Commission***, again a decision of the Supreme Court of Canada, reported (1989), 59 D.L.R. (4th) 458. And this is more directly on point with reference to the submissions made by Ms. Helme. At 463:

The maxim *nemo judex in causa sua debet esse* underlies the doctrine of "reasonable apprehension of bias". It translates into the principle that no one ought to be a judge in his own cause. In this case, it is contended that the chairman, in acting as both investigator and adjudicator in the same case, created a reasonable apprehension of bias. As a general principle, this is not permitted in law because the taint of bias would destroy the integrity of the proceedings conducted in such a matter.

As with most principles, there are exceptions. One exception to the *nemo judex* principle is where the overlap of functions which occurs has been authorized by statute, assuming the constitutionality of the statute is not in issue.

[18] In this respect, counsel for the Superintendent submitted there was, as I take it, impliedly an authorization of overlap. But in my view of the consideration of s. 94 in its totality in relation to this subject matter, there appears to be nothing in the statute authorizing an overlap of function to the degree that it authorizes the Superintendent or the reviewing officer to act as an investigator, prosecutor, witness or adjudicator.

Your lawyer argued that the superintendent is not entitled to go beyond his authority as an adjudicator. 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 and suggesting changes or amendments be made to it. The amended Certificate is therefore disregarded and will not be considered as police evidence before me.

While I accept that the Appeals Registry erred in requesting the police to provide a 'missing lot number', the Certificate originally submitted by the police will be taken as evidence properly put before me. In a review under section 94.4, in accordance with section 94.5(1)(c), the superintendent must consider a copy of a Certificate.

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 Urbanowski, of the Squamish RCMP, stated that he observed you operating or in care or control of a vehicle on Highway 99, at 02:18 hours on February 24, 2012.

Your lawyer contended that the police evidence lacked specific detail as to what was observed and how it was established you were a driver or had care or control of a vehicle. In the absence of contradictory evidence from you, however, 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 02:18 hours on February 24, 2012.

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

The constable provided a Certificate of a Qualified Technician (Certificate) that states that your BAC was 180 mg% at 03:50 hours and 160 mg% at 04:11 hours on February 24, 2012. The certificate indicates that Corporal James Arthur Splinter is qualified to operate an approved instrument and is a qualified technician. The qualified technician stated that two samples of your breath were taken that, in his opinion, "were necessary to enable proper analysis to be made to determine the concentration, if any, of alcohol in [your blood]". Mr Splinter stated that the BAC Datamaster C was in proper working order, and certified that the statements made were true. I note that both samples were taken within three hours of your operating or having care or control of a motor vehicle.

Your lawyer argued that the Certificate was defective. In the absence of a lot number of the solution used in the approved instrument, the Certificate did not comply with section 258 of the *Criminal Code*. Section 95.5(1)(c) refers to any Certificate under section 258 of the *Criminal*

Code with respect to the person served with the notice of driving prohibition. The matter of the lot number is not merely technical or theoretical.

The only other information regarding your BAC was noted on page 2 of the Report where the name of the qualified technician, Corporal Splinter, is entered beside two test results. The first showed a BAC of 180 mg/% recorded at 03:50 hours on February 24, 2012. The second result was 160 mg/% at 04:11 hours. Those times and readings precisely match those on the defective Certificate signed by Corporal Splinter. There is no other analysis of your BAC that can support a suspension.

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

Decision

I 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 Paul Doroshenko
(Fax: 604 685 8308)

March 28, 2012

s.22

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

Introduction

On March 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 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 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 Issues

Records at this office indicate that all of the required disclosure documents were received by your lawyer, Cory Armour, 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?

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

Facts, Evidence and AnalysisDid 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.

On the first page of the RTS, in the section labeled, "Observations / Reasonable and Probable Grounds for Demand(s)", Cst. Lynch noted the following:

- You were observed driving 90-100km/hr in a posted 60km/hr zone
- You had a moderate odour of liquor on your breath
- You had glassy bloodshot eyes
- You would not answer questions

I again turn to the RTS, and note that the Cst. Lynch ticked a box on the RTS indicating that you understood a demand. Further on the RTS, under the section labeled, "How did driver refuse" Cst. Lynch stated that you said you were under duress and that you were refusing to provide samples.

In your written submission, you stated that there was no discussion of drinking alcohol or you blowing into a machine at the side of the road. You stated that you were immediately handcuffed and placed in the back of the Cst. Lynch's police car. You stated that at the detachment you were put in a holding cell and were told to find a lawyer to call, and that you did not know what to do as you had never been in that position before and did not know what was going on. You stated that when you found a lawyer, Cst. Lynch stated that he would be contacted, but when Cst. Lynch returned he advised you that the lawyer could not be contacted. You stated that Cst. Lynch refused to contact another lawyer. At this point you had not had contact with legal counsel and Cst. Lynch advised you that if you did not blow it would be deemed a refusal to provide a breath sample.

In his written submission, Mr. Armour stated that there is no evidence before me that it was a lawful demand. He stated that on page three (3) of the RTS the section titled "Demand(s) for Samples" is entirely blank. He stated that Cst. Lynch has not stated any time for when he made an ASD demand, nor is there any time indicated for when he made a breath demand. Mr. Armour stated that for a demand to be lawful it must be forthwith or as soon as practicable. Here, it is known that you were stopped at 01:00 hours but there is no evidence as to when a breath demand was made.

After reviewing the evidence before me I find that in your case, based on your evidence and the evidence from Cst. Lynch contained in the RTS, I can infer that a demand was made. However, as the time of the demand is not recorded in the RTS, and in the absence of any other evidence, I cannot determine that the demand was made pursuant to the *Criminal Code*. As a result, I am unable to find that you failed or refused to comply with a demand made on you to supply a sample of your breath.

Decision

I am not satisfied that you failed or refused 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 but only 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 owing to the Province of British Columbia, your refund may be used to help offset those debts.

s.15
Adjudicator

cc: Cory Armour
Fax [250] 762-3163

March 2, 2012

s.22

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

Introduction

On February 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 (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.

Preliminary Matters

Our records indicate that copies of all documents related to this prohibition were provided to you. I have proceeded with the hearing based on this confirmation.

I acknowledge that losing your driver's licence will adversely impact you; however, I have no authority under the *Act* to consider the hardship you will experience, personal circumstances, employment, or transportation needs, in the course of this review.

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?

In the Report to Superintendent regarding your Administrative Driving Prohibition (Report) Officer Potyok indicates that on February 11, 2012 at 12:55 a.m., he observed you sitting in the driver's seat of your vehicle with the keys on the passenger seat within your reach. The vehicle was parked in a driveway on s.22 in Fort St. James.

In your written submissions you contend that your uncle drove your truck to s.22 earlier and you arrived by cab a few minutes before the police arrived. You submit that you and your boyfriend were sitting in your truck, talking and you had no intention of driving.

While I have considered your submissions, you have provided no evidence from your uncle, your boyfriend or the cab company, to corroborate your evidence. Further, Officer Potyok indicates the vehicle keys were sitting on the passenger seat, which contradicts your evidence that your boyfriend was sitting in the vehicle with you.

Based on the evidence, I find that you were operating or had care or control of a motor vehicle at the time in question.

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.

Officer Potyok has provided no evidence to confirm that the demand for breath samples was made on you as soon as practicable. Consequently, I am not satisfied that the demand was made on you under section 254 of the *Criminal Code*.

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

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 February 11, 2012.

I therefore revoke your driving prohibition as required by section 94.6 of the *Motor Vehicle Act*. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

Driving Prohibition Review Decision
Page 3

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

March 28, 2012

s.22

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

Introduction

On March 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 (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
- 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, including the peace officer's report.

Preliminary Issues

Our records indicate that copies of all documents related to this prohibition were faxed to the office of your legal counsel, Albert King. I have proceeded with the review based on this confirmation.

Issues

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

I will start with the second issue:

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

Mr. King notes that the Certificate of a Qualified Technician Who took Samples of Breath (certificate of analysis) does not contain a lot number; consequently, I cannot be satisfied that a suitable solution was used in the BAC Datamaster C.

I agree with Mr. King that the certificate of analysis is defective because of the missing lot number. As a result, I have not considered it in the evidence.

In the grid on page two of the Report to Superintendent (Report), Officer Suhnablegger provides the results of the breath samples you provided. However, because it appears that these results were taken from the certificate of analysis, I am not satisfied that they are accurate because of the missing lot number.

There is no other evidence before me regarding your breath sample results.

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

Decision

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.

I therefore revoke your driving prohibition as required by section 94.6 of the *Motor Vehicle 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

pc: Albert King via fax

MARCH 30, 2012

s.22

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

Introduction

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

Section 94.6 of the *Motor Vehicle Act* (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 you. I have proceeded with the hearing based on this confirmation.

In your written statement, you said that you need your driver's licence for your work as s.22

If you lose your licence, you will lose your job. Prior to your current employment you were out of work for a year, and you support a family of four with your current job. You also said that you have had a good driving record for 20 years.

I acknowledge and appreciate your situation. However, under the Act I am not authorized to

Driving Prohibition Review Decision
Page 2

consider hardship, personal circumstances, employment or transportation needs in this review. Further, I cannot consider your driving history. I am authorized to consider only those grounds that are directly related to the issues outlined 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, 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), Constable Zinn indicated that he witnessed you driving on March 17, 2012, at 0219 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 March 17, 2012, at 0219 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, Constable Zinn noted that you admitted to having consumed liquor five hours earlier. You said that you had a drink with dinner. The officer stated that you had a strong odour of liquor on your breath, your face was flushed and your eyes were watery and bloodshot. He said that your speech was slurred and that you were confused.

In the grid on page two of the RTS, the officer stated that he demanded you to provide a breath sample into an ASD at 0223 hours and that the device registered a "fail". The officer provided evidence that you refused to accompany him to the detachment, but he did not specify for what purpose. I am not satisfied that there is sufficient evidence before me to conclude that the officer made a valid demand for you supply a sample of your breath under section 254(3) of the *Criminal Code*. Having made this finding, I do not need to consider any 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. I therefore revoke your driving prohibition. 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 to you in approximately 6 - 8 weeks. If you have any outstanding fines or debts owing to the Province of British Columbia, your refund may be used to help offset those debts.

MARCH 1, 2012

s.22

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

Introduction

You applied to the Superintendent of Motor Vehicles for a review of your ADP. Under section 117 of the *Motor Vehicle Act*, the Superintendent has delegated the authority to conduct this review to me.

Section 94.6 of the *Motor Vehicle 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 this review, I must consider all relevant information provided to me, including the peace officer's report and the certificate of analysis of your breath dated February 11, 2012.

Preliminary Issues

At the beginning of the oral review, I listed the documents I received from the police, which were sent to your lawyer, James Sherren, on your behalf. Mr. Sherren acknowledged that he had received them. I have proceeded with the hearing based on this confirmation.

Mr. Sherren noted that the investigating officer had indicated on the Report to Superintendent (RTS), that she prepared, attached and incorporated a Report to Crown Counsel (RCC) into the contents of the RTS. Neither Mr. Sherren nor I received the RCC.

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. 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?

Mr. Sherren pointed out that the time of driving noted on the RTS – 1940 hours, is the same time as the demand for a breath sample on an approved screening device (ASD), the result of the ASD test, and the time given for the breath demands.

The officer's evidence is that you were in a motor vehicle accident, but you were standing on the sidewalk when the police arrived. There is no evidence of when the accident happened. I agree with your lawyer's argument that if any of the times given is accurate, "it is inconceivable that the time of the accident was also 1940." Accordingly, I find that there is no reliable evidence as to the time of driving.

Having made that finding, I do not need 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 before or while operating or having care or control of a motor vehicle you consumed alcohol resulting in your BAC exceeding 80 mg% within 3 hours of operating or having care or control of a motor vehicle.

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 owing to the Province of British Columbia, your refund may be used to help offset those debts.

s.15
Adjudicator

cc. James Sherren
604-688-6243 (fax)

March 9, 2012

s.22

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

Introduction

On February 19, 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 you. 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

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.

Officer Barker has provided no evidence to confirm that the demand for breath samples was made on you as soon as practicable. Consequently, I am not satisfied that the 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 February 18, 2012.

I therefore revoke your driving prohibition as required by section 94.6 of the *Motor Vehicle 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.

March 27, 2012

s.22

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

Introduction

On December 3, 2011, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your ADP. Under section 117 of the *Motor Vehicle Act* ("the Act"), the Superintendent has delegated the authority to conduct this review to me.

Section 94.6 of 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 this review, I must consider all relevant information provided to me, including the Report to Superintendent ("RTS") and any other relevant documents and information.

Preliminary Matters

During the oral hearing I confirmed with your lawyer, Brian Coleman, that he had all of the required disclosure documents. I have proceeded with the review based on this confirmation.

Mr. Coleman referred to the "original December decision", and the arguments he made at that time. However, as this was a Re-Hearing of your IRP review, I advised Mr. Coleman that the original decision was not and will not be before me for this review. Therefore, as I stated to Mr. Coleman, I am unaware of any arguments made previously.

Mr. Coleman confirmed with me that I had received the Consent Order dated March 7, 2011, and that I had reviewed it.

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 the RTS, Cst. Hakonson identified himself as the investigating officer in this matter. Cst. Hakonson indicated that you were the driver of the vehicle at an Alcohol Roadblock. He stated that you were occupying the driver's seat of the vehicle, the keys were in the ignition and that the vehicle was operable. The date and time of driving or care or control recorded on the RTS is December 3, 2011, at 22:11 hours.

Neither you nor Mr. Coleman provided any submissions on this issue.

Based on the evidence before me, I am satisfied that you operated or had care or control of a motor vehicle on December 3, 2011, at 22:11 hours.

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

Mr. Coleman referred to the Consent Order and noted that I cannot consider the Certificate of a Qualified Technician (the "Certificate") in this review. As such, there is no evidence before me that your BAC exceeded 80 mg%.

After reviewing the Certificate and the Consent Order, I agree with Mr. Coleman that I cannot consider the Certificate in this review.

However, under section 94.5(1) of the Act, I must consider any relevant documents or information forwarded to this office by Cst. Hakonson. Given this, I must consider the RTS as well as the Breath Test Tickets (the "Tickets"), the Ministry of Attorney General Certificate ("Ministry Certificate"), the Certificate from the Forensic Laboratory Services of Vancouver, and the Certificate Of An Analyst ("Analyst Certificate").

In the RTS, Cst. Hakonson stated that there was a strong odour of liquor on your breath, and your eyes were red and bloodshot. Cst. Hakonson further indicated that you advised him you consumed one (1) glass of wine at 6:30pm. On page two (2) of the RTS in the grid, Cst. Hakonson stated that a "Fail" result registered on an ASD and that Cst. Smith took three samples of your breath on December 3, 2011.

ADP Review Decision

Page 3

The Tickets indicate that Cst. Smith was the technician, and that he took two (2) suitable samples of your breath on a BAC Datamaster C, an approved instrument. The Tickets state that your BAC was 110 mg% at 22:59 hours and 90 mg% at 23:26 hours respectively, on December 3, 2011. The Tickets indicate that the alcohol standard solution used was manufacturer Ethyl Alcohol Standard Calwave lot number 20697. It is noteworthy that the Analyst Certificate provided by Cst. Hakonson indicates that s.22 a designated Alcohol Standard Analyst, certified that the Ethyl Alcohol Standard Calwave Lot 20697 was suitable for use with an approved instrument.

Nevertheless, upon review of the Certificate from the Forensic Laboratory Services of Vancouver, I note that it indicates Cst. Smith took a BAC Datamaster C Certification course in December of 2007, and that he was certified to operate the BAC Datamaster C up to the end of December 2008. This document also states that Cst. Smith's certification was renewed for the years 2009 and 2010, respectively. However, I do not have any documentation or evidence before me in this review that would allow me to conclude that Cst. Smith was certified to operate the BAC Datamaster C during the year of 2011. Specifically, I cannot be satisfied that Cst. Smith was qualified to have administered the breath tests to you using the BAC Datamaster C on December 3, 2011. Consequently, I find that I cannot rely upon the results indicated on the Tickets.

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

Having made this finding I need not consider the remaining issue.

Decision

I therefore revoke your driving prohibition, as required under section 94.6 of the Act. You may resume driving but only 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 owing to the Province of British Columbia, your refund may be used to help offset those debts.

Adjudicator

Cc: Brian Coleman

Fax: [604] 683-9354

March 2, 2012

s.22

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

Introduction

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

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

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

I must revoke your driving prohibition if I am satisfied that you did not fail or refuse to comply with a demand or that you had a reasonable excuse for failing or refusing to comply with a demand.

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

Preliminary Issues

Records at this office indicate that disclosure was provided to your lawyer, Jennifer Currie, on February 22, 2012. I have proceeded with the hearing 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?

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

Based on the evidence before me, I am satisfied that you operated or had care or control of a motor vehicle on February 16, 2012, at 01:13 hours in Revelstoke.

Did you fail or refuse to comply with a demand?

Ms. Currie argued in her written submission that the demand that was made to you was invalid. I concur with Ms. Currie's submission. Consequently, based on the evidence before me, I cannot find sufficient evidence to conclude that a proper demand was made to you pursuant to section 254 of the *Criminal Code*.

Having made this finding, there is no need for me to address the other issue.

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

Adjudicator

cc: Jennifer Currie
Fax: 604-590-5626

March 19, 2012

s.22

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

Introduction

On March 4, 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 Michael Shapray. 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 Qureshi and the submissions from your lawyer, 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 Qureshi 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*. However, I have considered both the Report to Superintendent (Report) submitted by the constable and your lawyer's argument there was insufficient evidence that a demand was made as soon as practicable pursuant to section 254(3).

Constable Qureshi noted on page 1 of the Report that the time of driving/ care or control was 02:15 hours on March 4, 2012. A demand was made by the constable and you understood its meaning. A fail registered on an Approved Screening Device (ASD) at 02:15 hours. Once the constable had established he had reasonable grounds, in order to comply with the requirements of section 254(3), a subsequent demand for samples of breath for a proper analysis to determine your blood alcohol concentration (BAC), had to be made 'as soon as practicable.' That demand was made at 03:00 hours by Officer Somerville, a breathalyser technician.

Mr Shapray argued that the delay of 45 minutes in making that demand has not been explained or justified by Constable Qureshi. Your lawyer maintained there was no reason why the breath demand could not have been made sooner. He submitted that an unexplained delay of 45 minutes renders the breath demand invalid, and cited the case of *R v Whitesell*, [1998] BCJ No 303. The BC Supreme Court held that a breath demand made 26 minutes after the officer formed his opinion was not made as 'soon as practicable'. Mr Shapray also referred me to *R v Beaulieu*, [2006] BCJ No 2089; *R v Kilmartin*, [2005] BCJ No 1019; and, *R v Walmsley*, [2008] BCJ No 2299 to emphasise his point.

I find in this incident that there was an unreasonable delay between Constable Qureshi forming his opinion that you had committed an offence under section 253 as a result of the consumption of alcohol, and the time when a demand was made at 03:00 hours for breath samples to be analysed by a breathalyser technician. Accordingly, I am not satisfied that a valid demand was made.

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 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: Michael Shapray
Fax: (250 590 5626)

March 29, 2012

s.22

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

Introduction

On March 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* (the 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 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 Issues

Records at this office indicate that all of the required disclosure documents were received by your lawyer, Dilraj Singh Gosal, on your behalf. I have proceeded with the review based on this confirmation.

Issues

Having reviewed the evidence of Cst. Harvey and the submissions of Mr. Dilraj and yourself, I find there is one issue that is determinative of this review. Did you fail or refuse 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 determine whether a demand existed and I must determine whether you failed or refused to comply with that demand.

In the RTS, Cst. Harvey stated that your eyes were watery, that your attitude was cocky and that you advised her you had two (2) beers and that the last one was around 9:00 – 9:20.

In your affidavit, you stated that you had no alcohol in your body, or person, and you explained that you had watery eyes as result of a medical condition and the s.22 you are taking. In support of your submission you provided a medical note from the s.22 confirming your condition. You also stated that the police were searching your vehicle and you believed that they needed reasonable grounds to do so, and that is why you were firm in your tone of voice when speaking to them, which Cst. Harvey described as cocky.

In his written submission, Mr. Gosal noted that there are no objective grounds for the demand, as Cst. Harvey had no evidence of alcohol on your breath, your speech was unremarkable, your clothes proper, pupils fine, and your face was fine. Mr. Gosal argued that Cst. Harvey did not have the requisite grounds to form a suspicion of alcohol in your body; therefore it was not a lawful demand pursuant to the *Criminal Code of Canada*. In support of his submission Mr. Gosal referred to and provided the following cases: *R. v. McIvor*, *R. v. Dumaine*, *R. v. Girard*, and *R. v. Johal*.

The issue I must consider is whether or not the officer's observations were sufficient to provide him with a reasonable suspicion that you had alcohol in your body. I concur with Mr. Gosal. In your particular case and in the absence of any other indicia of impairment, the observations recorded by Cst. Harvey in the RTS do not sufficiently support the grounds for a demand.

Based on the evidence before me, I am satisfied that the officer did not make a lawful demand. Having made this finding, I do not need to consider the other issues.

Decision

I am not satisfied that you failed or refused 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 but only 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 owing to the Province of British Columbia, your refund may be used to help offset those debts.

s.15
Adjudicator

cc: Dilraj Gosal
Fax: [604] 598-1117

June 19, 2012

s.22

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

Introduction

On February 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 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 it is more likely than not that:

- you consumed alcohol before or while you were operating or had care or control of a motor vehicle, and
- alcohol consumption caused your blood alcohol concentration ("BAC") to exceed 80 milligrams of alcohol per 100 milliliters 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 Matters

Records at this office indicate that disclosure documents regarding this matter were provided to your lawyer, Mr. David Jenkins, on your behalf. I have proceeded with the hearing based on this confirmation.

Issues

There are 3 issues in this review:

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

Facts, Evidence and AnalysisDid your BAC exceed 80 mg% within 3 hours of operating or having care or control of a motor vehicle?

In the Report To Superintendent ("the Report"), the officer noted that he detected a faint odour of liquor on your breath and your person, your face was flushed, and that your eyes were watery and bloodshot. He has also noted that your shoes were off and that your balance was uncertain.

According to the notes under the grid on page 2 of the Report, four tests were done but no certificate of analysis is "available". In his submission, your lawyer stated that to proceed without the certificate would contravene the requirements in sections 94.3 and 94.5 of the Act, and would be a review based upon deficient materials. He has also referred me to the *Featherstone v. British Columbia (Superintendent of Motor Vehicles)* decision in support of this argument.

I acknowledge that the officer should have provided the certificate, if available, but as per section 94.5 (2.1) of the Act, I may proceed with the hearing in the absence of documents required under section 94.3. However, in this case, while the officer has noted on page 2 of the Report that you failed an approved screening device ("ASD") test; he has not provided the results of any of the tests of your BAC taken at the detachment.

Without the results of the tests and the time they occurred, I find that I cannot be satisfied that your BAC exceeded 80 mg% within 3 hours of your operating or having care or control of a motor vehicle.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that before or while operating or having care or control of a motor vehicle, you consumed alcohol that caused you to have a BAC of over 80 mg% within three hours after you operated or had care or control of a motor vehicle on February 11, 2012, at 02:13 hours.

I therefore revoke your driving prohibition, as required by section 94.6 of the *Motor Vehicle 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 David Jenkins Fax #: (250) 565 - 8001

MARCH 20, 2012

s.22

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

Introduction

On March 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 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, including the peace officer's report and the certificate of analysis of your breath.

Preliminary Issues

Records at this office indicate that disclosure was provided to your lawyer, Lisa Helps, on your behalf. I have proceeded with the hearing 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. Did your BAC exceed 80 mg% within 3 hours of operating or having care or control of a motor vehicle?
3. 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

Having reviewed the evidence of Constable Eden, I find there is one issue that is determinative of this review:

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

There is no evidence before me that you had 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.

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

Decision

Based on the evidence before me in its entirety, I am not satisfied on a balance of probabilities that before or while operating or having care or control of a motor vehicle you consumed alcohol resulting in your BAC exceeding 80 mg% within 3 hours of operating or having care or control of a motor vehicle.

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 owing to the Province of British Columbia, your refund may be used to help offset those debts.

s.15
Adjudicator

cc. Lisa Helps
604-669-5558 (fax)

March 30, 2012

s.22

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

Introduction

On March 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 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 show that the police documents were disclosed to you. I held 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

I have reviewed the police evidence and your letter. I find there is one issue that can settle this review.

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

Constable Maddex served you with a Notice. He alleged that you operated, or had care or control of, a motor vehicle and you refused to comply, without a reasonable excuse, with a demand for a sample of your breath. However, I note that the constable did not provide the time of a demand. On page 2 of the Report, the grid showing the time and date for the demand of a sample was left blank.

For a demand to be valid, it must be made forthwith or as soon as practicable. 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, 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 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 (ICBC). The nearest driver licensing office may be found in Qualicum Beach at:

Coastal Community Insurance Services (2007) Ltd.
120A - 2nd Avenue
Qualicum Beach, BC V9K 1T3

A refund of your review fee will be sent to you in about 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

March 30, 2012

s.22

c/o JAMES SHERREN, BARRISTER & SOLICITOR
1506 – 128 WEST PENDER ST
VANCOUVER BC V6B 1R8

REVIEW DECISION Administrative Driving Prohibition (ADP)

s.22

Introduction

On March 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 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 consumed alcohol before or while you were operating or had care or control of a motor vehicle, and
- 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, including the peace officer's report.

Preliminary Issues

Our records indicate that copies of all documents related to this prohibition were faxed to the office of your legal counsel, James Sherren. During the oral hearing Mr. Sherren acknowledged that he had received disclosure. I have proceeded with the review based on this confirmation.

Issues

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

I will start with the second issue.

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

Mr. Sherren submits that your prohibition should be revoked because Officer New has not provided evidence sufficient to establish that your BAC exceeded 80 mg% within 3 hours of driving. He bases this on the following:

- In the grid on page two of the Report to Superintendent, Officer New indicates that the result of your BAC was “.70”; however, he does not provide the unit of measurement; consequently, I cannot be satisfied that the reading is based upon a unit of measurement that is required under the *Act*.
- The breath test tickets read: “values expressed in milligrams of alcohol in 100 millilitres”. This sentence is incomplete because the wording “of blood” is missing, which again makes the unit of measurement unknown.
- The breath sample readings are below the legislated threshold.

I have considered Mr. Sherren’s submissions and agree that based on the evidence I cannot conclude that your BAC exceeded 80 mg% within 3 hours of driving.

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

Decision

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 on March 9, 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

pc: James Sherren via fax

March 1, 2012

s.22

REVIEW DECISION Administrative Driving Prohibition No. s.22

Introduction

On February 19, 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

You applied for a review on February 23, 2012. Your application indicates that you requested a written review. The Office of the Superintendent of Motor Vehicles faxed disclosure documents to your lawyer, Don Skogstad, on February 24, 2012. I have before me a fax communication result report confirming successful transmission of the disclosure documents. Both your application and the fax cover sheet attached to the disclosure documents state that your written review was scheduled for 9:30 am. To date, I have no submissions from either you or your lawyer with regard to this review. As such, I will proceed with this review on the evidence before me.

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 type of demand or 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

cc: Don Skogstad
fax: 250-487-4309

April 13, 2012

s.22

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

Introduction

On March 24, 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 disclosure was provided to your lawyer, Martin Allen, on March 28, 2012. I have proceeded with the hearing 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?

According to the Constable's Report to Superintendent, you operated or had care or control of a motor vehicle on March 24, 2012, at 02:44 hours. Based on the evidence before me, I am satisfied that you had care or control of a motor vehicle on the date and time in question.

Did you fail or refuse to comply with a demand?

Mr. Allen argued in his written submission that there is no evidence what nature of demand was made or when it was made. He directed me to the decisions of *Helgesen v. the Superintendent of Motor Vehicles*, *Dhinsa v. the Superintendent of Motor Vehicles*, and *Taylor v. the Superintendent of Motor Vehicles*.

Although I am satisfied that the officer made a breath demand, I note that there is no evidence in the report as to when the officer read you the breath demand. As such, based on the evidence before me, I cannot find sufficient evidence to conclude that a proper demand was made to you pursuant to section 254 of the *Criminal Code*.

Having made this finding, there is no need for me to address the other issue.

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. 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: Martin Allen
Fax: 250-920-0177

June 19, 2012

s.22

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

Introduction

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

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

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

I must revoke your driving prohibition if I am satisfied that you did not fail or refuse to comply with a demand or that you had a reasonable excuse for failing or refusing to comply with a demand.

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

Preliminary Issues

At the beginning of the oral review, I listed the documents I received from the police which were sent to your lawyer, David Silverman. 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. 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 (the "Report") the investigating officer stated that he witnessed you driving on Vedder Road in Chilliwack BC, on April 19, 2012, at 23:14 hours.

There is no evidence before me contradicting the officer's evidence. Based on the evidence before me, I find that it is more likely than not that you operated or had care or control of a motor vehicle on April 19, 2012, at 23:14 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.

On page 2 of the Report, the officer checked the boxes indicating that you were read your Charter Rights and Official Warning and that you understood the demand. However, the time of the demand is not recorded in the Report. In the absence of any other evidence, I cannot determine if the demand was made forthwith as required under s. 254 of the *Criminal Code*. As I am unable to find that a demand was made forthwith, I am unable to find that you failed or refused to comply with it. Having made this finding, I do not need to consider the final issue in this review.

Decision

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

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

A refund of your review fee has been authorized and will be sent in approximately six to eight weeks. However, the refund may be used to offset any outstanding fines or debts owed to the Province of British Columbia.

s.15
Adjudicator

cc: David Silverman
Fax: 604-859-3361

June 19, 2012

s.22

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

Introduction

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

Section 94.6 of the *Motor Vehicle Act* (“the 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 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 Matters

Records at this office indicate that disclosure documents regarding this matter were provided to your lawyer, Mr. Anthony Serka, on your behalf. I have proceeded with the hearing 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 Notice of Prohibition ("the Notice"), Constable Li identified himself as the investigating officer and indicated that he observed you operating a vehicle on 4900 block of Commercial Street in Vancouver. The officer has reported the time and date of driving/care or control as 20:33 hours, on March 15, 2012.

While your lawyer submits that there is no evidence that you were operating, or had care or control of a motor vehicle, as the officer has not provided a Report To Superintendent ("the Report"); I find the Notice to be sufficient and note that you have provided no evidence to the contrary.

Based on the evidence before me, I find that it is more likely than not that you operated or had care or control of a motor vehicle at 20:33 hours, on March 15, 2012.

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 also determine whether you failed or refused to comply with that demand.

As the officer has failed to provide the Report, I find I have no evidence regarding the demand. As a result, I cannot be satisfied that a valid demand existed.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that you failed or refused to comply with a demand made on you. I therefore revoke your driving prohibition, as required by section 94.6 of the *Motor Vehicle Act*. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

Adjudicator s.15

c.c. Anthony Serka
fax (250) 876 - 9035

April 4, 2012

s.22

32 RADAR CRESCENT, PO BOX 3242
FORT NELSON, BC V0C 1R0

REVIEW DECISION Administrative Driving Prohibition (ADP) No. 00-315713

Introduction

On March 25, 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. You confirmed receipt of 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. 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 Bless, of the Northern Rockies RCMP, stated that he observed a vehicle operating normally, headed down a driveway towards s.22 Fort Nelson. The constable noted that the location of driving was s.22 s.22 Constable Bless stated that the alleged time of driving was 20:15 hours on March 25, 2012.

In your oral submission you acknowledged driving your vehicle down the driveway of your residential property. You own s.22 in a rural neighbourhood. s.22 Given the situation, you decided to stay with your nephew for the night. You drove your vehicle towards the public highway, but parked 10 to 15 metres from the access point. You had no intention of going onto the road with your vehicle. s.22

You argued that while you operated a motor vehicle, you did not do so on a highway or an industrial road. In your submission you affirmed that there is no general public access to s.22 and that there is no provision of parking, or the servicing of vehicles on your property. A person may enter your property by invitation, such as to a birthday party. Consonant with the legislative intention to protect the public, your driveway would have to be used by the public if section 94.1 of the Act is to apply.

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 or an industrial road. 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 in care or control of a motor vehicle at 20:15 hours on March 25, 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

APRIL 20, 2012

s.22

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

Introduction

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

Section 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

At the beginning of the oral hearing, I listed the documents I received from the police which were sent to your lawyer, Mark Bussanich. Mr. Bussanich acknowledged that he had received them on your behalf. I have proceeded with the review based on this confirmation.

Issues

Having reviewed the evidence of Constable Graham and the submissions from your lawyer, I

find there is one issue that is determinative of this review, namely, did you fail or refuse to comply with a Demand?

Facts, Evidence and Analysis

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

Constable Graham served you with a Notice, alleging that after operating a motor vehicle, you failed or refused to comply with a Demand for a sample of your breath under section 254 of the *Criminal Code*, without a reasonable excuse. Your lawyer argued that the officer provided insufficient evidence that a Demand was made in accordance with the requirements of section 254.

In the Report to Superintendent, Constable Graham stated that after operating a motor vehicle, you provided a breath sample into an approved screening device (ASD), which registered a “fail”. This result gave the officer the grounds to believe that you operated the vehicle while your ability to do so was impaired by alcohol. The *Criminal Code* requires a peace officer to make the Demand as soon as practicable, once these grounds are formed. In your situation, however, Constable Graham indicated that the Demand was made an hour and 33 minutes after the ASD result. Further, the officer did not provide evidence explaining why this delay was necessary. Consequently, I cannot be satisfied of the validity of the Demand. Having made this finding, there is no need for me to consider 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 April 1, 2012 at 0136 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 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.

April 26, 2012

s.22
C/O COUNSEL
420 – 625 HOWE STREET
VANCOUVER BC V6C 2T6

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

Introduction

On April 5, 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 consumed alcohol before or while you were operating or had care or control of a motor vehicle, and
- 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, including the peace officer’s report and the Certificate of a Qualified Technician.

Preliminary Matters

At the beginning of the oral hearing, I listed the disclosure documents and your lawyer, Vicki Williams, confirmed that she had received them. 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. 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?

Ms. Williams submitted evidence regarding this issue, including your affidavit, the affidavit of her articling student, s.22 the affidavit of the business owner of s.22 and the criminal court case of *R. v. Martindale* 1995 B.C.J. No. 2249.

I am satisfied that you did not have intent to operate or have care or control of a motor vehicle on April 4, 2012 at 21:48 hours. Accordingly, I must revoke your prohibition pursuant to section 94.6 of the *Act*.

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

Decision

I have revoked 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

cc: Vicki Williams
fax: 604-687-4299

April 11, 2012

s.22

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

Introduction

On March 25, 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 Michael Klein, on April 3, 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

Having reviewed the evidence of Constable Noler and the submissions from your lawyer, 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 Noler 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 your lawyer's argument that there was insufficient evidence that a demand was made in accordance with the requirements of section 254.

Your lawyer argued that the constable's demand was not lawful. He drew my attention to page 2 of the Report and noted 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 forthwith. The requirements for a valid demand are specific and must comply with section 254 of the *Criminal Code*.

For a demand to be valid, it must be made forthwith or as soon as practicable. 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 March 24, 2012 at 23:25 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: Michael Klein
Fax: (604 687 4299)

April 20, 2012

s.22

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

Introduction

On March 31, 2012, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your 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 consumed alcohol before or while you were operating or had care or control of a motor vehicle, and
- 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, including the peace officer's report.

Preliminary Issues

Our records indicate that copies of all documents related to this prohibition were faxed to the office of your legal counsel, Kyla Lee. During the oral hearing Ms. Lee acknowledged that she had received disclosure. I have proceeded with the review based on this confirmation.

Issues

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

I will start with the second issue.

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

Ms. Lee submits that your prohibition should be revoked because Officer Troughton has not provided evidence sufficient to establish that your BAC exceeded 80 mg% within 3 hours of driving.

I concur.

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

Decision

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 on March 30, 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

pc: Kyla Lee via fax

APRIL 4, 2012

s.22

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

Introduction

On March 19, 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 it is more likely than not that:

- you consumed alcohol before or while you were operating or had care or control of a motor vehicle, and
- 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 Matters

Your application for Review indicates that disclosure documents regarding this matter were provided to you. I have proceeded with the hearing based on this confirmation.

On your application for the review and in your submission, you note that you did not refuse or fail to comply. However, the police evidence is that you provided breath samples, therefore this ground does not apply to your case.

In your written submission you stated that you need to be able to drive until summer, so you can

s.22

s.22

I acknowledge and appreciate the impact a driving prohibition can have

on your personal and professional circumstances. However, under the Act, I am not authorized to consider hardship, personal circumstances, employment or transportation needs in this review. In addition, the Act does not grant me any discretion to alter the terms of a driving prohibition unless that prohibition is lengthier than the Act requires.

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 the Report To Superintendent ("the Report"), Constable Devine identified himself as the investigating officer and indicated that he witnessed you driving. He stated that he observed a vehicle fail to stop at stop sign and he conducted a traffic stop. You were identified as the driver. In the Report, the constable has noted the time and date of driving as 21:33 hours, on March 19, 2012.

You have provided no evidence to the contrary. Based on the evidence before me, I find it is more likely than not that you operated or had care or control of a vehicle at 21:33 hours on March 19, 2012.

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

In the Report, the officer noted that he detected a moderate odour of liquor on your breath and in the vehicle and that your face was flushed and your eyes were watery and bloodshot. He has also indicated that your speech was slurred and that you were swaying. The officer has indicated that you admitted consuming alcohol four hours prior. In the Report, the officer noted that he made an ASD demand and conducted a test at 21:50 hours, and that your test result was a "FAIL".

In your submission you stated that you had 3 cans of beer with dinner but you were feeling sober enough to drive. How impaired you felt or believed yourself to be is not the issue.

According to the Certificate Of A Qualified Technician ("the CQT"), you provided samples with a BAC of 130 mg%, and 120 mg% on the Datamaster instrument. The times of the tests were reported at 21:43 hours and 22:04 hours, respectively.

However, I note that the reported times of the tests differ significantly in page 2 of the Report. Moreover the time of the first test in the CQT is reported to have occurred prior to the ASD demand and test. As a result, I find that the evidence regarding your test times is unreliable.

Based on the evidence before me, I cannot be satisfied that your BAC exceeded 80 mg% within 3 hours of your operating or having care or control of a motor vehicle.

Given this finding, there is no need to deal with the remaining issues.

Decision

I cannot be satisfied that before or while operating or having care or control of a motor vehicle, you consumed alcohol that caused you to have a BAC of over 80 mg% within three hours after you operated or had care or control of a motor vehicle on March 19, 2012, at 21:33 hours.

I therefore revoke your driving prohibition, as required by section 94.6 of the *Motor Vehicle Act*. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

April 4, 2012

s.22

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

Introduction

On March 19, 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, Mr Paul Doroshenko. He confirmed the same, 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

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

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

The constable provided a two BAC Datamaster C tickets that state your BAC was 200 mg% at 16:12 hours and 160 mg% at 16:38 hours on March 19, 2012. The tickets indicate that s.22 was the technician who operated the approved instrument and he signed as a qualified technician. The qualified technician affirmed that two samples of your breath were taken for analysis to determine your BAC. I note that both samples were taken within three hours of your operating or having care or control of a motor vehicle. Constable Bozak also stated in his Report that the Datamaster operator had to use sample control to override. A Certificate of Analysis was not attached to the Report.

Your lawyer argued that the Datamaster C tickets could not be relied upon since a proper breath test was not performed. Mr Doroshenko submitted a section from the "BAC Datamaster C certification course manual". He asserted that in order to obtain a proper breath test, two (2) breath test readings should be within 20 mg% of each other. The two (2) readings are required to be within 20 mg% of each other to ensure that suitable samples of breath are obtained that are free of mouth alcohol. In support of this contention, your lawyer provided part of a Memorandum from Verna Mendes, of the RCMP Toxicology Services Section, dated 6 October, 2008, on the subject of the Reliability of the BAC Datamaster C. In the Memorandum, the author notes that one of the operational requirements for breath testing is that two truncated breath test readings are within 20 mg% of one another and are taken at least 15 minutes apart.

Mr Doroshenko argued that since the difference between the two test results shown on the Datamaster C tickets was greater than the 20mg% permitted, the BAC analysis may not be relied upon. There is no other analysis of your BAC that can support a suspension.

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

Decision

I 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 Paul Doroshenko
(Fax: 604 685 8308)

APRIL 3, 2012

s.22

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

Introduction

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

Section 94.6 of the *Motor Vehicle 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 this review, I must consider all relevant information provided to me, including the peace officer's report and the certificate of analysis of your breath dated March 18, 2012.

Preliminary Comments

Records at this office indicate that disclosure was 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. Did your BAC exceed 80 mg% within 3 hours of operating or having care or control of a motor vehicle?
3. 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 the Report to Superintendent (RTS), Constable Buchanan stated that he witnessed you driving or in care or control of a vehicle on March 17, 2012, at 2352 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 March 17, 2012, at 2352 hours.

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

In the RTS, Constable Buchanan stated that you were the only occupant of the vehicle and he noticed a strong odour of liquor on your breath and in the vehicle. He said your face was flushed and your eyes were watery and bloodshot. An analysis of your breath sample registered a "fail" on an approved screening device (ASD).

Cst. Buchanan submitted a Certificate of a Qualified Technician (the Certificate) stating that your BAC was 90 mg% at 0201 hours and 80 mg% at 0220 hours on March 18, 2012. The Certificate indicates that s.22 is qualified to operate an approved instrument and is a qualified technician. s.22 stated that he took two samples of your breath that, in his opinion, "were necessary to enable proper analysis to be made in order to determine the concentration, if any, of alcohol in [your blood]". He stated that the BAC Datamaster C was in proper working order. He certified that his statements were true. Both samples were taken within three hours of your operating or having care or control of a motor vehicle.

I note, however, that the qualified technician did not provide a lot number for the alcohol standard used with the approved instrument. As a result, I am not satisfied that your BAC exceeded 80 mg% within 3 hours of operating or having care or control of a motor vehicle.

Decision

Based on the evidence before me in its entirety, I am not satisfied on a balance of probabilities that before or while operating or having care or control of a motor vehicle you consumed alcohol resulting in your BAC exceeding 80 mg% within 3 hours of operating or having care or control of a motor vehicle.

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

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

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

I must revoke your driving prohibition if I am satisfied that you did not fail or refuse to comply with a demand or that you had a reasonable excuse for failing or refusing to comply with a demand.

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

Preliminary Issues

At the beginning of the oral review, I listed the documents I received from the police which were sent to your lawyer, David Silverman. 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. 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 (the "Report") the investigating officer stated that he witnessed you driving on Vedder Road in Chilliwack BC, on April 19, 2012, at 23:14 hours.

There is no evidence before me contradicting the officer's evidence. Based on the evidence before me, I find that it is more likely than not that you operated or had care or control of a motor vehicle on April 19, 2012, at 23:14 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.

On page 2 of the Report, the officer checked the boxes indicating that you were read your Charter Rights and Official Warning and that you understood the demand. However, the time of the demand is not recorded in the Report. In the absence of any other evidence, I cannot determine if the demand was made forthwith as required under s. 254 of the *Criminal Code*. As I am unable to find that a demand was made forthwith, I am unable to find that you failed or refused to comply with it. Having made this finding, I do not need to consider the final issue in this review.

Decision

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

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

A refund of your review fee has been authorized and will be sent in approximately six to eight weeks. However, the refund may be used to offset any outstanding fines or debts owed to the Province of British Columbia.

s.15
Adjudicator

cc: David Silverman
Fax: 604-859-3361

May 11, 2012

s.22

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

Introduction

On April 23, 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, Mr Alan Benson. 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

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

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

The constable provided a Report to Superintendent (Report). The grid on page 2 of the Report indicates a demand for a blood sample was made on December 3, 2011 at 05:53 hours. Constable Gagne did not provide evidence establishing the time for the BAC analysis result, either in his Report or narrative. The Certificate of an Analyst affirms that s.22 :

“made an analysis of the said sample of blood on the 13th of January 2012 at Vancouver in the province of British Columbia and the result of my analysis is 146 milligrams of alcohol in one hundred millilitres of blood.”

The analyst did not specify at what time the blood sample was taken. In the absence of such test result information, I am unable to determine whether your BAC exceeded 80mg% within three hours of operating or having care or control of a motor vehicle.

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

Decision

I 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 Alan Benson
(Fax: 604 538 5754)

May 15, 2012

s.22

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

Introduction

On April 27, 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 confirmed with you on April 30, 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

Having reviewed the evidence of Constable Jordan and your 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 Jordan 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 your 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 April 27, 2012 at 16:50 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: Gordon Dykstra
Fax: (888 988 3122)

May 8, 2012

s.22

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

Introduction

On March 24, 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 on a balance of probabilities

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

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

Preliminary Issues

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

In your oral hearing, you said that as a s.22 you need your driver's licence for work. Additionally, you stated that your physician has you under constant care for s.22 and you need to be able to attend appointments..

I acknowledge that a prohibition of this kind may have far-reaching consequences. However, under the Act, I have no authority to consider hardship, or medical circumstances in this review. The issues I must consider in this review are as follows.

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 and Evidence and Analysis

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

In her Report to Superintendent (Report), Constable (Cst.) Kornicki observed you driving without a seatbelt. He stated that you were the sole operator of the vehicle. Constable Kornicki conducted a traffic stop. He recorded the time of driving / care or control as 1455 hours, on March 24, 2012.

Other than questioning why the officer stopped you, which is not an issue before me, you do not challenge this issue.

I find it more probable than not that you operated or had care or control of a motor vehicle at 1455 hours on March 24, 2012.

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

The Cst. provided a Certificate of a Qualified Technician (Certificate) that states that your BAC was 280 mg% at 1551 hours and 270 mg% at 1609 hours on March 24, 2012. The certificate indicates that Cst. James Aden Halliday is qualified to operate an approved instrument and is a qualified technician.

In reviewing the Certificate I find the 'lot number' is missing. Consequently, I cannot accept this Certificate as a Certificate under section 258 of the *Criminal Code*.

Decision

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

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

May 3, 2012

s.22

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

Introduction

On April 15, 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 it is more likely than not that:

- you consumed alcohol before or while you were operating or had care or control of a motor vehicle, and
- 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 Matters

Records at this office indicate that disclosure documents regarding this matter were provided to your lawyer, Mr. Brian Mickelson, on your behalf. I have proceeded with the hearing 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. 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 AnalysisDid you operate or have care or control of a motor vehicle?

In the Report To Superintendent ("the Report"), Constable Lally identified himself as the investigating officer and indicated that he witnessed you driving when you stopped at a road block on Como Lake Avenue in Coquitlam. You were located in the driver's seat and identified as the driver. In the Report, the constable has noted the time and date of driving as 03:05 hours, on April 15, 2012.

You have provided no evidence to the contrary. Based on the evidence before me, I find it is more likely than not that you operated or had care or control of a vehicle at 03:05 hours, on April 15, 2012.

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

In the Report, the officer noted that he detected a strong odour of liquor on your breath and in the vehicle, and that your face was red and your eyes were glassy. In the Narrative Report, the officer stated that you denied consuming any alcohol and you informed him that you were the designated driver. The officer then made an ASD demand and conducted a test at 03:15 hours, and that your test result was a "FAIL".

According to the grid on page 2 of the Report, and the Breath Test Ticket, you provided a sample with a BAC of 90 mg% on the Datamaster instrument. The time of the test was reported as 04:38 hours. I note that the time of the test was within 3 hours of your reported time of driving.

Your lawyer submits that only one breath sample has been taken and he suggests that this is not sufficient, and has provided an expert opinion in support. The expert opinion references the Datamaster Operation Manual, which indicates that a "proper" breath test consists of four items, including "2 breath test readings that agree within 20 mg% of each other." Your lawyer has also provided a decision letter from one of my colleagues, which also had only one breath test conducted and was revoked.

In regard to the decision letter from my colleague that has been provided, while I must state at the outset that I am not bound by the decision of my colleagues, I also note that in contrast to the current case, the adjudicator did not have a breath test ticket to consider.

In this case, while I find that the Breath Test Ticket is some evidence that your BAC exceeded 80 mg% and must be considered, I find I do not have sufficient evidence to confirm the prohibition.

Based on the evidence before me, I cannot find that your BAC exceeded 80 mg% within 3 hours of your operating or having care or control of a motor vehicle.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that your BAC exceeded 80 mg% within 3 hours of your operating or having care or control of a motor vehicle. I therefore revoke your driving prohibition, as required by section 94.6 of the *Motor Vehicle Act*. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

Adjudicator s.15

cc Brian Mickelson
fax (604) 637 - 1617

May 22, 2012

s.22

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

Introduction

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

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

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

I must revoke your driving prohibition if I am satisfied that you did not fail or refuse to comply with a demand or that you had a reasonable excuse for failing or refusing to comply with a demand.

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

Preliminary Issues

Records at this office indicate that all of the disclosure documents were sent to your lawyer, Jason Tarnow. 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 (the "RTS") the investigating officer stated that he witnessed you driving on Highway 1 East Bound in Surrey BC, on May 6, 2012, at 02:49 hours.

There is no evidence before me contradicting the officer's evidence. Based on the evidence before me, I find that it is more likely than not that you operated or had care or control of a motor vehicle on May 6, 2012, at 02:49 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.

On page 2 of the RTS, the officer checked the boxes indicating that you were read your Charter Rights and Official Warning and that you understood the demand. However, the time of the demand is not recorded in the RTS. In the absence of any other evidence, I cannot determine if the demand was made forthwith as required under section 254 of the *Criminal Code*. As I am unable to find that a demand was made forthwith, I am unable to find that you failed or refused to comply with it. Having made this finding, I do not need to consider the final issue in this review.

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

cc: Jason Tarnow
Fax: [604] 278-0525

May 18, 2012

s.22

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

Introduction

On April 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 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 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, Emmet Duncan. During the oral hearing Mr. Duncan acknowledged that he had received disclosure. 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?

In the Report to Superintendent regarding your Administrative Driving Prohibition (Report) Officer Cichon indicates that on April 27, 2012 at 00:53 a.m., you were the driver of a vehicle stopped at a roadblock at 1660 Main Street in North Vancouver.

You did not provide any evidence regarding this issue.

Based on the evidence, I find that you were operating or had care or control of a motor vehicle at the time in question.

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.

Mr. Duncan submits that Officer Cichon has provided no evidence to confirm that a breath demand was made on you pursuant to section 254 of the *Criminal Code*.

I concur.

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

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 April 27, 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.

Driving Prohibition Review Decision
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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

pc: Emmet Duncan

May 9, 2012

s.22

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

Introduction

On March 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 ADP. Under section 117 of the *Motor Vehicle Act* (the Act), the Superintendent has delegated the authority to conduct this review to me.

Section 94.6 of 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 this review, I must consider all relevant information provided to me, including the Report to Superintendent (RTS) and the Certificate of Qualified Technician (the Certificate).

Preliminary Matters

During the oral re-hearing I confirmed with your lawyer, Jennifer Currie, that she had all of the required 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. 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 the RTS, Constable Ramsay (Cst. Ramsay) is identified as the investigating officer in this matter. Cst. Ramsay indicated that you were the driver of the vehicle when it crashed into a light standard. Cst. Ramsay stated that you admitted that you were driving the vehicle. The date and time of driving or care or control recorded on the RTS is March 12, 2012, at 19:34 hours.

Neither you nor Ms. Currie provided any submissions on this issue.

Based on the evidence before me, I am satisfied that you operated or had care or control of a motor vehicle at 19:34 hours, on March 12, 2012.

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

The Certificate and the BAC Datamaster C Breath Test Tickets (the Tickets) both indicate that your BAC was 180 mg% at 21:58 hours and 180 mg% at 22:18 hours respectively, on March 12, 2012.

During the review, Ms. Currie referred me to the BAC Datamaster C Certification Course Certificate from the Justice Institute of British Columbia (Datamaster C Certificate) and stated that s.22 was not certified to operate the BAC Datamaster C when he took two (2) samples of your breath on March 12, 2012. As such, the breath test results contained in the RTS, the Certificate and the Tickets are unreliable. Therefore, there is no reliable evidence before me that your BAC exceeded 80 mg%.

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

Having made this finding I need not consider the remaining issue.

Decision

I therefore revoke your driving prohibition, as required under section 94.6 of the Act. You may resume driving but only 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 owing to the Province of British Columbia, your refund may be used to help offset those debts.

s.15
Adjudicator

Cc: Jennifer Currie
Fax: [604] 590-5626

MAY 24, 2012

s.22

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

Introduction

On May 6, 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, Roy Swartzberg, 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

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

In the Report to Superintendent (RTS), Constable Rodney indicated having witnessed you driving or in care or control of the vehicle on May 6, 2012, at 0953 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 6, 2012, at 0953 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, Constable Rodney noted that you were found in the driver's seat of the vehicle with an open bottle of half-empty liquor between your legs. The evidence indicates that there was a strong odour of liquor on your breath, your person and in the vehicle. You were pale and your eyes were watery. You were talkative and cocky, confused and had an uncertain balance. You did not dispute the officer's evidence in this regard.

On page two of the RTS, Constable Rodney stated that Sergeant Pons made a Demand of you on May 6, 2012, at 1202 hours. I note that this was over two hours after Constable Rodney witnessed you driving or in care or control of the vehicle. There is no explanation for the delay between the officers 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.

Driving Prohibition Review Decision
Page 3

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.

Adjudicator

cc. Roy Swartzberg
604-945-2063 (fax)

May 17, 2012

s.22

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

Introduction

On April 28, 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 it is more likely than not that:

- you consumed alcohol before or while you were operating or had care or control of a motor vehicle, and
- 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 Matters

Records at this office indicate that disclosure documents regarding this matter were provided to you, and I have proceeded with the hearing 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. 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?

The officer has not provided the Notice of Driving Prohibition or the Report to Superintendent regarding this matter. As a result I have no evidence regarding your operation or care or control of a vehicle.

Based on the evidence before me, I cannot find that you operated or had care or control of a vehicle on April 28, 2012.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that you were operating or had care or control of a motor vehicle on April 28, 2012.

I therefore revoke your driving prohibition, as required by section 94.6 of the *Motor Vehicle Act*. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

Adjudicator s.15

MAY 15, 2012

s.22

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

Introduction

On April 30, 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

At the beginning of the oral hearing, I listed the documents I received from the police, which were sent to your lawyer, Paul Doroshenko, on your behalf. Mr. Doroshenko acknowledged that he had received them. I 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 Constable Petrin 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?

Constable Petrin 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*. Mr. Doroshenko argued 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 agree with your lawyer. On a balance of probabilities, I find that Constable Petrin did not provide sufficient evidence for me to be satisfied that a valid demand was made.

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.

May 8, 2012

s.22

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

Introduction

On April 20, 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* (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
- 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 review, I checked that your lawyer, Jay Redmond, had received full disclosure of the documents before me. He acknowledged that he received all the documents.

Issues

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

Having reviewed the submission of Mr. Redmond and the evidence before me, I find there is one issue that is determinative of this review.

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

Mr. Redmond submitted that your prohibition should be revoked because the investigating officer has not provided reliable evidence that your BAC exceeded 80 mg% within 3 hours of your driving or having care or control of a vehicle.

The officer reported the time of driving or care or control of a vehicle as 21:56 hours, on April 20, 2012. The officer also indicated that the ASD and breath demands were made before that time, and that you were in custody at that time. I find there is no evidence before me by which I can reasonably infer the time at which you were driving or in care or control of a vehicle. Therefore, I cannot be satisfied that your BAC exceeded 80 mg% within 3 hours of operating of having care or control of a motor vehicle.

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

Decision

I am not satisfied that your BAC was over 80 mg% within 3 hours of operating or having care or control of a motor vehicle, on April 20, 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. Jay Redmond
fax: 604.581.2017

February 17, 2012

s.22

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

Introduction

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

Section 215.5(1) of the *Motor Vehicle Act* (“the Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for 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.

Preliminary Matters

At the beginning of the oral review on February 10, 2012, I listed the disclosure documents which were provided to your lawyer, Mr. Emmet Duncan, on your behalf regarding this matter. He acknowledged that he had received them.

Mr. Duncan has referred me to the recent decision of *Spencer v. British Columbia (Superintendent of Motor Vehicles)* and in particular paragraph 31, regarding the onus on the officer. I acknowledge that the officer has the onus to justify the prohibition.

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 ("the Report"), Constable Bryson identified himself as the investigating officer and noted that a border guard observed you drive up to the Douglas Border crossing on Highway 99. In the Report, the officer has noted the date of driving as January 29, 2012.

Your lawyer has noted that the information regarding the time of driving is blank in the Report and that this information is necessary for the demand to be valid. I note that the Notice of Driving Prohibition has a time of 13:15 hours; however this does not provide a reliable time of driving, and therefore I have no evidence on this point.

Based on the evidence before me, I cannot be satisfied that you **were** a driver within the meaning of section 215.41(1) of the Act, on January 29, 2012.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that that you **were** a driver within the meaning of section 215.41(1) of the Act, on January 29, 2012.

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

Adjudicator s.15

cc Emmet Duncan
fax # (604) 488 – 1413

FEBRUARY 9, 2012

s.22

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

Introduction

On January 19, 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), 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, Greg Diamond, 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 Versteeg indicated that she witnessed you driving or in care or control of the vehicle on January 19, 2012, at 1655 hours. The officer also recorded this information in the Occurrence Report. I note, however, that Constable Versteeg stated in the RTS and the OR that she formed the reasonable suspicion for demand at 1550 hours and read you an ASD demand at 1552 hours. The time of driving and the time the officer formed her reasonable suspicion are incompatible.

Based on the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on January 19, 2012, at 1655 hours.

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

Decision

I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on January 19, 2012, at 1655 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.

cc. Greg Diamond
604-938-0870 (fax)

February 9, 2012

s.22

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

Introduction

On January 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, 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), 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 disclosure documents regarding this matter were provided to your lawyer, Ms. Sarah Leamon, on your behalf. I have proceeded with the hearing based on this confirmation.

Ms. Leamon has referred me to the recent decision of *Spencer v. British Columbia (Superintendent of Motor Vehicles)* and in particular paragraph 63. She suggests that the four points outlined by the judge should be applicable to all reviews. I note paragraph 63 describes general principles that I have applied throughout my decision.

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 (“the Report”), Constable Remin identified himself as the investigating officer and indicated that you were witnessed driving. In the Report, the officer has noted that a construction crew reported a driver driving through a construction site “at a high rate of speed, almost hitting people, then exiting the vehicle, being confrontational and smelling of liquor. Crew called 911 at 16:04.” In the Occurrence Report, the officer has noted that a named witness construction worker had called to report a possible impaired driver. The witness reported that the male driver had entered the construction zone and nearly hit a couple of construction vehicles. The driver of the vehicle had then exited the vehicle and began to berate the construction crew calling them “assholes”. The witness also stated that he could smell alcohol from the driver.

The police attended the scene and located your parked vehicle. You approached the officers and were identified as the driver. In the Occurrence Report, the officer noted that you informed him that you had got lost in the construction zone and you were called an “asshole” by some of the construction workers. You informed the officer that you exited the vehicle to confront the workers. In the Report, the officer has noted the time and date of driving as 16:04 hours, on January 9, 2012.

While you deny that you were driving too fast, and your version of events regarding the interaction with the construction workers differs significantly, you do confirm that you were driving and dealt with the police at about this time.

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 January 9, 2012, at 16:04 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 I must determine whether you failed or refused to comply with that demand.

Driving Prohibition Review Decision
Page 3

In the Occurrence Report, the officer has noted that the construction worker stated that he could smell alcohol from you. The officer noted that he could smell a sweet odour coming from you, and that you were very agitated with small jerky movements. In the Occurrence Report, the officer stated that he formed the opinion that you had consumed alcohol at approximately 16:28 hours. In the Report, the constable has noted that he read you the ASD demand at 16:29 hours, and that you understood the demand.

Your lawyer argues that the demand was not reasonable and has referred me to *R. v. Hoodicoff* in support. While I find the *Hoodicoff* decision to differ on facts and not be directly applicable, I concur regarding the validity of the demand. I note that the officer did not witness any of the dangerous driving behavior that was reported by the construction workers. Moreover, the officer did not conclusively smell alcohol on you, nor did he note that he detected any of the symptoms consistent with alcohol consumption. As a result, I am not satisfied that the officer had the reasonable suspicion as the basis to support a demand.

Based on the evidence before me, I cannot be satisfied that a valid demand was made.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that 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 ASD on January 9, 2012, at 16:30 hours.

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

Adjudicator s.15

cc Sarah Leamon
fax # (604) 685 – 8308

February 7, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On January 19, 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* 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 *Motor Vehicle Act*, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device (ASD), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

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

Preliminary Matters

Records at this office indicate that full disclosure of the documents before me was provided to you. 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 *Motor Vehicle 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 AnalysisWere you a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*?

The investigating officer noted that he witnessed you driving. You confirmed you were driving. Based on the evidence before me, I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act* at 23:35 hours on January 19, 2012.

Did you fail or refuse to comply with a demand?

The officer noted that an odour of liquor was coming from you and that your eyes were watery and your speech was slurred. Consequently, he read you an ASD demand, which I find valid.

Your lawyer, Kurt Froehlich, provided several reasons why he believes the prohibition should be revoked. I will deal with one only, as I agree with him based on the following contradictory information.

In his report, the officer noted that a “no go” result means that air was not flowing through the instrument. Despite him hearing and feeling air flowing from the mouthpiece and out the exhaust, the constable said each test resulted in a “no go”. I find this evidence contradictory, and consequently, I find the device used was likely unreliable at the time of the tests. Given the evidence, I am not satisfied that you refused or failed to comply with a valid demand. Rather, I find the device failed to operate correctly.

Decision

I am not satisfied that you failed or refused to comply with a valid demand because I find the device was unreliable. I therefore revoke your driving prohibition, monetary penalty and vehicle impoundment, as required by s. 215(4)(c)(ii) of the *Motor Vehicle Act*. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. Your vehicle impoundment is revoked. If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle.

The Superintendent of Motor Vehicles will pay towing and storage costs up to and including November 4, 2010. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

cc: Kurt Froehlich
Boyle & Co
Fax: (250) 492-4877

February 27, 2012

s.22

copy

Re: Immediate Roadside Prohibition (IRP) Number

s.22

On February 15, 2012, a peace officer served you with a Notice of Driving Prohibition for refusing to comply with an approved screening device demand. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition where you stated that you provided two samples of your breath which resulted in "fail" readings.

I am not satisfied that you refused to comply with the demand, and I therefore revoke the driving prohibition, monetary penalty, and vehicle impoundment. 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.

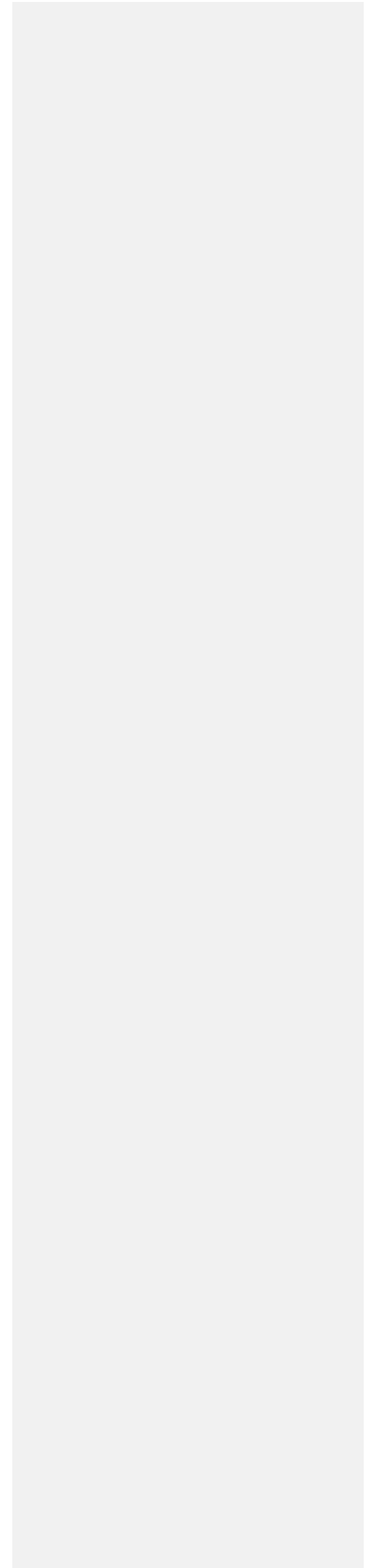
I note that your vehicle has not yet been released from the impound lot. I have sent an Order of Release to the impound lot where your vehicle is stored. You, or someone you authorize, may attend the impound lot and pick up your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including February 27, 2012. You are responsible for any storage costs beyond that date. You should know that if this vehicle is not retrieved, the impound lot may take steps to dispose of the vehicle 14 days after mailing notice to you of its intention to do so.

s.15

Manager, Adjudication and Training
Office of the Superintendent of Motor Vehicles

cc: Martin Johnson
By fax to: (250) 868-3080

cc: Martin Johnson
| By fax to: (250) 868-3080



March 23, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP)

s.22

Introduction

On March 11, 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, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device (ASD), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

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

Preliminary Matters

Records at this office indicate that disclosure has been provided to you on March 11, 2012.

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 (Report), Constable Opoku, of the Richmond RCMP, noted that he witnessed you driving or in care or control of a vehicle. In his attached Synopsis, the constable stated that he was dispatched to investigate a possible impaired driver. Constable Opoku conducted patrols and located a s.22
He conducted a traffic stop at s.22 You got out of the car. There was an odour of liquor emanating from your breath. The constable stated that you admitted to having a few drinks at 'Original Joe's' while watching a Canucks game and decided to drive home; s.22
s.22 At 01:02 hours, on March 11, 2012, a demand was made.

I note, however, that Constable Opoku has neglected to record your time of driving in the space provided. On the Notice Constable Opoku indicated that he had "reasonable and probable grounds to believe that on March 11, 2012, at 00:40 hours, on s.22 at or near Richmond, BC, you had care or control of a motor vehicle on a highway or industrial road." I note that in his report, the officer also indicated that he made an ASD demand at 01:02 hours, which is 22 minutes later, and not forthwith. It appears to me that the time noted on the Notice is actually the time the officer was dispatched to commence his investigation, and not the time you were alleged to have been in care or control of a vehicle.

Based on the evidence before me, I find that I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on March 11, 2012. Having made this finding I do not have to consider anything further.

Decision

I am satisfied that you were not a driver within the meaning of section 215.41(1) of the Act on March 11, 2011. I therefore revoke your driving prohibition and the monetary and other penalties you received, as required by s. 215.5(4)(a) of the Act. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

You confirmed retrieving your vehicle from the impound lot. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the release date of March 19, 2012. Please send a copy of your invoice to the superintendent, at the address shown on the front page, along with a cover letter, for reimbursement of the costs incurred.

Adjudicator

s.15

March 1, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On February 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* ("the Act") requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device, and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

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

Preliminary Matters

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

Issues

There are three issues in this review:

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

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

In the Report, the officer stated that he detected an odour on you. He recorded the time of reasonable suspicion as 03:10 hours and the time of the demand as 03:15 hours.

In the hearing, Mr. Filkow argued that there was no reasonable suspicion for the demand and no indication of impairment with respect to your driving. He stated that there needs to be a suspicion that there is alcohol in the driver's body. There is no admission of consumption, no time of last drink, and no symptoms of impairment noted. He also drew my attention to the times in the Report and state that it does not make sense that the officer could form his reasonable suspicion before he encountered you.

The issue I must consider is whether or not the officer's observations were sufficient to provide him with a reasonable suspicion that you had alcohol in your body. I concur with Mr. Filkow. In the absence of any other indicia of impairment, the detection of an unspecified odour does not support the grounds for a demand.

Based on the evidence before me, I am satisfied that the officer did not make a lawful demand. Having made this finding, I do not need to consider the other issues.

Decision

I am not satisfied that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device on February 17, 2012.

I therefore revoke your driving prohibition and monetary penalty, as required by s. 215.5 of the Act. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia. The vehicle impoundment is also revoked.

I note that your vehicle has already been released from the impound lot. Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will reimburse you for towing and storage charges you paid up to and including the day the vehicle was eligible for release. Original receipts and invoices with proof of payment must be attached. You may send your invoice to the Superintendent of Motor Vehicles at the address on page 1.

March 20, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On March 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 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 peace officer's report.

Preliminary Matters

Our records indicate that you received the disclosure documents for this review.

Issues

There are two issues in this review:

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

Facts, Evidence and Analysis

Did the ASD register a warn?

In your written submission you stated that when you asked for another sample the officer replied that you had three chances already. In considering the Report to Superintendent, I note that the officer was silent on this issue.

Based on the evidence before me, I am satisfied that you requested a second ASD test and were not given one. Consequently, there was no result on a second test for me to consider. As such, I find the ASD did not register a warn.

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

Decision

I am satisfied that the ASD did not register a warn.

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for 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 day the vehicle was eligible for release. Original receipts and invoices with proof of payment must be attached. You must also enclose a copy of this letter to ensure the correct charges are refunded to you. You may send your receipts and invoices to the address on page one 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.

March 1, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On February 19, 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 *Motor Vehicle Act*, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device (ASD), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

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

Preliminary Matters

Records at this office indicate that disclosure has been provided to you. You acknowledged receipt of the police documents. I have proceeded with the hearing based on this information.

Issues

There are three issues in this review:

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

Having reviewed the evidence of Constable Conlin and your submissions, I find there is one issue that is determinative of this review:

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.

As to the issue of whether you failed or refused to comply with the demand, in section 6 of the Report, 'Failure or Refusal to Comply with Demand', the constable stated that: the 'driver did not understand [the] demand or what was required. Driver gave a sample (Fail). But it was apparent that she was unaware of what Constable Conlin had asked. Driver stated she couldn't understand [the] officer's accent. Second demand read by Constable Doan and understood. Driver refused to comply.'

You disputed that you refused to provide an adequate breath sample. You submitted that the police officer asked you to submit a breath sample, after you stepped out of your car. You stated that you provided a sample. The police officer presented you with an ASD. The breath sample was administered in front of your residence. You asked what the sample registered, and if one of the police officers would write down the results for you. One of the police officers said you 'failed'. You again asked for your reading. You had never before given a breath sample. You acknowledged that you did not understand what the police officer had meant by the term 'fail'.

The term fail is defined in the Act, under section 215.41 to mean:

an indication on an approved screening device that the concentration of alcohol in a person's blood is not less than 80 milligrams of alcohol in 100 millilitres of blood.

Under section 215.41 there is no specific requirement for a person to understand the import of a demand, insofar as they comply with a peace officer's demand. It is clear from the evidence that you provided a sample and an ASD registered a 'fail'. I find that on a balance of probabilities, you did not refuse to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an ASD.

Having made this finding, there is no need for me to consider whether or not you were a driver within the meaning of section 215.41(1) of the Act.

Decision

I therefore revoke your driving prohibition and the monetary and other penalties you received, as required by s. 215.5(4)(c)(ii) of the Act. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

Please note that the corresponding vehicle impoundment is also revoked. If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 1, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

s.15

March 15, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On February 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* ("the Act") requires me to confirm your prohibition if I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device (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

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?

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

Preliminary Matters

During the oral hearing I confirmed with your lawyer, Sylvia Andrews, that she received all of the required disclosure documents on your behalf. I have proceeded with the review based on this confirmation

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 determine whether a demand was made on you pursuant to section 254(2) of the *Criminal Code*, and I must determine whether you failed or refused to comply with that demand.

In her written submission, Ms. Andrews emphasized that the law allows for police to briefly detain drivers for the purposes of an ASD test without providing the *Charter* right to counsel.

After reviewing the evidence in its entirety, I note that in the police supplemental, Cst. O'Donnell indicated that Cpl. Millard observed you driving or in care or control of the vehicle at 00:45 hours. However, Cst. O'Donnell stated in the Report to Superintendent that he did not read you the ASD demand until 01:00 hours; fifteen (15) minutes after you had been stopped by Cpl. Millard.

In accordance with section 254 of the *Criminal Code*, it is essential that the police evidence demonstrate that an ASD demand was made forthwith. In the absence of any explanation for the delay I do not find that the 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.

Given this finding, there is no need to deal with the remaining issues.

Decision

Based on the evidence before me, I am not satisfied that on February 12, 2012, 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 ASD. I therefore revoke your 90-day driving prohibition and monetary penalty as required by section 215.5(1)(b)(i) of the Act. As a result, the prohibition has been removed from your driving record and you can attend a Driver Services Centre to obtain a new driver's licence.

s.15
Adjudicator

cc: Sylvia Andrews
Fax: [604] 244-0617

March 19, 2012

s.22

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

Introduction

On March 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 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 an analysis by means of an approved screening device (“ASD”), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

In reaching my decision on this review, I must consider all relevant information provided to me, including the peace officer’s reports and your submissions.

Preliminary Matters

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

After considering the totality of the evidence before me, I have determined that this case hinges on one issue, which is whether or not you had a reasonable excuse for failing or refusing to comply with a demand.

Facts, Evidence and Analysis

Did you have a reasonable excuse?

In the IRP Report to Superintendent (“IRP Report”), Peace Officer Fedirchuk is identified as the investigating officer. The investigating officer indicated that he provided you with an explanation and demonstration on how to provide a sample of your breath into the ASD, and that you made

Driving Prohibition Review Decision
Page 2

four unsuccessful attempts. The officer described your attempts as short with only a single "+" registering on the ASD. The officer stated that he was of the opinion that you were trying real hard to provide a suitable sample. The officer recorded the date and time of failure or refusal to comply with the demand as March 7, 2012, at 12:07 hours.

In your written submission you stated that you attempted to provide a breath sample as instructed by the officer but were unable to exhale with sufficient strength. You also provided a note from s.22 which indicates that your peak flow of exhalation was 50% of that which would be expected. The note indicates that you s.22 which likely affected your ability to provide a suitable sample of your breath into the ASD.

In considering your submission, I note the evidence from the officer indicates that he was of the opinion at the time that you did in fact try hard to provide a suitable sample of your breath into the ASD. It seems to me that the officer's evidence supports your claim that you were not capable of providing a sample for medical reasons.

Based on the entirety of the evidence before, I am satisfied, based on a balance of probabilities, that you did have a reasonable excuse for failing or refusing to comply with a demand.

Decision

I am satisfied that you had a reasonable excuse for failing or refusing to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an ASD on March 7, 2012, at 12:07 hours.

I therefore revoke your driving prohibition and monetary penalty, as required by section 215.5 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 Drivers Licence.

The corresponding vehicle impoundment is also revoked. If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including March 19, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator

MARCH 12, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition (IRP) No

s.22

Introduction

On February 25, 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 corresponding vehicle impoundment if I am satisfied that you were not a driver within the meaning of section 215.41(1), or that the ASD did not register a warn or a fail.

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

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

Preliminary Matters

Records at this office indicate that disclosure was 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 or 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 Mitchell identified himself as the investigating officer and stated that he observed a vehicle parked on the east side of the 800 block of Howe street with the parking lights on. Constable Mitchell stated that both the passenger seat and driver's seat were reclined. In his attached Occurrence Report he stated that as he approached the vehicle it was apparent that both people were sleeping. He noted the date and time of driving or care or control as February 25, 2012, at 7:15 am.

In your submission, you stated that you were at a friend's home and you had consumed a couple of drinks. You stated that you did not believe it was safe for you to drive so you gave your friend your keys and you both reclined your respective seats and fell asleep. You had been sleeping for hours with no intention of driving. Your friend advised you that while you were sleeping he started the vehicle to warm it up. You stated that he left the keys in the ignition and the lights on. He does not have a driver's licence so he was unable to drive. You stated that if the officer hadn't woken you up, you could have slept a few more hours.

Your passenger, s.22 provided a written statement which corroborates your evidence that prior to entering the vehicle you gave him the keys.

In reviewing the evidence before me, I accept your evidence that you did not intend to drive.

Based on the evidence before me, I am satisfied that you **were not** a driver within the meaning of section 215.41 of the Act on February 25, 2012, at 7:15 am. Having made this finding I do not need to consider the final issue.

Decision

I am satisfied that you **were not** a driver within the meaning of section 215.41(1) of the Act on February 25, 2012, at 7:15 am.

I therefore **revoke** your driving prohibition and monetary penalty, as required by s. 215.5(4) of the Act. **You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.**

March 23, 2012

s.22

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

s.22

Introduction

On March 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 215.5(1) of the *Motor Vehicle Act* (“the Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for 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.

Preliminary Matters

Records at this office indicate that disclosure documents regarding this matter were provided to your lawyer, Mr. Michael Shapray, on your behalf. I have proceeded with the hearing based on this confirmation.

Driving Prohibition Review Decision
Page 2

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 (“the Report”), Constable Dullemond identified himself as the investigating officer and indicated that he witnessed you driving on s.22 and pulling into a driveway. You stepped out of the driver’s seat, and were identified as the driver. The officer has noted the time and date of driving as 15:42 hours, on March 2, 2012.

You have provided no evidence to the contrary. 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 March 2, 2012, at 15:42 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 I must determine whether you failed or refused to comply with that demand.

In the Report, the officer has stated that he detected an odour of liquor on your breath. The officer indicated that you denied consuming any alcohol. The constable has noted that he read you the ASD demand at 15:44 hours, and that you understood the demand. You have provided no evidence to the contrary on this point. Based on the evidence before me, I am satisfied that a valid demand was made.

As to the second issue of whether you failed or refused to comply with the demand, the officer’s evidence is that he administered an ASD test at 15:48 hours, and it registered a “FAIL” reading. After you did the ASD test, he made a breath demand and you refused.

I note that as the police evidence indicates you did provide a sample for the ASD test, I cannot find that you failed or refused to comply with a demand.

Based on the evidence before me, I cannot be satisfied that you failed or refused to comply with a demand on, on March 2, 2012.

Given this finding, there is no need to deal with the remaining issues.

Decision

I am not satisfied that that you failed or refused to comply with a demand.

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

Adjudicator s.15

cc Michael Shapray
fax # (604) 590 – 5626

April 5, 2012

s.22

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

Introduction

On March 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, 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) and revoke the corresponding vehicle impoundment.

Preliminary Matters

Our records indicate that copies of all documents related to this prohibition were provided to your legal counsel, Anjalika Rogers. During the oral hearing Ms. Rogers acknowledged receiving disclosure. 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 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 Report to Superintendent regarding your Immediate Roadside Prohibition (Report) Constable Ostadenko indicates that on March 17, 2012 at 01:50 hours, he observed you driving.

You did not provide any evidence regarding this issue.

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.

Under reasonable suspicion for demand, Constable Ostadenko indicates that you admitted to consuming alcohol, you had slurred speech, you were crying and you could not pull out your driver's licence. He formed a reasonable suspicion that you had alcohol in your body at 01:55 hours.

Ms. Rogers submits that because the evidence indicates that Constable Ostadenko made a breath demand on you and not an ASD demand, he had no authority to issue you a driving prohibition under section 215.41(3)(d) of the *Act*. Consequently, your prohibition should be revoked.

I concur. Based on the evidence, I am not satisfied that on March 17, 2012, an ASD demand was made on you to provide a sample of your breath pursuant to section 254(2) of the *Criminal Code* and you failed or refused to comply with the demand.

Having made this finding, I do not need to consider the third issue.

Decision

Based on the evidence before me, I am not satisfied that on March 17, 2012, 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 ASD.

I therefore revoke your 90-day driving prohibition and monetary penalty as required by section 215.5(4) of the *Act*. The prohibition has been removed from your driving record and you can attend a Driver Services Centre to obtain a new driver's licence.

Driving Prohibition Review Decision
Page 3

The vehicle impoundment is also revoked. The owner may go directly to the place that the vehicle was impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including April 5, 2012. The owner is responsible for any storage costs beyond that date. The owner should also be aware that if the vehicle is not retrieved within 30 days of the expiry of the impoundment, the impound lot may take steps to dispose of the vehicle.

Adjudicator s.15

pc: Anjalika Rogers via fax

April 20, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

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

Section 215.5(1) of the *Motor Vehicle Act* requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device (ASD), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

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

Preliminary Matters

Records at this office indicate that disclosure has been provided to your lawyer, Sarah Leamon. I have proceeded with the hearing based on this information.

Issues

There are three issues in this review:

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

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 Report to Superintendent (Report), Constable McKerracher noted that you denied drinking. The time of last drink, if any, was unknown. The constable stated in his Occurrence Report that:

“Without an odour of liquor present, Constable McKerracher did not believe he had reasonable grounds to justify an ASD demand on s.22 without an admission to consumption. Aside from her glassy eyes and odd speech, there was no odour to support it from a 5 foot distance. s.22 was able to state her name, address and birth date, thus satisfying Shryvers.”

The constable stated in the Report that he nevertheless formed a reasonable suspicion at 02:27 hours, and an ASD demand was made at 02:20 hours. Constable McKerracher stated in his Occurrence Report that at a time after his initial questioning, he detected a mild odour of liquor on your breath. At that point he was standing by your door within approximately one foot of you. The constable again asked if you had consumed any alcohol that night. You stated you had not had a drop of alcohol and were fine. The constable went on to itemise his reasons for forming a reasonable suspicion:

- An odour of liquor on your breath, when speaking at the doorway to your residence, at a one foot distance;
- Glossy and bloodshot eyes;
- Speech that was rushed and had become slurred.

In your affidavit you stated that you visited your friend, s.22 and spent the evening of March 31, 2012 at his residence where you had dinner. While there, you drank only water, and no alcohol. You drove home at 1:30 am, and arrived at 2:05 am on April 1. Once in your driveway, you saw flashing lights of the police. You exited the vehicle. Constable McKerracher asked if you had consumed any alcohol that evening, and you told him you had not.

While the constable was issuing a ticket for driving without a driver's licence, you entered your residence, putting away a bicycle and attending to your pet cat. The constable knocked on your window, and you went to the front door. You asserted Constable McKerracher said: “I didn't smell it at your car, but I smell alcohol now.” You went on to state that the constable did not specify where he smelt the odour coming from. He again asked if you had consumed any alcohol, and you answered that you had not consumed any alcohol. At this point, you told the constable that you were making beer and wine in your home. His response, in your account, was that this was irrelevant. You stated that there were five litres of fermenting beer located approximately one (1) metre away from your front door. You are making five litres of red wine, five litres of white wine, and ten litres of beer for a friend's wedding in June. s.22

Although fairly desensitised to the aroma, the smell is quite pungent.

Your friend, s.22 stated in his affidavit that you drank only water on the night of the incident. He affirmed that you brew alcoholic beverages in your home and that you are in the process of making a large volume for an upcoming wedding. He stated that the interior of your home smells like alcohol as a result. s.22 also noted that you tend to speak quickly and quite abruptly.

The roadside ASD demand is governed by s. 254(2) of the *Criminal Code*. That allows a peace officer to demand that a driver of a motor vehicle provide a sample of breath forthwith as is necessary to obtain a screening of the breath at the roadside. That demand can only be made where a peace officer reasonably suspects that the person who is operating the motor vehicle has alcohol in her body.

Your lawyer argued that for a valid demand, the investigating officer must have reasonable grounds. There was no admission of drinking, and an alleged smell of alcohol does not constitute adequate grounds in itself, following the reasoning in *R v Hoodicoff* [2005] BCPC 458. Ms Leamon maintained that the constable acknowledged when you were outside of your residence, he did not have the requisite grounds for a reasonable suspicion. He only detected a mild odour of liquor on your breath when at the doorway to your residence, in the close vicinity of beer and wine that were in the process of fermentation. The alcoholic beverages were delivering a pungent odour. In your affidavit you accounted for the glossy, and bloodshot appearance of your eyes due to the time of day and that you were tired. You asserted that typically you speak quite fast and tend not to complete your sentences from time to time. s.22 supported this assertion.

In my view the suggestion that there was a reasonable suspicion cannot be sustained. The constable initially came to the conclusion that there were insufficient grounds for a reasonable suspicion. He changed his opinion at the doorway to your residence. I accept that you were making beer and wine on the premises and that your home distinctly smelled of liquor. Given the evidence, I find that the officer, on a balance of probabilities, could not have made the subtle distinction that you had a 'mild odour' of liquor on your breath in the presence of such a strong aroma. He did not state that he continued to detect the presence of liquor on your breath, once clearly removed from your doorway. The remaining indicia do not in themselves meet the required standard of a reasonable suspicion that you had alcohol in your body. The constable acknowledged this point in his Occurrence Report on page 1. Therefore, I am satisfied that the demand was invalid.

Having made this finding, there is no need for me to consider whether or not you were a driver within the meaning of section 215.41(1) of the Act.

Decision

I am not satisfied that you failed or refused to comply with a valid demand, because I find the demand was itself invalid. I therefore revoke your Immediate Roadside Prohibition and monetary penalty, as required by section 215.5(4)(c)(ii) of the *Motor Vehicle Act*. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

Please note that the corresponding vehicle impoundment is also revoked. If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including April 20, 2011. 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: Sarah Leamon
fax (604 685 8308)

April 10, 2012

s.22

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

Introduction

On March 21, 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 an analysis by means of an approved screening device (“ASD”), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

In reaching my decision on this review, I must consider all relevant information provided to me, including the peace officer’s reports and your submissions.

Preliminary Matters

At the beginning of the oral hearing, I listed the disclosure documents and your lawyer, Sarah Leamon, confirmed that she had received them. 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 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 IRP Report to Superintendent ("IRP Report"), Officer Dosanjh is identified as the investigating officer. The investigating officer checked the box, in the IRP Report, to indicate that he witnessed you as the driver of the vehicle. The officer indicated, in the IRP Report, that you were excessively speeding and that you were driving the truck when he conducted a traffic stop. The officer provided an occurrence report which indicates that he conducted a traffic stop based on your driving behavior. The officer stated, in the IRP Report, that the date and time of driving or care or control was March 21, 2012, at 20:10 hours.

In your affidavit, you acknowledged being the driver.

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 March 21, 2012, at 20:10 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 I must determine whether you failed or refused to comply with that demand.

In the IRP Report, the officer indicated that his reasonable suspicion for his demand was based on the following; your driving behavior, strong smell of liquor or Listerine, slowed and slurred speech, glossy bloodshot and dilated eyes. The officer stated that he formed his reasonable suspicion at 20:22 hours and that he read the ASD demand to you on March 21, 2012, at 20:22 hours.

In your affidavit, you stated that your eyes may have been bloodshot and glossy as you were tired from working long hours a few days in a row. Your affidavit indicates that you worked at least a twelve hour shift on the date in question. You also stated that you work around machines, fumes, and fine dust, which often irritate your eyes. Additionally, you stated that you suffer from seasonal allergies to pollen and other environmental agents. Moreover, you were feeling under the weather and "worn down". Summarily, your affidavit explains the visual indicia as noted by the officer. You also stated that you normally speak quite slowly and that you do not agree that your speech was slurred on the date in question. You disputed having a "difficult time" finding your driver's licence as you have a number of cards and compartments in your wallet and you were simply looking to find where you last put your licence. Finally, you stated that you did not consume any alcohol on the date in question.

I note that the officer stated that he detected an odour of liquor or Listerine. With this in mind, and considering the totality of the evidence before me, I find, based on a balance of probabilities, that the officer did not meet the required standard of reasonable suspicion that you had alcohol in your body. Therefore, I am not satisfied that the ASD demand was a valid demand on the date in question. Consequently, I cannot find that you failed or refused to comply with a demand.

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

Decision

While I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Act*, I am not satisfied 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 ASD on March 21, 2012, at 20:22 hours.

I therefore revoke your driving prohibition and monetary penalty, as required by section 215.5 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 Drivers Licence.

The corresponding vehicle impoundment is also revoked. If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. As the vehicle has been impounded for multiple reasons, the Superintendent of Motor Vehicles will pay storage costs from March 30, 2012 up to and including April 10, 2012. You are responsible for any towing and storage costs prior to and 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: Sarah Leamon
fax: 604-685-8308

April 20, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On April 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 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 peace officer's report.

Preliminary Matters

Records at this office indicate that disclosure was provided to your lawyer, Sarah Leamon, on April 10, 2012. I have proceeded with the review based on this confirmation.

Issues

There are two issues in this review:

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

Facts, Evidence and Analysis

Did the ASD register a warn?

Ms. Leamon pointed out that the ASD used by the officer indicated the calibration expiry date is well beyond 30 days and therefore the test result cannot be accepted as reliable. I concur that the ASD result is unreliable. Therefore, based on the evidence before me, I am not satisfied that the ASD registered a warn.

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

Decision

I am not satisfied that the ASD registered a warn.

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

Adjudicator

cc: Sarah Leamon
604-685-8308

April 4, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On March 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* ("the Act") requires me to confirm your prohibition if I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device (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 Report to Superintendent (RTS).

Preliminary Matters

Records at this office indicate that your lawyer, Jennifer Currie, received all of the required disclosure documents on your behalf. 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 a demand?
3. If so, did you have a reasonable excuse?

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

Facts, Evidence and Analysis

Did you have a reasonable excuse?

Cst. Chassie indicated in the RTS and the Synopsis that you attempted twice, but you did not provide a suitable sample of your breath into an ASD.

In your affidavit, you explained that you blew into the ASD as hard and for as long as you could until you ran out of breath. You stated that you advised Cst. Chassie that you have s.22 breathing, blowing, and taking deep breaths due to your s.22. You stated that you have significant difficulty s.22 In support of your submission you provided a letter from s.22 The letter confirms that you have s.22 also explicitly stated in the letter that due to your condition you are unable to blow into a handheld roadside screening device. s.22 further stated that you cannot sustain a breath long enough or strong enough to produce an adequate reading.

Ms. Currie stated that you had a reasonable excuse for failing to comply with Cst. Chassie's demand for a sample of your breath. Ms. Currie noted that you were only given two chances to blow into the ASD. She also pointed out that Cst. Chassie has not provided any evidence that shows you employed any tactics such as blocking the tube with your tongue, not making a tight seal with your lips around the mouthpiece, or not blowing air into the ASD. Ms. Currie argued that your evidence clearly establishes on a balance of probabilities that you tried your best to provide a suitable sample for analysis, but that you were unable to due to medical reasons.

After reviewing all of the evidence before me, in your specific case and in the absence of any other contradictory evidence, I find that your evidence confirms that on March 17, 2012, you were physically incapable of providing a suitable sample of your breath into an ASD. As such, I am satisfied that you had a reasonable excuse for failing to comply with Cst. Chassie's ASD demand.

Decision

I am satisfied that on March 17, 2012, you had a reasonable excuse for failing to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an ASD. I therefore revoke your 90-day driving prohibition and monetary penalty as required by section 215.5 of the Act. As a result, the prohibition has been removed from your driving record and you can attend a Driver Services Centre to obtain a new driver's licence. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for the Enhanced Drivers Licence.

s.15
Adjudicator

cc: Jennifer Currie
Fax: [604] 590-5626

April 4, 2012

s.22

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

Introduction

On March 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 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 an analysis by means of an approved screening device (“ASD”), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

In reaching my decision on this review, I must consider all relevant information provided to me, including the peace officer’s reports and your submissions.

Preliminary Matters

The Office of the Superintendent of Motor Vehicles faxed disclosure documents to your lawyer, Mark Nohra, on March 26, 2012. I have before me a fax communication result report confirming successful transmission of the disclosure documents. I have proceeded with the review based on this confirmation.

After considering the totality of the evidence before me, I have determined that this case hinges on one issue, which is whether or not you were a driver within the meaning of section 215.41(1) of the *Act*.

Facts, Evidence and Analysis

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

Mr. Nohra submitted extensive arguments regarding the issues before me, including your affidavit, the affidavit of your friend, s.22 and two court cases. Upon considering the totality of the evidence before me, and based on a balance of probabilities, I find that I cannot be satisfied that you were operating or had care or control of a motor vehicle on March 22, 2012 at 00:14 hours. Accordingly, I must revoke your prohibition pursuant to section 215.5 of the Act.

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

Decision

I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on March 22, 2012 at 00:14 hours. I therefore revoke your driving prohibition and monetary penalty, as required by section 215.5 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 Drivers Licence.

The corresponding vehicle impoundment is also revoked. If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including April 4, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Mark Nohra
fax: 604-732-5891

May 1, 2012

s.22

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

Introduction

On April 14, 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.

Preliminary Matters

You applied for a review of this driving prohibition on April 18, 2012. Records at this office indicate that disclosure documents regarding this matter were provided to you. Your application form stated that your written review was scheduled for April 25, 2012, at 9:30 am. To date I have not received any submissions from you with regard to your ADP. As such, I will proceed with this review on the evidence before me.

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" or 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 ("the Report"), Constable Canso identified himself as the investigating officer and stated that you were witnessed driving. A named witness observed a person walk to a car, get into driver's seat, and start the car. In the Report, the officer has reported the time and date of driving as 18:00 hours, on April 14, 2012.

You have provided no evidence to the contrary, therefore 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 April 14, 2012, at 18:00 hours.

Did the ASD register a "WARN" or a "FAIL"?

In the Report, the officer noted that he detected a moderate odour of alcohol and that you had a red face. He stated that there was a "Fest-of-Ale, in the area, and you admitted to consumption of 3 sample size beers, and you informed him the time of your last drink was at 17:50 hours. You have provided no evidence to the contrary.

In the Report To Superintendent ("the Report"), the constable indicated that he made an ASD demand 18:02 hours, and that you understood the demand. He then administered an ASD test at 18:05 hours, and it registered a "WARN" reading. The officer has indicated that he informed you of the opportunity for a second test and you declined.

I note that although you have provided no evidence to the contrary, the officer has indicated that the ASD Calibration Expiry Date was 2012-04-13. As the expiry date is one day prior to your test, I cannot be satisfied that the ASD was properly serviced, and consequently, I find I do not have a valid ASD result to consider.

As a result, I cannot be satisfied that an ASD did register a "WARN" on April 14, 2012, at 18:05 hours.

Decision

I am not satisfied that an ASD did register a "WARN" on April 14, 2012, at 18:05 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.

Adjudicator s.15

MAY 4, 2012

s.22

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

Introduction

On April 21, 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), 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 you and your lawyer's office. 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?

After reviewing all the submissions before me, I find that there is no compelling evidence that you were the driver of the vehicle. As a result, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on April 21, 2012, at 2032 hours.

Based on my finding in this regard, I do not need to consider any other issues.

Decision

I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on April 21, 2012, at 2032 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.

May 15, 2012

s.22

REVIEW DECISION Immediate Roadside Prohibition No. s.22

Introduction

On April 26, 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, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device (ASD), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

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

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

Preliminary Matters

Records at this office indicate that disclosure was provided to your lawyer, Mr Wayne Ryan on May 2, 2012. He confirmed receiving the police evidence and I have proceeded with the hearing based on this information.

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 (Report), Constable Gray, of the Vancouver Police, stated that he observed you in the driver's seat of a vehicle on April 26, 2012 at 02:20 hours. The keys were in the ignition and the vehicle mobile.

Upon reviewing the time of events recorded in the Report, I note that the constable recorded the timing as follows:

Time of driving / care or control	02:20 hours
Time of reasonable suspicion	02:15 hours
ASD demand	02:19 hours
ASD test	02:19 hours
Failure or refusal to comply with demand	02:20 hours

Constable Gray's timing of events is logically inconsistent. It appears to me that the time noted as the time of driving in the Report and on the Notice is actually the time the officer made a determination that you failed or refused to comply with a demand, and not the time you were alleged to have been in care or control of a vehicle.

Based on the evidence before me, I find that I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act on April 26, 2012 at 02:20 hours. Having made this finding I do not have to consider anything further.

Decision

I am satisfied that you were not a driver within the meaning of section 215.41(1) of the Act on April 26, 2012 at 02:20 hours. I therefore revoke your driving prohibition and the monetary and other penalties you received, as required by s. 215.5(4)(a) of the Act. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia.

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 leased vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including May 15, 2012. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Wayne Ryan
Fax: (604 271 8073)