

July 11, 2014

s.22

## **REVIEW DECISION     Immediate Roadside Prohibition (“IRP”)     s.22**

### **Introduction**

On April 11, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

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

### **Issues**

The following are the issues in this review:

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

## **Facts, Evidence and Analysis**

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

There are three matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, whether you failed or refused to comply with that demand, and whether you intended to produce that failure or refusal.

After reviewing the evidence before me, I find that the officer did not establish a reasonable suspicion that you had alcohol in your body.

I am satisfied that the peace officer did not make a valid ASD demand.

## **Decision**

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

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

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

s.15

Adjudicator



July 24, 2014

s.22

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

**Introduction**

On July 6, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

At the beginning of the oral hearing your lawyer, Kyla Lee confirmed that full disclosure of the documents before me was provided to her. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Were the ASDs reliable?

After reviewing the evidence before me, I am not satisfied that the ASDs used for your analyses were reliable.

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

## Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. 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: Kyla Lee (by fax)  
(604) 685-8308



July 24, 2014

s.22

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

**Introduction**

On July 6, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

You applied for this review on all 13 grounds, some of which are not applicable to your situation because of the reason you were prohibited. For your benefit, I will consider all grounds that are applicable to your situation.

At the beginning of the oral hearing your lawyer, Kyla Lee confirmed that full disclosure of the documents before me was provided to her. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Were the ASDs reliable?

After reviewing the evidence before me, I am not satisfied that the ASDs used for your analyses were reliable.

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

## Decision

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

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

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

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

s.15

Adjudicator

cc: Kyla Lee (by fax)  
(604) 685-8308



July 18, 2014

s.22

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

**Introduction**

On June 29, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “WARN”, and was it as a result of your BAC exceeding 50 mg%?

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

### **Facts, Evidence and Analysis**

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

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

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

### **Decision**

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

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

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

s.15

Adjudicator

cc: John Bethel  
Fax: 604-437-0342





July 23, 2014

s.22

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

### **Introduction**

On July 2, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

On the IRP Application for Review, you indicated five grounds for review, one of which is not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

I am not satisfied that your BAC was over 80 mg% even though the ASDs registered a “FAIL”.

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

## Decision

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

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

Please note that this decision does not change any other prohibitions from driving or licensing requirements. Further, the corresponding vehicle impoundment is also revoked and the owner of the vehicle will be notified by separate letter.

s.15

Adjudicator

cc: Philip Riddell (by fax)  
(604) 520-6035



July 31, 2014

s.22

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

**Introduction**

On July 12, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “WARN”, and was it as a result of your BAC exceeding 50 mg%?

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

### Facts, Evidence and Analysis

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

#### Was the ASD reliable?

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

### Decision

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

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including July 16, 2014, the date your vehicle was eligible for release. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator



July 24, 2014

s.22

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

**Introduction**

On July 3, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

You applied on thirteen (13) review grounds; however, not all of them are applicable to your situation. For your benefit, I have considered all the grounds available to you.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

After carefully considering all of the evidence before me, I am satisfied that your BAC was not less than 80 mg%.

## Decision

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

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

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

Adjudicator

cc: Diego Solimano  
fax: 604-687-8996



July 25, 2014

s.22

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

**Introduction**

On April 4, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

Records at this office confirm that full disclosure of the documents before me was provided to your representative, Philip A. Riddell. I have proceeded with this review based on that confirmation.

As per section 215.49 of the Act, I can consider any documents submitted by the officer that are not required to be sworn. This includes the Notice and Certificate of Service, and the information relating to the calibration of the ASDs. Given that the Narrative Text Hardcopy (the “Narrative”) is not a required document under section 215.49, and it has not been properly attached to the solemnly affirmed Report to Superintendent (the “Report”), I have not considered it in this review. I find that with the solemnly affirmed Report and the other material as noted above, I have sufficient documentation before me to proceed with the hearing and make a decision.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

There are three matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, whether you failed or refused to comply with that demand, and whether you intended to produce that failure or refusal.

After reviewing the evidence before me, I am not satisfied that the peace officer made a valid ASD demand.

Having made this finding, I do not need to consider any further evidence in this review.

## Decision

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the Act. Information concerning this Regulation can be found online at: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including April 24, 2014. **Original receipts and invoices with proof of payment must be submitted for reimbursement.** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Philip A. Riddell  
fax: 604 520-6035





July 25, 2014

s.22

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

### **Introduction**

On July 6, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

At the beginning of the oral hearing your lawyer, Kyla Lee confirmed that full disclosure of the documents before me was provided to her. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Was the ASD reliable?

After reviewing the evidence before me, I am not satisfied that the ASD used for your analysis was reliable.

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

## Decision

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

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

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

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

s.15

Adjudicator

cc: Kyla Lee (by fax)  
(604) 685-8308



July 24, 2014

s.22

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

**Introduction**

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

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

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

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

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

**Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

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

**Issues**

The following are the issues in this review:

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

## **Facts, Evidence and Analysis**

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

There are three matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, whether you failed or refused to comply with that demand, and whether you intended to produce that failure or refusal.

After reviewing the evidence before me, I am satisfied that you did not fail or refuse to comply with the ASD demand.

Having made this finding I do not need to consider any further evidence in this review.

## **Decision**

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

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

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

s.15

Adjudicator

cc: Zachary Ng  
fax: 604 608-3826



July 24, 2014

s.22

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

**Introduction**

On April 10, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

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

As per section 215.49 of the Act, I can consider any documents submitted by the officer that are not required to be sworn. This includes the Notice and Certificate of Service, and the information relating to the calibration of the ASDs. Given that the Narrative Text Hardcopy (the “Narrative”) is not a required document under section 215.49, and it has not been properly attached to the solemnly affirmed Report to Superintendent (the “Report”), I have not considered it in this review. I find that with the solemnly affirmed Report and the other material as noted above, I have sufficient documentation before me to proceed with the hearing and make a decision.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

There are three matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, whether you failed or refused to comply with that demand, and whether you intended to produce that failure or refusal.

After reviewing the evidence before me, I am satisfied that you did not fail to comply with the ASD demand.

Having made this finding, I do not need to consider any further grounds in this review.

## Decision

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the Act. Information concerning this Regulation can be found online at: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including April 30, 2014. **Original receipts and invoices with proof of payment must be submitted for reimbursement.** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Howard Smith  
fax: 604 535-7699



July 24, 2014

s.22

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

**Introduction**

On May 11, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

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

**Issues**

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

There are three matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, whether you failed or refused to comply with that demand, and whether you intended to produce that failure or refusal.

After reviewing the evidence before me, I am satisfied that you did not intend to provide an insufficient sample of your breath.

Having made this finding, I do not need to consider any further grounds in this review.

## Decision

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the Act. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including May 30, 2014. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Philip W. Cote  
fax: 778 395-6226





July 18, 2014

s.22

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

**Introduction**

On July 1, 2014, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

In the hearing you confirmed that you had received the disclosure, except for the ASD information related to your prohibition. You stated that when you attended the Driver's Licensing Office ("DLO") you were given information that did not belong to your file.

Records at this office confirm that you were provided with incorrect ASD documentation when you retrieved the disclosure package from the DLO. In the hearing, I informed you that the evidence before me was complete and that I had the ASD documents before me. I informed you that if you were able to attend the DLO, they would now be able to provide the proper documentation to you, and if you wished to do so, I would accept further written submissions from you in response to those documents.

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

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

Was the ASD reliable?

I am not satisfied that the ASDs used to administer the ASD analyses were reliable.

**Decision**

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

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

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

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



July 24, 2014

s.22

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

**Introduction**

On July 3, 2014, 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 have been 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;
- the approved screening device (ASD) registered a "fail" as a result of your blood alcohol concentration (BAC) being not less than 80 milligrams of alcohol in 100 millilitres of blood (80 mg%);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

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

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

**Preliminary Matters**

I will consider all of the grounds available to you in this review that are appropriate to the circumstances under which you were issued the prohibition.

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, David Jenkins. I acknowledge receipt of Mr. Jenkins' July 22, 2014, correspondence together with your written submission.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

There is one issue that is determinative of this hearing.

### Was the second analysis provided by the Officer?

Based on a review of the evidence before me, I am not satisfied that the Officer provided a second analysis.

## Decision

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

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

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

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

s.15  
Adjudicator

cc: David Jenkins  
Fax 250-565-8001



July 29, 2014

s.22

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

**Introduction**

On July 8, 2014, 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 have been delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Jennifer Currie. I acknowledge receipt of Ms. Currie’s written submission dated July 24, 2014.

**Issues**

The following are the issues in this review:

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

## **Facts, Evidence and Analysis**

### Did the officer make a valid ASD demand?

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

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

## **Decision**

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

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

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

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

s.15  
Adjudicator

cc: Jennifer Currie  
via fax 604-590-5626



July 25, 2014

s.22

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

**Introduction**

On July 14, 2014, 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 have been 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;
- the approved screening device ("ASD") registered a "fail" as a result of your blood alcohol concentration (BAC) being not less than 80 milligrams of alcohol in 100 millilitres of blood (80 mg%);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

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

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

**Issues**

The following are the issues in this review:

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

## **Facts, Evidence and Analysis**

There is one issue that is determinative of this hearing.

### Was the ASD reliable?

Based on the evidence before me, I cannot be satisfied that the first ASD was reliable.

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

## **Decision**

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

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

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

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





July 29, 2014

s.22

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

**Introduction**

On April 26, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

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

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**Did you fail or refuse to comply with an ASD demand?

There are three matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, whether you failed or refused to comply with that demand, and whether you intended to produce that failure or refusal.

After reviewing the evidence before me, I am satisfied that you did not fail or refuse to comply with the ASD demand.

Having made this finding, I do not need to consider any further grounds in this review.

**Decision**

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including May 20, 2014. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

Adjudicator

cc: Jeremy Carr  
fax: 250 388-7327



July 29, 2014

s.22

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

**Introduction**

On April 12, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

Records at this office confirm that full disclosure of the documents before me was provided to your representative, Patrick M. McGowan. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

There are three matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, whether you failed or refused to comply with that demand, and whether you intended to produce that failure or refusal.

After reviewing the evidence before me, I am satisfied that you did not fail or refuse to comply with the ASD demand.

Having made this finding, I do not need to consider any further grounds in this review.

## Decision

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including April 30, 2014. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Patrick M. McGowan  
fax: 604 684-0799



July 11, 2014

s.22

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

**Introduction**

On February 9, 2014, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

After reviewing the evidence before me, I am satisfied that you were not advised of your right to request a second breath test analysis.

Having made this finding, I do not need to consider any further grounds in this review.

## Decision

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including February 27, 2014. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Michael Shapray  
fax: 604 590-5626



July 24, 2014

s.22

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

**Introduction**

On July 4, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

You applied on all 13 grounds, a number of which are not applicable to your situation because of the reason the officer prohibited you. For your benefit, I have considered all of the grounds appropriate to your circumstances.

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

After considering the evidence before me, I am satisfied that you had a reasonable excuse for failing or refusing to comply with the demand.

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

## Decision

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

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

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

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

s.15

Adjudicator

cc: Helen Huzzey  
Fax: 604-984-8573





July 16, 2014

s.22

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

On July 24, 2011, a peace officer served you with a Notice of Driving Prohibition because you failed or refused, without a reasonable excuse, to comply with a demand under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device.

You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and Adjudicator Fisher confirmed the IRP. You subsequently filed a petition for judicial review of that decision.

I have received a Consent Order to re-hear your IRP application. I have considered the evidence and I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may continue to drive with the driver's licence you obtained from the Insurance Corporation of British Columbia.

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

This decision does not change any other prohibitions from driving or licensing requirements.

s.15

Manager, Adjudication and Training

PC:    Phillip A. Riddell  
      Barrister & Solicitor  
      By fax at: 604-520-6035



July 2, 2014

s.22

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

**Introduction**

On June 14, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

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

Were the ASDs reliable?

I am not satisfied that the ASDs used to administer the breath tests were reliable.

**Decision**

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

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

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

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



July 31, 2014

s.22

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

**Introduction**

On July 11, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

At the beginning of the oral hearing your lawyer, Kyla Lee confirmed that full disclosure of the documents before me have been provided to her. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

After reviewing the evidence before me, I am satisfied that your BAC was less than 80 mg%.

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

## Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 31, 2014. 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: Kyla Lee (by fax)  
(604) 685-8308



July 22, 2014

s.22

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

**Introduction**

On June 20, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

On the IRP Application for Review, you indicated four grounds for review, two of which are not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Was the ASD reliable?

I am not satisfied that the ASD used to administer the second ASD test was reliable.

## Decision

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

Records at this office indicate that you were issued a duplicate class 5 British Columbia driver's licence on July 15, 2014, with an expiry of June 23, 2019.

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

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

s.15

Adjudicator



July 16, 2014

s.22

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

**Introduction**

On June 25, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

On the IRP Application for Review, you indicated eight grounds for review, three of which are not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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



## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

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

## Decision

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

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

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

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. RoadSafetyBC will pay towing and storage costs up to and including the date of this letter. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to RoadSafetyBC to dispose of the vehicle.

Adjudicator

cc: Cathryn Waker (by fax)  
604-637-1617



July 10, 2014

s.22

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

**Introduction**

On June 26, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

At the beginning of the oral hearing your lawyer, John Green confirmed that full disclosure of the documents before me was provided to him. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

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

### **Facts, Evidence and Analysis**

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

#### Did you have a reasonable excuse?

After considering the evidence before me, I am satisfied that you had a reasonable excuse to fail or refuse to comply with the ASD demand.

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

### **Decision**

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

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

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

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 July 10, 2014. 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: John Green (by fax)  
(250) 361-9181



July 31, 2014

s.22

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

### **Introduction**

On July 17, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

On the IRP Application for Review, you indicated a number of grounds for review that are not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

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

Was the ASD reliable?

I am satisfied that the ASD was not reliable.

**Decision**

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

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

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

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

pc: Jeremy G. Carr (by fax)  
250-388-7327



July 4, 2014

s.22

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

**Introduction**

On June 13, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

In the oral review of June 27, 2014, I confirmed with your lawyer, Ms. Kyla Lee, that she had full disclosure of file material. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

Having reviewed the evidence of Cst. Duin, I find there is one determinative issue in this review.

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

I am not satisfied the officer made a valid demand compliant with the *Criminal Code* when he encountered you as the driver on June 13, 2014. Therefore, I find the demand to be invalid.

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

**Decision**

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 4, 2014. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

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



July 31, 2014

s.22

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

**Introduction**

On July 23, 2014, 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 have been 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;
- the approved screening device (ASD) registered a "fail" as a result of your blood alcohol concentration (BAC) being not less than 80 milligrams of alcohol in 100 millilitres of blood (80 mg%);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

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

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

**Preliminary Matters**

I acknowledge receipt of your lawyer, Ken Thompson's, submissions dated July 31, 2014. After reviewing the evidence before me together with counsel's submissions, I am not satisfied that there is sufficient evidence for me to confirm your prohibition.



## Decision

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

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

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

s.15  
Adjudicator

cc: Kenneth B. Thomson  
By fax 1-250-992-7349



July 18, 2014

s.22

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

### **Introduction**

On June 29, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

On the IRP Application for Review, you indicated two grounds for review, one of which is not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Was the ASD reliable?

I am not satisfied that the ASD used to administer the first ASD test was reliable.

## Decision

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

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

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

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

s.15

Adjudicator



July 30, 2014

s.22

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

**Introduction**

On July 9, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

On the IRP Application for Review, you indicated six grounds for review, three of which are not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

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

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

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

**Decision**

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

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

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

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



July 10, 2014

s.22

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

**Introduction**

On June 20, 2014, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

Your lawyer, Kyla Lee, confirmed that she received all of the disclosure documents that are before me. I have proceeded with this review based on that confirmation.

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

## **Facts, Evidence and Analysis**

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

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

Having considered the evidence before me, I find that you did not fail or refuse to comply with a demand.

## **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.

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

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

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

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

Adjudicator

cc: Kyla Lee  
604-685-8308



July 22, 2014

s.22

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

On May 10, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”) because 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”).

Upon review of the evidence before me, I find that I do not have before me a properly sworn Report to Superintendent. As a result, there is insufficient evidence before me to support the driving prohibition indicated on the Notice you were served with on May 10, 2014.

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the Act. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including May 21, 2014. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

Adjudicator s.15

cc: Sarah Leamon (by fax)  
(604) 370-2505





July 30, 2014

s.22

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

**Introduction**

On July 18, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

On the IRP Application for Review, you indicated four grounds for review, one of which is not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

I am satisfied that your BAC was less than 80 mg%.

## Decision

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

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

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

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



July 17, 2014

s.22

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

**Introduction**

On June 29, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

At the beginning of the oral hearing your lawyer, Kyla Lee confirmed that full disclosure of the documents before me was provided to her. I have proceeded with this review based on that confirmation.

Having reviewed all of the evidence before me, I find that the Report to Superintendent is not properly before me. I find I have insufficient evidence to make the necessary findings required to confirm the prohibition.

## Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 17, 2014. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Kyla Lee (by fax)  
(604) 685-8308



July 30, 2014

s.22

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

**Introduction**

On July 12, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

On the IRP Application for Review, you indicated a number of grounds for review that are not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

On July 24, 2014, this office received a 7-page written submission that appears to be written by Jeremy G. Carr of CARR BUCHAN & COMPANY. Records at this office confirm that full disclosure of the documents before me were faxed to Sacha L. I. Roudette, who is also employed by CARR BUCHAN & COMPANY. For the purposes of this review, I will refer to Mr. Carr as your legal representative because the written submission provided to this office appears to be authored by him.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

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

## Decision

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

Please contact the Insurance Corporation of British Columbia (ICBC) to determine your eligibility to apply for a BC driver's licence or to arrange for your foreign driver's licence to be returned to you. You must call ICBC Customer Contact at 250-978-8300, or toll free at 1-800-950-1498.

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

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

pc: Jeremy G. Carr (by fax)  
250-388-7327

July 22, 2014

s.22

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

**Introduction**

On July 8, 2014 a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

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

### **Facts, Evidence and Analysis**

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

#### Were the ASDs reliable?

I am not satisfied that the ASDs used to administer the breath tests were reliable.

### **Decision**

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

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

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

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

Adjudicator s.15

cc: Vicki Williams by fax 604 687 4299



July 7, 2014

s.22

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

**Introduction**

On June 14, 2014, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

At the start of the oral hearing your lawyer, Sarah Leamon, acknowledged that she received disclosure.

You applied on one ground. For your benefit I have considered all the grounds available to you.

**Issues**

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

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

### **Facts, Evidence and Analysis**

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

#### Was the second analysis provided by the officer and performed using a different ASD?

Having considered the evidence before me, I find that a second analysis was not provided.

### **Decision**

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

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

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

If you have not already done so, you may go directly to the location where the vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 7, 2014. 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  
604-370-2505



July 23, 2014

s.22

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

### **Introduction**

On July 12, 2014, 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 have been 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;
- the approved screening device ("ASD") registered a "fail" as a result of your blood alcohol concentration (BAC) being not less than 80 milligrams of alcohol in 100 millilitres of blood (80 mg%);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

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

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

### **Issues**

The following are the issues in this review:

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

## **Facts, Evidence and Analysis**

There is one issue that is determinative of this hearing.

### Was the ASD reliable?

Based on the evidence before me, I cannot be satisfied that the second ASD was reliable.

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

## **Decision**

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. 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: Mitch Foster  
Via Fax 604-687-4299



July 31, 2014

s.22

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

**Introduction**

On July 12, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

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

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

I am satisfied that your BAC was less than 80 mg%.

**Decision**

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

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

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

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

pc: Kyla Lee (by fax)  
604-685-8308

July 14, 2014

s.22

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

**Introduction**

On June 22, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

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

### **Facts, Evidence and Analysis**

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

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

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

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

### **Decision**

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

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

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

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

Adjudicator

cc. Lolita Rudovica  
604-581-2017 (fax)



July 2, 2014

s.22

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

**Introduction**

On June 14, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

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

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

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

**Decision**

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

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

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

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



July 22, 2014

s.22

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

**Introduction**

On July 1, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

On the IRP Application for Review, you indicated eight grounds for review, six of which are not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

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

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

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

**Decision**

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

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

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

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

Adjudicator

cc: Kyla Lee (by fax)  
604-685-8308

July 16, 2014

s.22

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

**Introduction**

On June 29, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

On the IRP Application for Review, you indicated four grounds for review, three of which are not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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

**Issues**

The following are the issues in this review:

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

### **Facts, Evidence and Analysis**

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

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

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

### **Decision**

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

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

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

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

s.15

Adjudicator

cc: David Silverman (by fax)  
604-859-3361



July 18, 2014

s.22

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

**Introduction**

On May 5, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

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

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

## Decision

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

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

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

s.15

Adjudicator

cc: Philip A. Riddell  
Fax: 604-520-6035





July 8, 2014

s.22

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

**Introduction**

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

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

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

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

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

**Preliminary Matters**

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

At the outset of your oral hearing your lawyer, John Chak, confirmed that he received full disclosure. I have proceeded with this review based on that confirmation.

Mr. Chak pointed out that the officer circled the word “sworn” in the *jurat* and he suggested that the officer should have written the word “sworn”. I acknowledge that the officer circled the word “sworn” in the *jurat*. However, I do not find that this affects the validity of the officer’s oath as evidenced by the *jurat*. As a result, I am satisfied that the Report to Superintendent (RTS) has been properly sworn.

In considering the evidence before me, I note that the Narrative Text Hardcopy was printed after the RTS was signed by the commissioner for taking affidavits for British Columbia. As result, I have not considered the Narrative in this review. However, as per section 215.47 of the Act, I can consider any other documents submitted by the officer including the Notice and Certificate of Service, the Vehicle Impoundment RTS and the information relating to the calibration of the ASDs. I find that with the sworn RTS and the other material as noted above, I have sufficient documentation before me to proceed with the hearing and make a decision.

### Issues

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

### Facts, Evidence and Analysis

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

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

Having considered the evidence before me, I cannot find that you were advised of your right to request a second analysis.

### Decision

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

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

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

The corresponding vehicle impoundment is also revoked. Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to an including **March 12, 2013**. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

Adjudicator

cc: John Chak  
604-282-7509



July 3, 2014

s.22

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

**Introduction**

On June 14, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

### **Facts, Evidence and Analysis**

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

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

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

### **Decision**

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

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

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

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

s.15

Adjudicator

cc: Sarah E. Leamon (by fax)  
604-370-2505



July 18, 2014

s.22

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

### **Introduction**

On July 1, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

You applied on 11 grounds, a number of which are not applicable to your situation because of the reason the officer prohibited you. For your benefit, I have considered all of the grounds appropriate to your circumstances.

At the beginning of the oral hearing, articling student Anna Novakovic, confirmed that she had received full disclosure of the documents before me. I have proceeded with this review based on that confirmation.

In the hearing, I advised Ms. Novakovic that on the fax cover sheet dated July 16, 2014, she had indicated that she had provided the case of *R. v. Scott*, 2013 BCCA 554, and that she would be relying on that case during the review; however, the case included in her submissions was *Spencer v. British Columbia (Superintendent of Motor Vehicles)*, 2011 BCSC 1311. Ms. Novakovic confirmed that she would be relying on the Spencer case.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

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

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

## Decision

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

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

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

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

s.15

Adjudicator

cc: Anna Novakovic  
Fax: 604-370-2505





July 4, 2014

s.22

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

**Introduction**

On May 23, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Issues**

The following are the issues in this review:

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

- Was the ASD reliable?

## **Facts, Evidence and Analysis**

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

### Were the ASDs reliable?

You have provided evidence which calls the reliability of the ASD test results into question. I am not satisfied that the ASD results were reliable at the time the officer obtained samples of your breath.

## **Decision**

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

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

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

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

s.15

Adjudicator

CC. Sumit Ahuja  
LK Law  
Fax: 604-888-6565

July 10, 2014

s.22

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

**Introduction**

On June 11, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

You applied on the ground that you were not driving or in care or control of the motor vehicle; however, for your benefit, I have considered all of the grounds appropriate to your circumstances.

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

**Issues**

The following are the issues in this review:

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

**Facts, Evidence and Analysis**

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

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

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

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

**Decision**

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since the IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including June 23, 2014. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

Adjudicator

cc: Donald Muldoon  
(By fax) 974-8888



July 15, 2014

s.22

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

**Introduction**

On June 28, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

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

### **Facts, Evidence and Analysis**

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

#### Was the ASD reliable?

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

### **Decision**

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

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

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

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

s.15

Adjudicator

cc: David Jenkins  
Fax: 250-565-8001



July 25, 2014

s.22

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

**Introduction**

On July 8, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

You applied for this review on the ground that the result of the ASD was not reliable and the ASD registered a FAIL, but your BAC was less than 80 mg%. For your benefit, I will consider all grounds that are applicable to your situation.

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Harpreet Nirwan, on July 17, 2014. On the fax cover sheet sent to Mr. Nirwan on July 17, 2014, he was advised that the written review was scheduled for 9:30 am on July 25, 2014, and that all written submissions must be received by this office by the scheduled time for review.

As I have not received a written submission from you or your lawyer to date, I will proceed with the evidence I have before me.

### Issues

The following are the issues in this review:

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

### Facts, Evidence and Analysis

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

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

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

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

### Decision

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

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

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

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

Adjudicator

cc: Harpreet Nirwan (by fax)  
(604) 593-6867





July 18, 2014

s.22

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

**Introduction**

On June 29, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

### **Facts, Evidence and Analysis**

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

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

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

### **Decision**

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

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

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

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

s.15

Adjudicator



July 3, 2014

s.22

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

**Introduction**

On June 16, 2014, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

At the outset of your oral hearing your lawyer, Kevin Filkow, confirmed that he received full disclosure. I have proceeded with the review based on this confirmation.

The grounds indicated on the Notice was that you failed or refused, without a reasonable excuse, to comply with a demand made under section 254 of the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device. There is no evidence before me that you refused to comply. On the contrary, the evidence before me indicates that you provided a "FAIL" on an ASD.

## 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.

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

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

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

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

s.15

Adjudicator

cc: Kevin Filkow  
604-370-2505



July 18, 2014

s.22

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

**Introduction**

On July 1, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

### **Facts, Evidence and Analysis**

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

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

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

### **Decision**

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

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

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

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

s.15

Adjudicator

cc: Sarah E. Leamon (by fax)  
604-370-2505



July 16, 2014

s.22

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

**Introduction**

On June 16, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

Having reviewed all of the evidence before me, I find that the Report to Superintendent is not properly before me. I find I have insufficient evidence to make the necessary findings required to confirm the prohibition.

## **Decision**

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

Records at this office indicate that you were issued a duplicate class 5 British Columbia driver's licence on June 21, 2014, with an expiry of October 11, 2016. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

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

s.15

Adjudicator





July 2, 2014

s.22

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

**Introduction**

On June 13, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Was the ASD reliable?

After considering the evidence before me, I am not satisfied the ASD was reliable.

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

## Decision

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

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

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

s.15

Adjudicator

cc: Kevin Filkow (by fax)  
(604) 370-2505



July 24, 2014

s.22

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

### **Introduction**

On July 4, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

On the IRP Application for Review, you indicated three grounds for review, one of which is not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

### Were the ASDs reliable?

I am not satisfied that the ASDs used to administer both ASD tests were reliable.

## Decision

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

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

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

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

s.15

Adjudicator



July 31, 2014

s.22

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

### **Introduction**

On July 17, 2014, 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 have been delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

At the beginning of the hearing, your lawyer, Kyla Lee, confirmed that she was in receipt of full disclosure of the documents before me.

### **Issues**

The following are the issues in this review:

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

## **Facts, Evidence and Analysis**

There is one issue that is determinative of this review.

### Was the ASD reliable?

Based on a review of the evidence, I am not satisfied that the ASDs used to conduct your tests were reliable.

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

## **Decision**

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

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

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

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

Adjudicator s.15  
RoadSafetyBC

cc: Kyla Lee  
by fax 604-685-8308



July 21, 2014

s.22

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

### **Introduction**

On July 11, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

At the beginning of the oral hearing your lawyer, Sarah Leamon confirmed that full disclosure of the documents before me was provided to her. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

After reviewing the evidence before me, I am not satisfied that the "FAIL" was a result of your BAC exceeding 80 mg%

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

## Decision

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

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

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

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

s.15

Adjudicator

cc: Sarah Leamon (by fax)  
(604) 370-2505





July 29, 2014

s.22

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

**Introduction**

On July 10, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

## **Facts, Evidence and Analysis**

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

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

After considering the evidence before me, I am satisfied that you did not fail or refuse to comply with an ASD demand.

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

## **Decision**

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

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

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

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 July 29, 2014. 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



July 28, 2014

s.22

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

**Introduction**

On April 6, 2014, 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 have been 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;
- the approved screening device (ASD) registered a "fail" as a result of your blood alcohol concentration (BAC) being not less than 80 milligrams of alcohol in 100 millilitres of blood (80 mg%);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

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

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

**Preliminary Matters**

I acknowledge receipt of your lawyer, Cathryn Waker's submissions dated July 22, 2014. After reviewing the evidence before me together with counsel's submissions, I am not satisfied that the Report to Superintendent has been properly sworn. As such, I find that there is insufficient evidence for me to confirm your prohibition.

## Decision

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

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

Because your prohibition has been cancelled, the Superintendent of Motor Vehicles will pay the towing and storage costs that you have incurred up to the date that it was eligible for release (April 15, 2014). **Original receipts and invoices with proof of payment must be attached.** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Cathryn Waker  
By fax 604-637-1617



July 28, 2014

s.22

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

On July 6, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”) because 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”). 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.

Upon review of the evidence before me, there is insufficient evidence before me to support the driving prohibition indicated on the Notice you were served with on July 6, 2014.

**Decision**

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 28, 2014. 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: Isaac Ferbey (by fax)  
(604) 717-6001



July 22, 2014

s.22

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

**Introduction**

On July 2, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

At the beginning of the oral hearing your lawyer, Joseph Gordon confirmed that full disclosure of the documents before me was provided to him. I have proceeded with this review based on that confirmation.

Having reviewed all of the evidence before me, I find that the Report to Superintendent is not properly before me. I find I have insufficient evidence to make the necessary findings required to confirm the prohibition.

## Decision

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 22, 2014. 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: Joseph Gordon (by fax)  
(250) 860-9937



July 29, 2014

s.22

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

**Introduction**

On July 10, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

In the oral hearing your lawyer, Jonathan Israels confirmed that full disclosure of the documents before me was provided to him. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

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



## **Facts, Evidence and Analysis**

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

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

After considering the evidence before me, I am not satisfied that you failed or refused to comply with an ASD demand.

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

## **Decision**

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

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

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

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 July 29, 2014. 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: Jonathan Israels (by fax)  
(604) 488-1413



July 10, 2014

s.22

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

**Introduction**

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

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

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

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

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

**Preliminary Matters**

You applied on four grounds, not all of which are applicable to your situation because of the reason the officer prohibited you. For your benefit, I have considered all of the grounds appropriate to your circumstances.

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

## Issues

The following are the issues in this review:

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

## Facts, Evidence and Analysis

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

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

After considering the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41 of the Act.

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

## Decision

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

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

Please note that this decision does not change any other prohibitions from driving or licensing requirements. Further, the corresponding vehicle impoundment is also revoked and the owner of the vehicle will be notified by separate letter.

s.15

Adjudicator

cc: Sarah E. Leamon  
(By fax) 604-370-2505



JULY 9, 2014

s.22

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

### **Introduction**

On June 18, 2014, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

### **Preliminary Matters**

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

The Notice that you were served with indicates that you failed or refused, without a reasonable excuse, to comply with a demand made under section 254 of the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device. However, there is no evidence before me that you refused to comply. On the contrary, the evidence before me indicates that you provided a "FAIL" on an ASD.

## Decision

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

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

If you have not already done so, you may go directly to the location where the vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 9, 2014. 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

July 17, 2014

s.22

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

**Introduction**

On June 28, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

**Issues**

The following are the issues in this review:

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

## **Facts, Evidence and Analysis**

Having reviewed the evidence of Cst. Minhas, I find there is one determinative issue in this review.

### Was the ASD reliable?

After considering the evidence before me, I am not satisfied the ASD was reliable.

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

## **Decision**

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 17, 2014. 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



July 16, 2014

s.22

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

**Introduction**

On June 25, 2014, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

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

You applied on eight (8) review grounds, some of which are not applicable to your situation because of the reason for which you were prohibited. For your benefit, I have considered all the grounds available to you.

**Facts, Evidence and Analysis**

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



Did you fail or refuse to comply with a demand?

After considering all the evidence before me in this specific set of circumstances, I am not satisfied that you failed or refused to comply with a demand.

**Decision**

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 16, 2014. 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



July 10, 2014

s.22

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

**Introduction**

On June 19, 2014, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

On your application for review you selected a number of grounds that do not relate to the reason for which you were prohibited. For your benefit, I have considered all of the grounds available to you in this review that relate to the reason for which you were prohibited.

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer on June 26, 2014. I have proceeded with this review based on that confirmation.

In his submission your lawyer, Jeremy Carr, set out principles guiding an adjudicator's assessment of credibility, drawing from the contemporary cases of *Spencer*, *Gillies*, and *Kenyon*. He stated that Police are not deemed to have a credibility advantage and that

conclusions of credibility are to be found by weighing evidence and not a reliance on “peripheral credibility tests”. He stated that adjudicators must follow the courts’ directives in these cases when conducting hearings and argued that an adjudicator must not assume from the existence of a demand that the demand was properly founded.

In reference to the *Ssemaluulu* case, Mr. Carr stated that the judge held that the adjudicator did not give the client’s evidence the attention or weight it deserved, because it was provided by counsel, as summarized by the client. He argued that it would therefore be a mistake at law for the Superintendent to afford less weight to a client’s evidence because it had been summarized by counsel.

I am mindful of these cases and the principles of natural justice and administrative fairness, and have applied them in making my decision.

### **Issues**

The following are the issues in this review:

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

### **Facts, Evidence and Analysis**

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

#### Was the ASD reliable?

Based on the evidence before me, I am not satisfied that the ASD used to obtain a sample of your breath was reliable.

### **Decision**

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

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

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

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including [the date of this letter, July 10, 2014]. 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: Jeremy G. Carr  
250-388-7327



July 7, 2014

s.22

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

**Introduction**

On June 15, 2014, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

Records at this office indicate that your lawyer, Kyla Lee, received full disclosure.

You applied on one ground. For your benefit, I have considered all the grounds available to you.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "WARN", and was it as a result of your BAC exceeding 50 mg%?

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

### Facts, Evidence and Analysis

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

#### Was the ASD reliable?

Having considered the evidence before me, I cannot find that the ASD used was reliable.

### Decision

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

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

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

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online at:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including June 23, 2014. **Original receipts and invoices with proof of payment must be submitted for reimbursement.** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Kyla Lee  
604-685-8308



July 22, 2014

s.22

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

**Introduction**

On July 7, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

**Preliminary Matters**

At the beginning of the oral hearing your lawyer, Mitch Foster confirmed that full disclosure of the documents before me have been provided to him. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

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

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

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

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

**Decision**

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

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

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 22, 2014. 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: Mitch Foster (by fax)  
(604) 687-4299





July 25, 2014

s.22

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**REVIEW DECISION     Immediate Roadside Prohibition (“IRP”) No.     s.22**

**Introduction**

On July 13, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “WARN” as a result of your blood alcohol concentration (“BAC”) being not less than 50 milligrams of alcohol in 100 millilitres of blood (“50 mg%”)
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Joseph Gordon. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “WARN”, and was it as a result of your BAC exceeding 50 mg%?

- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed with a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

### Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following issue:

#### Was the ASD reliable?

Based on the evidence before me, I am not satisfied that the ASD was reliable.

### Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including July 17, 2014, the date your vehicle was eligible for release. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Joseph Gordon  
Fax: 250-860-9937



July 10, 2014

s.22

## **REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

### **Introduction**

On June 22, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- an approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

### **Preliminary Matters**

In the oral hearing I confirmed that full disclosure of the documents before me was provided to your lawyer, Kyla Lee. I have proceeded with this review based on that confirmation.

### **Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

### **Facts, Evidence and Analysis**

Having reviewed all of the evidence before me, I find there is one determinative issue in this review.

#### Were you a driver within the meaning of section 215.41(1) of the Act?

After considering the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Having made this finding, I do not need to consider other issues.

### **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

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 July 10, 2014. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Kyla Lee (by fax)  
(604) 685-8308



July 30, 2014

s.22

**REVIEW DECISION     Immediate Roadside Prohibition (“IRP”) No.     s.22**

On July 19, 2013, a peace officer served you with a Notice of Driving Prohibition because a sample of your breath on an approved screening device registered FAIL and your ability to drive was affected by alcohol.

You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and s.15 confirmed the IRP. You subsequently filed a petition for judicial review of that decision.

I have received a Consent Order to re-hear your IRP application.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- an approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

You applied for this review on 12 grounds, a number of which are not applicable to your situation because of the reason you were prohibited. For your benefit, I will consider all grounds that are applicable to your situation.

At the beginning of the oral hearing your lawyer, Kyla Lee confirmed that full disclosure of the documents before me was provided to her. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

## Facts, Evidence and Analysis

Having reviewed all of the evidence before me, I find there is one determinative issue in this review.

### Was your BAC less than 80 mg% even though the ASDs registered a "FAIL"?

After reviewing the evidence, I am satisfied that your BAC was less than 80 mg% even though the ASDs registered a "FAIL".

Having made this finding, I do not need to consider anything further.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter.

s.15

Adjudicator

cc: Kyla Lee (by fax)  
(604) 685-8308



July 22, 2014

s.22

## **REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

### **Introduction**

On July 5, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- an approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

### **Preliminary Matters**

On the IRP Application for Review, you indicated four grounds for review, two of which are not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

At the beginning of the oral hearing your lawyer, Erin Dance, confirmed that full disclosure of the documents before me was provided to her. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

## Facts, Evidence and Analysis

Having reviewed the evidence before me, I find there is one issue that is determinative in this review.

### Were the ASDs reliable?

I am not satisfied that the ASDs used for your analyses were reliable.

Having made this finding, I do not need to consider anything further.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements. Further, the corresponding vehicle impoundment is also revoked and the owner of the vehicle will be notified by separate letter.

s.15

Adjudicator

cc: Erin Dance (by fax)  
(604) 687-3022



July 25, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On July 5, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

On the IRP Application for Review, you indicated two grounds for review, one of which is not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

At the beginning of the hearing, you confirmed that you had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

## Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

## Facts, Evidence and Analysis

Having reviewed the evidence before me, I find there is one issue that is determinative of this review.

### Were you a driver within the meaning of section 215.41(1) of the Act?

I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator



JULY 10, 2014

s.22

**REVIEW DECISION     Immediate Roadside Prohibition (“IRP”) No.     s.22**

**Introduction**

On June 21, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (“ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the *Motor Vehicle Act* requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

Records at this office confirm that full disclosure of the documents before me was provided to you prior to your hearing. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

### **Facts, Evidence and Analysis**

As there is one issue that is determinative in this review, I have only addressed that issue.

#### Did you have a reasonable excuse?

Having carefully considered the evidence before me, I am satisfied that you had a reasonable excuse to fail or refuse to comply with the ASD demand.

### **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the *Motor Vehicle Act*. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that as a result of receiving this driving prohibition, you may be required to participate in the Responsible Driver Program and the Ignition Interlock Program. This driving prohibition may be considered by the Superintendent of Motor Vehicles in a review of your driving record. A further prohibition may be imposed.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.



July 10, 2014

s.22

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**REVIEW DECISION     Immediate Roadside Prohibition ("IRP") No.     s.22**

**Introduction**

On June 22, 2014, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the "Act") requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device ("ASD"); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

At the beginning of the hearing, your lawyer, Dan H. Griffith, confirmed that he had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

**Facts, Evidence and Analysis**

Having reviewed the evidence before me, I find there is one issue that is determinative in this review.

**Did you fail or refuse to comply with an ASD demand?**

I am satisfied that you did not fail or refuse to comply with the ASD demand.

**Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Dan H. Griffith (by fax)  
604 685-8308



July 7, 2014

s.22

## **REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

### **Introduction**

On June 15, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- an approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

### **Preliminary Matters**

At the beginning of the oral hearing your lawyer, Jamie Butler confirmed that full disclosure of the documents before me were provided to him. I have proceeded with this review based on that confirmation.

You applied for this review on thirteen grounds, some of which are not applicable to your situation because of the reason you were prohibited. For your benefit, I will consider all grounds appropriate to your circumstances.

## Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

## Facts, Evidence and Analysis

Having reviewed all of the evidence before me, I find there is one determinative issue in this review.

Was your BAC less than 80 mg% even though the ASD registered a "FAIL"?

After reviewing the evidence before me, I am not satisfied that the "FAIL" was a result of your BAC exceeding 80 mg%

Having made this finding I do not have to consider anything further.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 7, 2014. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Jamie Butler (by fax)  
(604) 739-9888





July 8, 2014

s.22

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**REVIEW DECISION Immediate Roadside Prohibition (IRP) No. s.22**

**Introduction**

On June 22, 2014, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (Act) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (ASD); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

At the outset of your oral hearing your lawyer, Troy Anderson, confirmed that he received full disclosure. I have proceeded with the review based on this confirmation.

The grounds indicated on the Notice was that you failed or refused, without a reasonable excuse, to comply with a demand made under section 254 of the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device. There is no evidence before me that you refused to comply. On the contrary, the evidence before me indicates that you provided a "FAIL" on an ASD.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where the vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 8, 2014. 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: Troy Anderson  
604-525-8553

JULY 28, 2014

s.22

**REVIEW DECISION    Immediate Roadside Prohibition (“IRP”) No.    s.22**

**Introduction**

On July 13, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

At the beginning of the hearing your lawyer, Kyla Lee confirmed that she had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

### **Facts, Evidence and Analysis**

Having reviewed the evidence before me, I find there is one issue that is determinative in this review.

#### Were the ASDs reliable?

I am satisfied that the ASDs used to administer the breath tests were not reliable.

### **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

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 July 28, 2014. 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

cc: Kyla Lee by fax: 604 685 8308



July 18, 2014

s.22

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**REVIEW DECISION     Immediate Roadside Prohibition ("IRP") No.     s.22**

**Introduction**

On June 28, 2014, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the "Act") requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device ("ASD"); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

At the beginning of the hearing, your lawyer, Kenneth S. Westlake, confirmed that he had received all of the disclosure documents before me. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

### **Facts, Evidence and Analysis**

Having reviewed the evidence before me, I find there is one issue that is determinative in this review.

Were you a driver within the meaning of section 215.41(1) of the Act?

I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

### **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Kenneth S. Westlake (by fax)  
604-687-7089



July 17, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On June 27, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- an approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

You applied for this review on six grounds, some of which are not applicable to your situation because of the reason you were prohibited. For your benefit, I have considered all of the grounds applicable to your situation.

At the beginning of the oral hearing you confirmed that full disclosure of the documents before me have been provided to you. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

## Facts, Evidence and Analysis

### Were you a driver within the meaning of section 215.41(1) of the Act?

After considering the evidence before me, I am not satisfied that you were not a driver within the meaning of section 215.41(1) of the Act.

Having made this finding, I do not need to consider other issues.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 18, 2014. 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





July 15, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On June 30, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

At the beginning of the hearing, your lawyer, Sarah E. Leamon, confirmed that she had received all of the disclosure documents before me. I have proceeded with this review based on that confirmation.

Having reviewed all of the evidence before me, I find that the Report to Superintendent is not properly before me. I find I have insufficient evidence to make the necessary findings required to confirm the prohibition.

## **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter that I am releasing the vehicle.

s.15

Adjudicator

cc: Sarah E. Leamon (by fax)  
604-370-2505



July 15, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On June 24, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (“ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

Records at this office confirm that your lawyer, Kenneth Walker, was provided full disclosure of the documents before me. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

## Facts, Evidence and Analysis

As it is determinative of this review, I will only address the following issue.

### Were you a driver within the meaning of section 215.41(1) of the Act?

Having considered all of the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 16, 2014. 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: Kenneth Walker  
fax: 250-374-4485



July 24, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On July 7, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

On the IRP Application for Review, you indicated two grounds for review, one of which is not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

At the beginning of the hearing, you confirmed that you had received all of the disclosure documents before me. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

## Facts, Evidence and Analysis

Having reviewed the evidence before me, I find there is one issue that is determinative of this review.

### Were you a driver within the meaning of section 215.41(1) of the Act?

I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator



July 18, 2014

s.22

**REVIEW DECISION     Immediate Roadside Prohibition (“IRP”) No.     s.22**

**Introduction**

On June 27, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided me.

**Preliminary Matters**

You applied on two grounds, one of which is not available to your situation because of the reason the officer prohibited you. For your benefit, I have considered all of the grounds appropriate to your circumstances.

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

**Facts, Evidence and Analysis**

Having reviewed all of the evidence before me, I find there is one determinative issue in this review.

Were you a driver within the meaning of section 215.41(1) of the Act?

After considering the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41(1) of the Act.

Having made this finding I do not have to consider anything further.

**Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.





July 10, 2014

s.22

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**REVIEW DECISION Immediate Roadside Prohibition (IRP) No. s.22**

**Introduction**

On June 20, 2014, a peace officer served you with a Notice of Driving Prohibition (the Notice). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (Act) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (ASD); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

Records indicate that you received all of the disclosure documents that are before me. I have proceeded with this review based on that confirmation.

You applied on two several grounds, one of which is not applicable to your situation because of the reason for which you were prohibited. For your benefit I have considered all the grounds available to you.

In considering the evidence before me, I note that the Narrative Text Hardcopy is dated after the Report to Superintendent (RTS) was signed by the commissioner for taking affidavits for British Columbia. As result, I have not considered the Narrative in this review. However, as per section 215.47 of the Act, I can consider any other documents submitted by the officer including the Notice and Certificate of Service, the Vehicle Impoundment RTS and the information relating to the calibration of the ASD. I find that with the sworn RTS and the other material as noted above, I have sufficient documentation before me to proceed with the hearing and make a decision.

### **Facts, Evidence and Analysis**

I find there is one issue that is determinative of my review.

*Did you have a reasonable excuse for failing or refusing to comply with a demand?*

Having considered the evidence before me, I find that you had a reasonable excuse.

### **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where the vehicle is impounded for the immediate release of the vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 10, 2014. 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



July 30, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On July 13, 2014, 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 have been delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the ASD registered a “WARN” as a result of your blood alcohol concentration (“BAC”) being not less than 50 milligrams of alcohol in 100 millilitres of blood (“50 mg%”)
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different approved screening device (“ASD”);
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Kyla Lee. I acknowledge receipt of Ms. Lee’s correspondence dated July 29 and 30, 2014, with attachments.

## Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “WARN”, and was it as a result of your BAC exceeding 50 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed with a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

## Facts, Evidence and Analysis

There is one issue that is determinative of this review.

### Was the ASD reliable?

Based on a review of the evidence, I am not satisfied that the ASD used to conduct your first test was reliable.

Having made this finding, I do not have to consider anything further.

## Decision

As a result of my finding, I revoke your driving prohibition and any monetary penalty, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date the vehicle was eligible for release. You are responsible for any storage costs beyond that date. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

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  
RoadSafetyBC

cc: Kyla Lee  
by fax 604-685-8308



July 31, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On July 12, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- an approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

At the beginning of the oral hearing your lawyer, Kyla Lee confirmed that full disclosure of the documents before me have been provided to her. I have proceeded with this review based on that confirmation.

## Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

## Facts, Evidence and Analysis

### Were you a driver within the meaning of section 215.41(1) of the Act?

After considering the evidence before me, I am not satisfied that you were not a driver within the meaning of section 215.41(1) of the Act.

Having made this finding, I do not need to consider anything further.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 31, 2014. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Kyla Lee (by fax)  
(604) 685-8308



July 16, 2014

s.22

**REVIEW DECISION     Immediate Roadside Prohibition (“IRP”) No.     s.22**

**Introduction**

On July 8, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (“ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

At the beginning of the oral hearing you confirmed that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?



## **Facts, Evidence and Analysis**

Having reviewed all of the evidence before me, I find there is one determinative issue in this review.

### Did you fail or refuse to comply with an ASD demand?

After considering the evidence before me, I am satisfied that you did not fail or refuse to comply with an ASD demand.

Having made this finding I do not have to consider anything further.

## **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

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 July 16, 2014. 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



July 29, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On July 13, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

At the beginning of the hearing, your lawyer, Deepak Chodha, confirmed that he had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

**Facts, Evidence and Analysis**

Having reviewed the evidence before me, I find there is one issue that is determinative of this review.

Was the ASD reliable?

I am satisfied that the ASD used to administer the first ASD was not reliable.

**Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter that I am releasing the vehicle.

s.15

Adjudicator

cc: Deepak Chodha (by fax)  
604-738-8774



July 3, 2014

s.22

## **REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

### **Introduction**

On May 1, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- an approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

### **Preliminary Matters**

At the beginning of the oral hearing you confirmed that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.

Having reviewed all of the evidence before me, I find that the Report to Superintendent is not properly before me. I find I have insufficient evidence to make the necessary findings required to confirm the prohibition.

**Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including May 8, 2014. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator



July 16, 2014

s.22

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**REVIEW DECISION     Immediate Roadside Prohibition (“IRP”) No.     s.22**

**Introduction**

On June 29, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Kyla Lee. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?

- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

### **Facts, Evidence and Analysis**

As it is determinative of this review, I will only address the following issue:

#### Was the ASD reliable?

Based on the evidence before me, I am not satisfied that the ASD was reliable.

### **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

The corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter that I am releasing the vehicle.

s.15

Adjudicator

cc: Kyla Lee  
Fax: 604-685-8308



July 3, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On June 14, 2014, 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 have been 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;
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

At the beginning of the hearing, you confirmed that you had received a copy of all of the documents that are before me. For your benefit, I will consider all of the grounds for review that are available to you in this review.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?



## **Facts, Evidence and Analysis**

There is one issue that is determinative of this hearing.

Was your BAC less than 80 mg% even though the ASD registered a “FAIL”?

Based on the evidence before me, I cannot be satisfied that your BAC was 80 mg% or higher, even though the ASD registered a “FAIL”.

Having made this finding I do not have to consider anything further.

## **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Please note that the corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter that I am releasing the vehicle.

s.15  
Adjudicator



July 15, 2014

s.22

**REVIEW DECISION     Immediate Roadside Prohibition (“IRP”) No.     s.22**

**Introduction**

On June 4, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (“ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

I will consider all of the grounds of review which are relevant to the type of prohibition indicated on the Notice the peace officer served.

Records at this office confirm that full disclosure of the documents before me was provided to your representative, Clarke Burnett. I have proceeded with this review based on that confirmation.

After reviewing the evidence of Cst. Dehoog and your lawyer’s submissions, I find that the Report to Superintendent and attached evidence is not properly before me. As such, I find that there is insufficient evidence to support the allegation indicated in the Notice.

Having made this finding, I do not need to consider any further grounds in this review.

## Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the Act. Information concerning this Regulation can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/952568628](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628)

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including June 18, 2014. ***Original receipts and invoices with proof of payment must be submitted for reimbursement.*** Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

s.15

Adjudicator

cc: Clarke Burnett  
fax: 250 869-1103



July 17, 2014

s.22

**REVIEW DECISION      Immediate Roadside Prohibition (“IRP”) No.      s.22**

**Introduction**

On July 3, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device (“ASD”); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

You applied for this review on four grounds, two of which are not applicable to your situation because of the reason for which you were prohibited. For your benefit, I have considered all the grounds available to you.

At the beginning of the hearing you confirmed that you had received all of the disclosure documents before me. I have proceeded with the review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

## **Facts, Evidence and Analysis**

### Did you fail or refuse to comply with an ASD demand?

There are three matters for me to determine in this issue. I must determine whether the peace officer made a valid demand, whether you failed or refused to comply with that demand, and whether you intended to produce that failure or refusal.

In the Report, the officer ticked the box indicating that there was an odour of liquor on your breath. The officer recorded the time of 2154 hours as the time he formed his reasonable suspicion and the time of 2208 hours as the time he made the ASD demand.

Based on the evidence before me I am not satisfied that the demand was a lawful demand under section 254 of the *Criminal Code*.

## **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator s.15

July 22, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On July 4, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- an approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Kyla Lee. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a “FAIL”, and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?

- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

### **Facts, Evidence and Analysis**

Having reviewed the evidence of Cst. Barrie, I find there is one determinative issue in this review.

#### Was the ASD reliable?

After considering the evidence before me, I am not satisfied the ASD was reliable.

Having made this finding, I do not have to consider anything further.

### **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 22, 2014. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

s.15

Adjudicator

cc: Kyla Lee (by fax)  
(604) 685-8308



July 31, 2014

s.22

**REVIEW DECISION Immediate Roadside Prohibition (“IRP”) No. s.22**

**Introduction**

On July 13, 2014, a peace officer served you with a Notice of Driving Prohibition (the “Notice”). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the “Act”) requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- the approved screening device (“ASD”) registered a “FAIL” as a result of your blood alcohol concentration (“BAC”) being not less than 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”);
- you were advised of your right to request a second analysis;
- if requested, it was provided and performed with a different ASD;
- the Notice was served on the basis of the lower analysis result; and,
- the result of the analysis on the basis of which the Notice was served was reliable.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

On the IRP Application for Review, you indicated a number of grounds for review that are not applicable to your situation because of the reason for which you were prohibited. However, I have considered all grounds available to you in this review.

Records at this office confirm that full disclosure of the documents before me was provided to you. I have proceeded with this review based on that confirmation.



**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did the ASD register a "FAIL", and was it as a result of your BAC exceeding 80 mg%?
- Were you advised of your right to a second analysis?
- Was the second analysis provided by the officer and performed using a different ASD?
- Was the Notice served on the basis of the lower analysis result?
- Was the ASD reliable?

**Facts, Evidence and Analysis**

Having reviewed the evidence before me, I find there is one issue that is determinative of this review.

Was the ASD reliable?

I am satisfied that the ASD was not reliable.

**Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including the date of this letter. You are responsible for any storage costs beyond this 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.



July 31, 2014

s.22

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**REVIEW DECISION    Immediate Roadside Prohibition ("IRP") No    s.22**

**Introduction**

On July 12, 2014, a peace officer served you with a Notice of Driving Prohibition (the "Notice"). You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* (the "Act") requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that:

- you were a driver within the meaning of section 215.41(1);
- you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device ("ASD"); and
- you did not have a reasonable excuse for failing or refusing to comply with a demand.

Section 215.5(4) of the Act requires me to revoke your prohibition, cancel the monetary penalty, and revoke any corresponding vehicle impoundment if I am not satisfied of any of the above.

In reaching my decision on this review, I must consider all relevant information provided to me.

**Preliminary Matters**

Records at this office confirm that full disclosure of the documents before me was provided to your lawyer, Kyla Lee. I have proceeded with this review based on that confirmation.

**Issues**

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- Did you fail or refuse to comply with an ASD demand?
- If you failed or refused to comply with the demand, did you have a reasonable excuse?

### **Facts, Evidence and Analysis**

As it is determinative of this review, I will only address the following ground:

#### Did you fail or refuse to comply with an ASD demand?

Having considered all of the evidence before me, I am satisfied that you did not fail or refuse to comply with the ASD demand.

### **Decision**

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence.

Please note that this decision does not change any other prohibitions from driving or licensing requirements.

The corresponding vehicle impoundment is also revoked. The owner of the vehicle will be notified by separate letter that I am releasing the vehicle.

s.15

Adjudicator

Kyla Lee, Acumen Law Corporation  
By fax: 604-685-8308