

Procedure for Revoking 3, 7 or 30 Day IRP after Extension

These procedures apply to files where an extension had previously been granted and the decision is now to revoke. If the review is successful, you will need to revoke the prohibition and revoke the vehicle impoundment. (If it was not impounded for any other reason).

BEFORE PROCEEDING, ALWAYS CONDUCT A COMPLETE REVIEW OF EVERYTHING ASSOCIATED WITH THE DRIVER AND THE IRP, INCLUDING THE VEHICLE IMPOUNDMENT AND HIS/HER DRIVING RECORD.

If Driver is Owner:

ADP_VI System

1. Prepare revoke/decision letter and fax cover sheet (if lawyer on file). Depending on circumstances, you will need to address the associated vehicle impoundment in your decision letter (reimbursement of towing and storage fees that have been paid). You may also have to alter the paragraph regarding the client's driver's licence if the client is prohibited for another reason or if he/she has RDP or Interlock requirements. You must also address any refunds due to the client. A separate letter will be required if driver was not the owner of the vehicle.
2. Under the Review Tab, click the Decision button. Change Decision status to "Successful".
3. Add phone date (& mailed date?). This is the date you called the client to let them know that the review was successful.
4. In the "Grounds for Review" field, enter the grounds you are revoking on, **not** the grounds the client applied under.
5. Enter your name in the Reviewing Officer field. Click Save.
6. The message "Please manually update the Mainframe Record" may appear. If so, click "OK".
7. **NOTE:** The Successful Review status in ADP/VI will normally, automatically remove the prohibition status in Drivers. However, as you had previously granted a stay of the driving prohibition, this may not occur automatically. You **MUST** check to make sure the prohibition no longer appears in Drivers. If it is not automatically removed, you must go into SUS and remove it.

8. To remove the prohibition, go into the SUS screen in Drivers system, tab down the TXN column, place an s.15 beside the appropriate 3 day prohibition and press enter.
 **The driver may have multiple Prohibitions, MAKE SURE YOU HAVE SELECTED THE CORRECT PROHIBITION

```

17/03/11          PROHIBITION / SUSPENSION UPDATE          SCREEN 01
SUS 8811458 EXP
-----
DRIVER LICENCE: 8811458   CANCELLED           NAME  : EXPERIMENTAL, OSMV PROD ONE
FILE REFERENCE:                               STATUS: PROHIB
-----
__TXN_ST/CODE__ START__   END__   CAUSE
  A  3
s.15 3 1215A  16MAR2011 18MAR2011 3 DAY PROHIBITION - SEC 215.43 MVA

*** PRESS ENTER TO ADD, 'M' TO MODIFY, 'R' TO REMOVE
F1-BCID F3-DSP F4-DRIVER-SEARCH
  
```

BEFORE REMOVING, AGAIN, MAKE SURE YOU HAVE SELECTED THE CORRECT PROHIBITION. Press enter a second time to confirm the delete.)

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17/03/11          PROHIBITION / SUSPENSION UPDATE          SCREEN 01
SUS 8811458 EXP
-----
DRIVER LICENCE: 8811458   CANCELLED           NAME  : EXPERIMENTAL, OSMV PROD ONE
FILE REFERENCE:                               STATUS: PROHIB
-----
__TXN_ST/CODE__ START__   END__   CAUSE
s.15 3 1215A  16032011 18032011
  3 1215A  16MAR2011 18MAR2011 3 DAY PROHIBITION - SEC 215.43 MVA

*** PRESS ENTER TO CONFIRM DELETE
F1-BCID F3-DSP F4-DRIVER-SEARCH
  
```

Delete confirmed:

```
17/03/11          PROHIBITION / SUSPENSION UPDATE          SCREEN 01
SUS 8811458 EXP
-----
DRIVER LICENCE: 8811458   CANCELLED           NAME  : EXPERIMENTAL, OSMV PROD ONE
FILE REFERENCE:          STATUS: PROHIB
-----
__TXN__ST/CODE__START__END__CAUSE__
A 3
-----
*** DELETE SUCCESSFUL
F1-BCID F3-DSP F4-DRIVER-SEARCH
```

9. Complete system work by removing the review in progress code s.15 from XS

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16/03/11          DRIVER STATUS TRANSACTION          SCREEN 01
XS 8811458 EXP
-----
LICENCE NUMBER: 8811458  5 YR RENEWAL   NAME  : EXPERIMENTAL, OSMV PROD ONE
MASTER STATUS : HOLD      EFF DATE: 21FEB2011
ORIG. SECTION : S & I     FILE REF:
TXN TYPE: s.15 STATUS CODE: s.15 EFFECT DTE: 01032011 REVIEW DATE:
TXN TYPE:   STATUS CODE:   EFFECT DTE:   REVIEW DATE:
TXN TYPE:   STATUS CODE:   EFFECT DTE:   REVIEW DATE:
TXN TYPE:   STATUS CODE:   EFFECT DTE:   REVIEW DATE:

0 MASTER EXPANDED          EFFECT      REVIEW      STAT
S_STATUS_STATUS          DATE        DATE        CODE_
3 NORMAL REVIEW OF IRP IN PROGRESS  01MAR2011  01APR2011  0IRPR
3 HOLD  NO FURTHER EXAMINATIONS PERMITTED  18FEB2011  18FEB2016  3NFEP
3 HOLD  EXAM REQUIRED BEFORE D.L. ISSUED    18FEB2011  18FEB2016  3NORX

**** DRIVER UPDATED SUCCESSFULLY
F1-BCID F3-DSP F4-DRIVER-SEARCH F7-BKWD F8-FWD
```

Go back to DSP screen. Review Drivers system and confirm all updates are showing or where required, have been removed: Licence type, Status, Expiry date, No cancellation. There should not be anything remaining on the driver's system to indicate the client had received this IRP.

- IF YOU ARE NOT SURE, ASK!**-**

10. If client's driving record indicates he/she is required to do the Responsible Driver Program (RDP) or the Ignition Interlock Program (IIP), and you haven't previously spoken to anyone in the RDP department regarding this, call one of their staff to confirm whether or not these requirements need to remain on the driving record.

RDP staff:

Patrick Tenhave – 953-8646 Ron Corrigan-953-8647
s.22 – 953-8644 Jason Washington – 953-8643 Patti Maclellan – 953-8642
Vicki Grewal – 953-8649 Carla Lewis – 953-8648

Do not e-mail the RDP program area to make changes in Drivers. Always telephone to ensure that changes are made in a timely way.

11. RDP staff will make changes to the RDP/Interlock requirements in Drivers if needed.
If the RDP/IIP requirements are to remain on the driving record, you may have to address this in your decision letter as there may be possible licensing restrictions associated.
12. Fax cover sheet and revoke/decision letter to lawyer (if involved). Follow up with a phone call to confirm they received the fax and go over details of letter (getting relicenced, reimbursement of associated VI towing and storage fees paid). If no lawyer, call the client to inform him/her of successful review, driver's licence and any impoundment details. (Phone calls may be optional in some situations)
13. If driver is not registered owner, you will need to complete and mail the appropriate letter to registered owner, informing of eligibility for reimbursement of towing and storage fees paid. (See If Driver is not Owner). If client was previously successful in Economic or Compassionate VI review, **we do not refund early release fees.**
14. If the client has already paid licencing fees (\$250, \$200 or \$400 and \$31) you will need to refund them to the client. You will need to complete a separate refund form (see sample attached) for each fee (3 forms)

15. To obtain the "Client No", go into the s.15 in the driver's system and the command line will display a nine digit number which is the "Client No" for refund purposes.

```

2011-03-17      BC SOLICITOR GENERAL - CLIENT SYSTEM      SC54916
10:41:26      s.15      BCSC/XTSA4924
Command: s.15 088-114-581-----
                                           PAGE:      1

Client Number: 088-114-581 EXPERIMENTAL,OSMV PROD ONE
Client Status: VERIFIED ACTIVE Client Type: INDIVIDUAL
Usual Address Ref: RESIDENCE Drivers: LIC Vehicles: 0 Others: 0

YOUR SELECTION: -
Sel  Addr Ref  Address                               User Id  Eff. Date
1  _  RESIDENCE  ATTN-DLIRM 250 414 7700      KA6D     2010-10-29
                               P.O. BOX 3750                  CLIENT
                               VICTORIA BC V8W 3Y8
2  _  RESIDENCE  ATTN-DLIRM 250 414 7700      KA6D     2010-09-03
                               P.O. BOX 3750                  CLIENT
                               VICTORIA BC V8W 3Y8

PQCA006I - ENTER SELECTION AND F2 TO RETURN WITH ADDR DATA
F1-HELP F2-FINISH F3-EXIT
  
```

16 To obtain the receipt numbers for the IRP fee and Reinstatement fee, review the Drivers system and locate the fees paid. The corresponding DOC # will be the receipt number for each.

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06/12/10      DRIVERS LICENCE DISPLAY      SCREEN 02
DSP       -----
MICROFILM_DOCUMENT_DESCRIPTION----- DOC_#__ DATE_____
PARENTAL CONSENT                      BU71056 29AUG2002
RELEASED AND MICROFILMED COLOUR CODE FILE 76H0069 20APR2005
RELEASED AND MICROFILMED COLOUR CODE FILE 10K0073 06DEC2006
RELEASED AND MICROFILMED COLOUR CODE FILE 68L0207 28MAR2008
RELEASED AND MICROFILMED COLOUR CODE FILE 66N0022 31DEC2009
$100 REINSTATEMENT FEE PAID            696950W 19APR2004
$100 REINSTATEMENT FEE PAID            016197X 27OCT2004
$100 REINSTATEMENT FEE PAID            750264X 18JUL2006
$100 REINSTATEMENT FEE PAID            571325Y 21DEC2007
$100 REINSTATEMENT FEE PAID            A630657 30JUL2010
$200 IRP PENALTY FEE PAID              A981596 17NOV2010
$250 REINSTATEMENT FEE PAID            A981593 17NOV2010

V_DATE___ D_DATE___ Q CONVICTION_DESCRIPTION_____ PT LOCATIONS_____ DOC_#___
01JAN2006 01FEB2006 FAIL TO DISPLAY "L" OR "N"SIGN 00 VANCOUVER EA54095
01JAN2006 01FEB2006 FAIL TO DISPLAY "L" OR "N"SIGN 00 VANCOUVER EA54095
08NOV2006 17DEC2006 FAIL TO REMAIN SCENE ACCIDENT 03 VANCOUVER EE53968
*** PRESS PF 8 FOR ADDITIONAL INFORMATION
F1-BCID F4-DRIVER-SEARCH F7-BKWD F8-FWD F9-DXM
  
```

- 17 To obtain the \$31 receipt number go to the screen in the Drivers system that lists the licences. Note the last licence issued, this should have been on the date the client re-licenced after his IRP expired. The corresponding DOC# will be the receipt number required for the refund form.

06/12/10 DRIVERS LICENCE DISPLAY SCREEN 04
 DSP

PHOTO_TYPE	ISSUE_DT_	EXPIRY_DT	CANCEL_DT	SURR_DT__	OFFICE_____	DOC_#__
RENEWAL	19APR2004	07AUG2006	22JUN2004		SURREY	113601
RENEWAL	27OCT2004	07AUG2006	01NOV2005		SURREY	112454
RENEWAL	18JUL2006	07AUG2008	30JUL2007		GUILDFORD	154415
RENEWAL	21DEC2007	07AUG2009	01JUN2009		CLOVERDALE	160317
RENEWAL	30JUL2010	07AUG2012			METROTOWN	193715
RENEWAL	17NOV2010	07AUG2012			BURNABY	155320

EXAM_DATE	CLASS	TYPE_____	REASON___	RESULT__	OFFICE_____	AUDIT_DATE__
17JUL2003	7	ROAD	ORIGINAL	PASSED	LANGLEY	17JUL2003
18JUN2003	7	ROAD	ORIGINAL	FAILED	SURREY	18JUN2003
29AUG2002	7	KNOWLEDGE	ORIGINAL	PASSED	SURREY	29AUG2002
29AUG2002	7	VISION	ORIGINAL	PASSED	SURREY	29AUG2002

NO MEDICALS, ACCIDENTS

CHANGE DT: 02DEC2010 CHANGE TXN : 0 M FOT M/STATUS DT: 17NOV2010
 F/R DT : 19NOV2015 DISTRICT CD: 003 ADDR DOC # :
 *** END OF REQUEST
 F1-BCID F4-DRIVER-SEARCH F7-BKWD F8-FWD F9-DXM

- 18 When completing the refund form, add the IRP number in the section labelled “Select from the drip down menu VI/ADP/PR” and provide a brief explanation of the type of refund and reasons you are giving it. Example: “IRP# 123456 - IRP Revoked client had paid \$250 reinstatement fee, client eligible to have fee refunded.” Print 2 copies of each form. Place one copy of each form in file and place the other copies of the forms (along with a copy of the client’s application form – each refund form must have a copy of application form attached) in the Branch Support basket located at the front of the office.

ADP/VI System (again)

- 19 Add comments to ADP/VI system. Note: You will need to add comments on both the ADP and the VI. **Always** cross reference IRP and VI numbers on each. Nothing on the ADP system will tell you about the registered owner of the vehicle.

ENSURE YOU ADD CLEAR COMMENTS TO BOTH ADP AND VI SO ANYONE REVIEWING THE FILE KNOWS EXACTLY WHAT HAS TRANSPIRED WITH YOUR FILE.

- Suggested comments for ADP/IRP (adjust comments accordingly if no lawyer or if driver not owner of vehicle):
- Successful IRP review. Faxed decision letter to lawyer (if applicable). Mailed copy to client. Updated Drivers system . Vehicle impoundment also revoked. VI #20-123456
 - If applicable - Called lawyer/client to confirm fax received; advised client can obtain DL and can be reimbursed towing and storage fees.

- If applicable - Client had already relicenced after 3 day (7 day) IRP and paid fees. Completed 3 refund forms to have \$200 IRP penalty fee, \$250 reinstatement fee and \$31 duplicate licence fee refunded and have forwarded to ICBC to process.
16. If applicable – Vehicle was previously released after 3 day/7 day impound or Successful review. Client had paid for towing and storage. Client now eligible to be reimbursed towing/storage fees. Advised client of this in decision letter. Note - If client was previously successful in Economic or Compassionate VI review, **we do not refund early release fees.**

Check vehicle impoundment system.

- 20 Add appropriate comments on VI system
- Vehicle was previously released due to Extension or Successful VI review.
 - IRP# 20-123456 revoked due to successful review. VI also revoked. Client had paid towing and storage. Client eligible to be reimbursed towing/storage fees. OSMV will reimburse fees from XX (date of impound) to XX (date eligible to be released) Advised client of this in decision letter.

If Driver is not Owner

- 21 If vehicle has already been released due to a successful VI review or Extension of IRP, you will need to send the Registered Owner (RO) a letter advising they can be reimbursed towing and storage fees (from date of impound to a specific date). A sample letter can be found at W:\Correspondence Unit\adp_vi\IRP Owner Letter. This letter may vary depending on the circumstances surrounding the VI.
- 22 Save owner letter in same location (W:\Correspondence Unit\adp_vi\IRP Owner Letter) by IRP number – ex: IRP123456ownerletter – adjud name. (see previous owner letters).
- 23 Mail letter to RO.
- 24 Add comments to VI system (will vary depending on circumstances)

ENSURE YOU ADD CLEAR COMMENTS SO ANYONE REVIEWING THE FILE KNOWS EXACTLY WHAT HAS TRANSPIRED WITH THE FILE.

- Vehicle was previously released due to Extension or Successful VI review.
 - IRP# 20-123456 now revoked due to successful review. VI also revoked. RO had paid towing and storage. RO now eligible to be reimbursed towing/storage fees. OSMV will reimburse fees from XX (date of impound) to XX (date eligible to be released)
 - Sent letter to RO to advise eligible for reimbursement if submits proof of payment.
- 25 The police will need to be notified that the driver’s prohibition should be removed from their CPIC system.
- Fill out the CPIC Update sheet (see attached)

- To locate the fax number of the police detachment that issued the IRP go to [W:\Appeal Registry\police listings.xls](#)
- Fax the CPIC Update to the correct police dept or RCMP detachment.
- Upon receiving the form, the Police detachment has the responsibility to update their CPIC data **AND then send us back the form with the bottom part of it completed** – this is supposed to be done within the same day you send the form (unless it is late in the day, in which case you will have to check the next day).
- Once the form is sent back to you, you can collect it and place in the file.

If you have not received the completed CPIC Update Form within 24 hours max, please notify Bima (or Kathy if Bima is not around).

Once all the steps above have been done, enter your decision on the Excel spread sheet and place the file in the file room. The files are stored first by month and then by their IRP numbers.



Insurance Corporation
of British Columbia

REFUND REQUEST

DATE March 14, 2011

TO: REVENUE ADMINISTRATION SECTION – REFUNDS UNIT

THIS AREA TO BE COMPLETED BY INITIATING SECTION

If copy required, photocopy before submitting. BACK-UP MUST BE ATTACHED.

CLIENT NO - -		ORIGINAL RECEIPT NO / TICKET NO. (MANDATORY)	
DESCRIPTION OF REFUND			
Select one of the following: MS: Vehicle Impoundment Review			
Select from the drop down menu VIIADP/PR VI #00-			
MAKE CHEQUE PAYABLE TO: NOTE: IF SENDING TO A LAWYER – INDICATE LAWYERS CLIENT NO: (IF ON SYSTEM) AND NAME (WITH BACKUP OF THE PAYEE)			
CLIENT NO (ONLY IF PAYEE IS DIFFERENT) - -		ADDRESS REFERENCE (IF ADDRESS IS DIFFERENT FROM QAR)	
SURNAME		FIRST NAME	
STREET ADDRESS			
CITY	PROVINCE / STATE	COUNTRY	POSTAL CODE/ ZIP CODE

<table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">AMOUNT</td> </tr> </table> <table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">S/O</td> </tr> </table>	AMOUNT	S/O	<p style="text-align: center;">INITIAL, ADJ SURNAME Initiating Person (Please Type or Print Name Clearly)</p> <hr/> <p style="text-align: center;">Initiating Section Authority (Signature)</p> <p style="text-align: center;">NANCY LEYS/ GERALD FUKAKUSA Revenue Authority (Print Name)</p> <hr/> <p style="text-align: center;">Revenue Authority Signature</p>
AMOUNT			
S/O			
<p>CERTIFIED THAT THE AMOUNT TO BE PAID:</p> <ul style="list-style-type: none"> - is correct; - is in accordance with the appropriate statute or other authority and/or contract; and - where applicable that the work has been performed, the goods supplied, the services rendered and/or other conditions met. 			

S
INVOICE NO

REFUND



URGENT CPIC REMOVAL NOTICE

ATTENTION:

- A REVIEW OF THE PROHIBITION NOTED ON THIS ADVISORY HAS BEEN COMPLETED.
- THE PROHIBITION HAS BEEN OVERTURNED AND IS NO LONGER IN EFFECT.
- THE DRIVER'S RECORD HAS BEEN ADJUSTED TO REFLECT THE RESULT OF THE REVIEW.
- PLEASE REMOVE THE DRIVING PROHIBITION IN YOUR CPIC SYSTEM IN REFERENCE TO THIS IRP.

POLICE AGENCY: _____ POLICE FILE: _____

POLICE FAX #: _____ CPIC NOTICE FAXED ON: _____
(YYYY/MM/DD)

DRIVER'S NAME: _____
Surname, First name

BCDL: _____ DOB: _____
(YYYY/MM/DD)

IRP NUMBER: _____ DATE OF DECISION: _____
(YYYY/MM/DD)

RECEIVING AGENCY TO COMPLETE & FAX BACK

REMOVED FROM CPIC ON: _____ BY: _____
(YYYY/MM/DD)

ONCE COMPLETED PLEASE FAX FORM TO: 1-250-952-6620

Please mark it Attention: _____

Note: This returned fax form will serve as our verification that subject has been removed from the CPIC system.

All police inquiries are to proceed through the Police Liaison Officer. Phone: 250-358-6502 / 250-888-7090

OFFICE OF THE SUPERINTENDENT OF MOTOR VEHICLES
PO BOX 9254 STN PROV GOVT
VICTORIA BC V8W 9J2

Procedure for Revoking

If the review is successful, you will need to revoke the prohibition and revoke the vehicle impoundment.

BEFORE PROCEEDING, ALWAYS CONDUCT A COMPLETE REVIEW OF EVERYTHING ASSOCIATED WITH THE DRIVER AND THE IRP, INCLUDING THE VEHICLE IMPOUNDMENT AND HIS/HER DRIVING RECORD.

If Driver is Owner:

ADP_VI System

1. Pull up correct file. Check ADP/VI system for details of associated Vehicle Impoundment, as procedures will vary depending on VI circumstances. Is the IRP the only reason for the impoundment? If not, discuss with team lead. If VI has a review scheduled or is in the review process, you will need to discuss with VI adjudicator. The VI number is located on the IRP Notice of Prohibition.

BRITISH COLUMBIA
IRP No. 20-1510010
NOTICE OF DRIVING PROHIBITION Section 215.41 (MVA)
CERTIFICATE OF SERVICE Section 215.47 (MVA)

NOTICE OF DRIVING PROHIBITION Section 215.41 (MVA)

SURNAME GIVEN NAMES BIRTH DATE (YYYYMMDD) GENDER

ADDRESS(STREET) CITY/TOWN PROVINCE/STATE POSTAL CODE/ZIP

BC DRIVER'S LICENCE NO. CLASS EXPIRY YR OUT-OF-PROVINCE DRIVER'S LICENCE NUMBER PROV/STATE

SEIZED DRIVER'S LICENCE VEHICLE IMPOUNDED? VEHICLE IMPOUNDMENT NUMBER

YES NO PHOTO YES NO

The undersigned peace officer has reasonable grounds to believe that on [DATE] at [TIME] hours, on [STREET/HIGHWAY], at or near [CITY/TOWN], British Columbia, you had care or control of a motor vehicle on a highway or industrial road and for the reason set out below has reasonable grounds to immediately prohibit you from driving for the period set out below:

2. Prepare revoke/decision letter and fax cover sheet (if lawyer on file). Depending on circumstances, you may need to add a paragraph at the end of the decision letter regarding the associated VI (picking up the vehicle, or getting reimbursed if vehicle already picked up). You may also have to alter the paragraph regarding the client's driver's licence if the client is prohibited for another reason or if he/she has RDP or Interlock requirements.
3. Under the Review Tab, click the Decision button. Change Decision status to "Successful".
4. Add phone date (& mailed date?). This is the date you called client letting them know of the successful review.

5. In the “Grounds for Review” field, enter the grounds you are revoking on, **not** the grounds the client applied under.
6. Enter your name in the Reviewing Officer field. Click Save.
7. The message “Please manually update the Mainframe Record” may appear. If so, click “OK”.
8. **NOTE:** The Successful Review status in ADP/VI will normally, automatically remove the prohibition status in Drivers. On occasion, this does not happen. You **MUST** check to make sure the prohibition no longer appears in Drivers. If it is not automatically removed, you must go into XS and remove it. See step 12 for instructions on removing status in XS.
9. If required, complete the Order of Release form and fax to impound lot (See sample attached). Select box on bottom of the form that indicates: “Invoice the Superintendent for towing and storage costs up to and including the date of release indicated above”. The name of the registered owner and the vehicle details can be found under the appropriate tabs on the VI system.

VI#: Owner 1 =

Adp/VI Entry

Vehicle	VI	Misc	Owner	Police	Review	Events	Comments	Faxes	Admin
Licence #:	<input type="text"/>	Prov/State:	BC						
L/Year:	2009	Registration #:	<input type="text"/>						
NSC JUR:		NSC #:							
Type:	1	Make:	HYUNDAI						
Model:	SONAT	Style:	FOUR DOOR SEDAN						
Year:	2010	Colour:	BLACK						
Vehicle Identification:	<input type="text"/>								

The Impound lot name and fax number can be located under the VI tab

Always scroll forward with F8 – For more Information when working in Drivers**

10. If client's driving record indicates he/she is required to do RDP or Ignition Interlock Programs, call anyone working in the Responsible Driving Program to confirm whether or not these requirements result from this IRP and whether or not they need to stay on the driving record.

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24/11/10          DRIVERS LICENCE DISPLAY          SCREEN 01
DSP 8811458 EXP
-----
LICENCE 8811458          STATUS PROHIB          FILE REF
  TYPE CANCELLED        KEYWORD OSMV PROD RECORD          SEX FEMALE
EXPERIMENTAL, OSMV     BIRTHDATE 15MAY1950          ADDRESS SRCE CLIENT
PROD ONE              EXPIRY DT 000000000          ADDRESS DATE 29OCT2010
ATTN-DLIRM 250 414          CLASS 500          LAST EXAM DT 01SEP2009
PO BOX 3750              RESTRICT 51          LAST MED DT
VICTORIA BC V8W 3Y8      ASSIGNED TO OSMV          LAST CANCEL DT 19SEP2010
                          PROD TRAINING
HEIGHT: 180CM  WEIGHT: 065.9KG  EYE COLOUR: BLUE          HAIR COLOUR: BLONDE

ALIAS NAME: DO NOT USE WITHOUT OSMV APPROVAL,

3 NORMAL 2 YR SHORT TERM DRIVER'S LICENCE REQ'D          ED 05NOV2010 RD 24NOV2015
3 NORMAL $250 REINSTATEMENT FEE REQUIRED          ED 05NOV2010 RD 24NOV2015
3 NORMAL REHABILITATION PROGRAM REQUIRED SEC 25.1(2)          ED 05NOV2010 RD 24NOV2015
3 PROHIB 90 DAY PROHIBITION - SEC 215.43 MVA          ED 05NOV2010 RD 03FEB2011
3 HOLD $500 IRP PENALTY FEE - PAY IN FULL          ED 05NOV2010 RD 24NOV2060
3 HOLD IGNITION INTERLOCK DEVICE REQUIRED          ED 05NOV2010 RD 24NOV2015
*** PRESS PF 8 FOR ADDITIONAL INFORMATION
  
```

RDP staff:

Patrick Tenhave – 953-8646 Ron Corrigan-953-8647
§.22 – 953-8644 Jason Washington – 953-8643 Patti Maclellan – 953-8642
Vicki Grewal – 953-8649 Carla Lewis – 953-8648

Do not e-mail the RDP program area to make changes in Drivers. Always telephone to ensure that changes are made in a timely way.

11. RDP staff will make changes to the RDP/Interlock requirements in Drivers if needed.
Depending on the circumstances and the client's driving record, the RDP staff may or may not remove these requirements. If the RDP/IIP requirements are to remain on the driving record, you may have to address this in your decision letter as there may be possible licensing restrictions associated.

ICBC/DriversBEFORE MAKING ANY CHANGES TO THE DRIVERS SYSTEM, MAKE SURE THERE IS NO OTHER REASON A STATUS (000ST or 00050) HAS BEEN ADDED. CLIENT MAY HAVE OTHER PROHIBITIONS. -** IF YOU ARE NOT SURE, ASK!****

12. Go into the Drivers system and in the XS screen remove any status pertaining to prohibition including:
 - a. 2 yr short term driver's licence required
 - b. \$250 reinstatement fee required
 - c. 90 Day Prohibition – sec 215.43 MVA (if not already removed)
 - d. \$500 IRP Penalty Fee – Pay in Full
 - e. Review of IRP in Progress - (new code OIRPR not showing on this screen shot)

You can only remove 4 statuses at a time. You will need to refresh the screen once you have removed the first 4. You can do this by going back to the DSP screen and then back into the screen.

```
§.15 24/11/10 DRIVER STATUS TRANSACTION SCREEN 01
8811458 EXP
-----
LICENCE NUMBER: 8811458 CANCELLED NAME : EXPERIMENTAL, OSMU PROD ONE
MASTER STATUS : PROHIB EFF DATE: 24NOV2010
ORIG. SECTION : S & I FILE REF:
TXN TYPE: r STATUS CODE: 000st EFFECT DTE: 05112010 REVIEW DATE:
TXN TYPE: r STATUS CODE: 00050 EFFECT DTE: 05112010 REVIEW DATE:
TXN TYPE: r STATUS CODE: 12152 EFFECT DTE: 05112010 REVIEW DATE:
TXN TYPE: r STATUS CODE: 3a500 EFFECT DTE: 05112010 REVIEW DATE:

0 MASTER EXPANDED EFFECT REVIEW STAT
S_STATUS_STATUS DATE DATE CODE
3 NORMAL 2 YR SHORT TERM DRIVER'S LICENCE REQ'D 05NOV2010 24NOV2015 000ST
3 NORMAL $250 REINSTATEMENT FEE REQUIRED 05NOV2010 24NOV2015 00050
3 PROHIB 90 DAY PROHIBITION - SEC 215.43 MVA 05NOV2010 03FEB2011 12152
3 HOLD $500 IRP PENALTY FEE - PAY IN FULL 05NOV2010 24NOV2015 3A500

**** ENTER TRANSACTION
F1-BCID F3-DSP F4-DRIVER-SEARCH F7-BKWD F8-FWD
```

You must then remove the prohibition in s.15 Go into s.15 screen in Drivers system, tab down the TXN column, place an s.15 beside the 90 day prohibition and press enter.

The driver may have multiple Prohibitions, MAKE SURE YOU HAVE SELECTED THE CORRECT PROHIBITION

```

24/11/10          PROHIBITION / SUSPENSION UPDATE          SCREEN 01
s.15 8811458 EXP
-----
DRIVER LICENCE: 8811458   CANCELLED           NAME  : EXPERIMENTAL, OSMV PROD ONE
FILE REFERENCE:                                     STATUS: PROHIB
-----
TXN ST/CODE  START      END      CAUSE
-----
A 3
s.15 3 12152  05NOV2010 24NOV2010 90 DAY PROHIBITION - SEC 215.43 MVA

*** s.15
F1-BCID F3-DSP F4-DRIVER-SEARCH
  
```

Press enter a second time to confirm the delete. (BEFORE REMOVING, AGAIN, MAKE SURE YOU HAVE SELECTED THE CORRECT PROHIBITION)

```

24/11/10          PROHIBITION / SUSPENSION UPDATE          SCREEN 01
s.15 8811458 EXP
-----
DRIVER LICENCE: 8811458   CANCELLED           NAME  : EXPERIMENTAL, OSMV PROD ONE
FILE REFERENCE:                                     STATUS: PROHIB
-----
TXN ST/CODE  START      END      CAUSE
-----
s.15 3 12152  05112010 24112010
s.15 3 12152  05NOV2010 24NOV2010 90 DAY PROHIBITION - SEC 215.43 MVA

*** PRESS ENTER TO CONFIRM DELETE
F1-BCID F3-DSP F4-DRIVER-SEARCH
  
```


Delete confirmed:

```
24/11/10          PROHIBITION / SUSPENSION UPDATE          SCREEN 01
s.15 8811458 EXP
-----
DRIVER LICENCE: 8811458   CANCELLED           NAME  : EXPERIMENTAL, OSMV PROD ONE
FILE REFERENCE:                STATUS: PROHIB
-----
__TXN__ST/CODE__START__END__CAUSE__
A  3
-----

*** DELETE SUCCESSFUL
F1-BCID F3-DSP F4-DRIVER-SEARCH
```

13. Complete an "OSMV System Update Requirement" sheet and fax to ICBC (pre-programmed fax number can be found on all fax machines under "ICBC Adj") requesting them to uncancel the licence and to restore the licence expiry and type
 - Under s.15 put a check/X to Restore DL Expiry & Licence Type
 - Under s.15 put check/X in box marked "Uncancel Licence" –
 - Put a check/X in the box titled "IRP Successful Review"
 - Add your name, phone number, and date completed in the box at the bottom of the form.
 - Mark the notice "RUSH!" or "URGENT!" (See example)

After 5 or 10 minutes, review the drivers system to see if ICBC has uncanceled the driver's licence. If it has not been done, periodically check back and if after 30 minutes the status is still unchanged, contact an Adjudicator at ICBC.

Every attempt should be made to fax the requests to ICBC before 3:30 pm. If you do have to fax after 3:30 pm, sent the fax and then contact an Adjudicator at ICBC.

Go back to DSP screen. Review Drivers system and confirm all updates are showing or where required, have been removed: Licence type, Status, Expiry date, No cancellation

14. Fax cover sheet and revoke/decision letter to lawyer (if involved). Follow up with a phone call to confirm they received the fax and go over details of letter (getting relicenced, vehicle release etc). If no lawyer, call the client to inform him/her of successful review, driver's licence and any impoundment details. If client is not registered owner you may need to obtain a contact number from the driver, so that you can call the owner and advise him/her of the vehicle release details.

15. If driver is not registered owner, you will also need to complete and mail appropriate letter to registered owner, informing of vehicle release and payment details etc. (See If Driver is not Owner)

ADP/VI System (again)

16. Add comments to ADP/VI system. Note: You will need to add comments on both the ADP and the VI. **Always** cross reference IRP and VI numbers on each. Nothing on the ADP system will tell you about the registered owner of the vehicle.

ENSURE YOU ADD CLEAR COMMENTS TO BOTH ADP AND VI SO ANYONE REVIEWING THE FILE KNOWS EXACTLY WHAT HAS TRANSPIRED WITH YOUR FILE.

Suggested comments for ADP/IRP (adjust comments accordingly if no lawyer or if vehicle already released):

- Successful IRP review. Faxed decision letter to lawyer (if applicable). Mailed copy to client. Updated Drivers system and sent fax to ICBC to have them uncancel licence. . Vehicle ok to be released DATE. VI #20-123456
- Called lawyer/client to confirm fax received; advised client can obtain DL and pick up vehicle.
- If applicable – Vehicle was previously released due to Extension or Successful VI review. Client had paid for towing and storage. Client now eligible to be reimbursed towing/storage fees. Advised client of this in decision letter.

Check vehicle impoundment system.

17. If releasing vehicle:

- In VI system under s.15 tab “Release Reason”, change to “Other – see comments”
- Add appropriate comments on VI system
 - Vehicle released due to successful IRP review (IRP# 20-123456). Called lawyer/owner to advise vehicle is eligible to be released. Faxed impound lot order of release. OSMV to pay towing and storage up to date of decision letter.

If Vehicle has already been released: Add appropriate comments

- Vehicle was previously released due to Extension or Successful VI review.
- IRP# 20-123456 now revoked due to successful review.
Client had paid towing and storage. Client eligible to be reimbursed towing/storage fees. OSMV will reimburse fees from XX (date of impound) to XX (date eligible to be released) Advised client of this in decision letter.

If Driver is not Owner

Follow same steps as above, but also do the following. These instructions will vary depending on whether or not the vehicle has already been released or not.

18. Pull up VI file for Registered Owner. Note, if VI file # is not in IRP file, you will need to investigate how to contact the RO.
19. Check to ensure the vehicle is not impounded for any additional/different reason. In the s.15 Tab, open the Notice of Impound. Click on View. Drag to make larger.

A. 3, 7 OR 30 DAY IMPOUNDMENT FOR THE FOLLOWING REASON – SECTION 215.46 OF THE MOTOR VEHICLE ACT:	
<input type="checkbox"/>	3-DAY IMPOUNDMENT pursuant to a 3-day prohibition under section 215.43(1)(a) of the Motor Vehicle Act
<input type="checkbox"/>	7-DAY IMPOUNDMENT pursuant to a 7-day prohibition under section 215.43(1)(b) of the Motor Vehicle Act
<input type="checkbox"/>	30-DAY IMPOUNDMENT pursuant to a 30-day or 90-day prohibition under section 215.43(1)(c) or 215.43(2) of the Motor Vehicle Act
B. 7 DAY IMPOUNDMENT FOR THE FOLLOWING REASON(S) – SECTION 251 OF THE MOTOR VEHICLE ACT:	
<input type="checkbox"/>	Driving while prohibited or suspended under the Motor Vehicle Act, Criminal Code, Youth Justice Act or Youth Criminal Justice Act (Canada)
<input type="checkbox"/>	Driving without a valid driver's licence and with a notice on the driving record indicating a previous conviction for driving while unlicensed
<input type="checkbox"/>	Committing an offence under section 148 of the Motor Vehicle Act
<input type="checkbox"/>	Driving or operating a motor vehicle in a race or in a stunt as defined in the Motor Vehicle Act and the officer intends to charge with an offence
<input type="checkbox"/>	Committing an offence under section 194 (1) or (2) of the Motor Vehicle Act
<input type="checkbox"/>	Committing an offence under section 25(15) of the Motor Vehicle Act relating to a restriction or condition of a motorcycle learner or novice driver's licence

20. Check VI system to see if RO has review in progress or vehicle has been released.
21. If RO has review in progress and/or decision hasn't been made yet, the review must be cancelled. Before doing this discuss with adjudicator who was assigned the file or the team lead.
22. If vehicle not released, in Misc, at Release Reason, change to "Other – see comments"
23. Complete and fax the VI Order of Release form to the Impound lot (see sample form attached). Mark the box on bottom of the form to advise the impound lot to "Invoice the Superintendent for towing and storage costs up to and including the date of release indicated above". *Note, when completing this form, the owner name, vehicle details and impound lot details can be obtained from the VI System. See step 9 above.
24. Call RO to advise of vehicle release.
25. If vehicle has already been released due to a successful VI review or Extension of IRP, you will need to send the RO a letter advising they can be reimbursed towing and storage fees (from date of impound to a specific date). A sample letter can be found at

W:\Correspondence Unit\adp_vi\IRP Owner Letter. This letter may vary depending on the circumstances surrounding the VI.

26. Save owner letter in same location (W:\Correspondence Unit\adp_vi\IRP Owner Letter) by IRP number – ex: IRP123456ownerletter – adjud name. (see previous owner letters).

27. Mail letter to RO.

28. Add comments to VI system (will vary depending on circumstances)

ENSURE YOU ADD CLEAR COMMENTS SO ANYONE REVIEWING THE FILE KNOWS EXACTLY WHAT HAS TRANSPIRED WITH THE FILE.

- “Vehicle released due to successful IRP review. (IRP# 20-123456). Faxed impound lot order of release. OSMV to pay towing & storage up to DATE (date of decision letter)
- Called RO to advise vehicle ok to be released. - If applicable- No answer, left message on voice mail to call Appeal Registry line – (If you call and receive a voice mail, leave a message for the RO to call the Appeal Registry at 250 356-6573 and advise client to quote VI number 20-123456 when calling back.)
- OR if applicable - Vehicle was previously released due to Extension of IRP or successful VI review. Client had paid for towing and storage. Client now eligible to be reimbursed towing/storage fees. OSMV will pay towing and storage fees from DATE (date of impound) up to and including DATE (date eligible to be released) Sent letter to RO to advise eligible for reimbursement if submits proof of payment.

29. The police will need to be notified that the driver’s prohibition should be removed from their CPIC system.

- Fill out the CPIC Update sheet (see attached)
- To locate the fax number of the police detachment that issued the IRP go to <W:\Appeal Registry\police listings.xls>
- Fax the CPIC Update to the correct police dept or RCMP detachment.
- Upon receiving the form, the Police detachment has the responsibility to update their CPIC data **AND then send us back the form with the bottom part of it completed** – this is supposed to be done within the same day you send the form (unless it is late in the day, in which case you will have to check the next day).
- Once the form is sent back to you, you can collect it and place in the file.

If you have not received the completed CPIC Update Form within 24 hours max, please notify Bima (or Kathy if Bima is not around).

Once all the steps above have been done, enter your decision on the Excel spread sheet and place the file in the file room. The files are stored first by month and then by their IRP numbers.



Where ideas work

SAMPLE

Office of the Superintendent of Motor Vehicles

OSMV System Update Requirement

Driver's License Number: D.L. #
Surname: NAME Initials: INITIALS

RUSH !!

XS

- Remove Status: Effective Date: Review Date:
Add Status: Effective Date: Review Date:

SUS

- Remove Prohibition: Effective Date: End Date:
Modify Suspension: Effective Date: End Date:

FUD

PRE

- Restore DL Expiry & License Type
Cancel License
Uncancel License

- RDP Interlock
IRP Under Review Authorized Extension IRP Successful Review
ADP Under Review Authorized Extension ADP Successful Review
Impersonation

Name ADJUDICATOR NAME
Phone # ADJUDICATOR #
Date Completed DATE

SAMPLE



VEHICLE IMPOUNDMENT ORDER OF RELEASE

DO NOT WRITE ABOVE LINE

The personal information on this form is collected under the authority of the Motor Vehicle Act (RSBC 1996, s.104.1 and 105.1) and the Freedom of Information and Protection of Privacy Act (RSBC 1996, c.165, s.26(a) and (c)).

Date (yyyy/mm/dd) DATE Vehicle Impoundment Number 20-123456

DETAILS UNDER "VEHICLE" TAB ON VI SYSTEM MAKE MODEL YEAR LICENCE PLATE NUMBER

The Superintendent of Motor Vehicles orders the impounded vehicle released

to UNDER "OWNER" TAB on DATE OF RELEASE PRINT NAME IN FULL DATE (yyyy/mm/dd)

Impound Lot Name UNDER "VI" TAB

Impound Lot Address ENTER ILO FAX # FOUND UNDER "VI" TAB

TO BE COMPLETED AT THE IMPOUND LOT

NAME OF OWNER/AUTHORIZED PERSON

SIGNATURE OF OWNER/AUTHORIZED PERSON

DRIVER'S LICENCE IDENTIFICATION NUMBER

DATE (yyyy/mm/dd)

NAME OF IMPOUND LOT REPRESENTATIVE

SIGNATURE OF IMPOUND LOT REPRESENTATIVE

OSMV USE ONLY

- Invoice the Superintendent for towing and storage costs up to and including the date of release indicated above. Collect towing and storage costs from the owner/authorized person. Collect towing and storage costs from owner/authorized person for the first 30 days of the impoundment. Invoice the Superintendent for the remainder of the storage costs up to and including the date of release indicated above.



ADJUDICATOR'S SIGNATURE SIGNATURE OF AUTHORIZATION

MV2713B (2006/11)



URGENT CPIC REMOVAL NOTICE

ATTENTION:

- A REVIEW OF THE PROHIBITION NOTED ON THIS ADVISORY HAS BEEN COMPLETED.
- THE PROHIBITION HAS BEEN OVERTURNED AND IS NO LONGER IN EFFECT.
- THE DRIVER'S RECORD HAS BEEN ADJUSTED TO REFLECT THE RESULT OF THE REVIEW.
- PLEASE REMOVE THE DRIVING PROHIBITION IN YOUR CPIC SYSTEM IN REFERENCE TO THIS IRP.

POLICE AGENCY: _____ POLICE FILE: _____

POLICE FAX #: _____ CPIC NOTICE FAXED ON: _____
(YYYY/MM/DD)

DRIVER'S NAME: _____
Surname, First name

BCDL: _____ DOB: _____
(YYYY/MM/DD)

IRP NUMBER: _____ DATE OF DECISION: _____
(YYYY/MM/DD)

RECEIVING AGENCY TO COMPLETE & FAX BACK

REMOVED FROM CPIC ON: _____ BY: _____
(YYYY/MM/DD)

ONCE COMPLETED PLEASE FAX FORM TO: 1-250-952-6620

Please mark it Attention: _____

Note: This returned fax form will serve as our verification that subject has been removed from the CPIC system.

All police inquiries are to proceed through the Police Liaison Officer. Phone: 250-356-8502 / 250-888-7090

OFFICE OF THE SUPERINTENDENT OF MOTOR VEHICLES
PO BOX 9254 STN PROV GOVT
VICTORIA BC V8W 9J2



Adjudicator's Procedures Manual

Ministry of Public Safety
and Solicitor General

Office of the Superintendent
of Motor Vehicles

January 2011

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Approval of Manual

The Office of the Superintendent of Motor Vehicles regulates drivers to help ensure the safe and responsible operation of motor vehicles in British Columbia. To meet this mandate, policies are required in a variety of program areas.

The goal of the *Adjudicators Procedures Manual* is to provide policy and guidance to adjudicators on how to manage review files, conduct reviews and hearings, and write decisions related to driving prohibitions and vehicle impoundments that are being contested by drivers and vehicle owners. The manual is a central repository for policy information regarding adjudication of prohibitions and impoundments. The manual is also a tool to train OSMV employees, including intake and support staff who require familiarity with how files are adjudicated.

Approved by:

Steve Martin
Superintendent of Motor Vehicles

Date

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Glossary

This glossary defines key words and terms for adjudicators, and provides a list of common acronyms used in the OSMV.

- Administrative justice / Natural justice** The duty to act fairly and apply the principles of procedural fairness. Two basic elements of administrative justice include: the right to be heard and to know the case against you, and an impartial, unbiased decision maker.
- Administrative law principles** The legal principles relating to government’s powers and organization, and the legal control of the government’s actions and decisions. It ensures that there is a legal basis for any action by a government representative such as an adjudicator, and sets standards that government officials must meet in making decisions about individuals.
- Approved instrument** An instrument designed to receive and analyze a sample of a person’s breath in order to measure the concentration of alcohol in the blood. It is an approved instrument for the purposes of Section 258 of the *Criminal Code*.
- Approved screening device** A breath-test device designed to measure the presence of alcohol in the blood, as approved under Section 254(1) of the *Criminal Code*. For the purposes of this manual, an ASD is the primary tool used for immediate roadside prohibitions (IRP) – an instrument called the Alco-Sensor. Only one breath test is required to issue a *Notice of Driving Prohibition* (unless the driver requests a second one using a different ASD).
- Breath test apparatus** The approved instrument used for Administrative Driving Prohibitions (ADP). The BTA used is called the BAC Datamaster C, with the test administered at the detachment. Also see “Approved instrument.”
- Burden of proof** The obligation of a party to satisfy the decision-maker of the existence of a fact in issue. Adjudicators use the civil law standard of “proof on the balance of probabilities” instead of the criminal law standard of “proof beyond a reasonable doubt.”
- Care or control** To prove that a person was the driver with “care or control” of the vehicle, it must be proved that the driver occupied the seat or position ordinarily use to operate a motor vehicle, unless the person can establish that they did not occupy that seat or position for the purpose of setting the vehicle in motion, and that there was no risk of unintentionally setting the vehicle in motion (see Supreme Court of Canada, *R.v. Toews*).
- Disclosure** The obligation of parties to reveal materials and documents that are relevant to the case. The applicant must know the case against them in order to make a full answer, so the OSMV must provide disclosure to the applicant, who must in turn disclose information the adjudicator needs in order to correct any wrong information and prove the applicant’s position.
- Driver** A person with care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle is in motion (Section 215.41, *Motor Vehicle Act*).
- Drivers** The Driver Licensing System, an ICBC database with driver details.
- Extension** A specific term that refers to an adjudicator’s authority under the *Motor Vehicle Act* s.94.6(4) or s.215.5(7) to extend the 21-day legislated timeframe during

which the adjudicator must make and send the decision. (The hearing date can be changed to any time within the 21-day period without using an extension.)

- Fail** An indication on an ASD that the concentration of alcohol in a person’s blood is 80 milligrams or more of alcohol in 100 millilitres of blood. A “fail” reading results in a 90-day IRP.
- Fairness** The principle that applicants for a review should be treated in a similar manner. This does not mean identical treatment, but an objective approach to each situation. The role of the adjudicator is to review the evidence before them and make an objective decision based solely on the evidence.
- Hearsay evidence** Information gathered by one person from another concerning some event, condition, or thing of which the first person had no direct experience (according to Wikipedia).
- Impartiality** The absence of bias, either actual or perceived.
- Institutional independence** The principle that adjudicators make independent decisions according to their own conscience and opinions, without pressure or undue influence from the government or other parties.
- Judicial review** An appeal by an owner or driver of an adjudicator’s decision that is heard by the BC Supreme Court. A decision with jurisdictional errors or an apprehension of bias may be quashed by the court.
- Judicial temperament** The objective and professional demeanour that adjudicators must exhibit during their oral reviews. Adjudicators must always listen attentively, patiently, and courteously to all participants to avoid any reasonable perception or apprehension of bias.
- Jurisdiction** The power and scope of an administrative body to hear a matter. An administrative body can only exercise the powers delegated to it by its enabling statute, which in the case of the OSMV is the *Motor Vehicle Act*.
- Operation** For the purposes of this program, the operation of the vehicle means the act of driving the vehicle.
- Owner** The person who owns a motor vehicle, including someone in possession of a motor vehicle under a contract by which they may become its owner on full compliance with the contract.
- Race (racing)** Unsafe driving behaviours that include outdistancing another vehicle, preventing a vehicle from passing, attempting to outdistance or pass a vehicle, or driving at excessive speeds with the goal of arriving at a destination ahead of another vehicle.
- Reasonable and probable grounds** The police officer must make a reasonable determination that the driver is impaired by applying various criteria for determining probable impairment.
- Relevance** To be relevant, the evidence must logically assist in proving or disproving a fact in issue in the case.
- Reliability** To be reliable, evidence must be trustworthy and likely to be true, which involves considerations of the source and form of the evidence, and how much weight to give it.

Stunt An unsafe driving behaviour that can include causing the motor vehicle's tires to partly lift from the road surface, losing traction while turning, causing the vehicle to spin, driving in the oncoming lane for longer than necessary to pass another vehicle, slowing or stopping in a way that blocks or impedes other vehicles, and driving very close to another vehicle, pedestrian, or fixed object without justification.

Warn An indication on an ASD that the concentration of alcohol in a person's blood is 50 to 80 milligrams of alcohol in 100 millilitres of blood. An ASD Warn can result in a 3, 7, or 30-day IRP.

Vehicles An ICBC database with vehicle details.

Acronym List

Acronym	Description
50 mg% 80 mg%	The concentration of alcohol in a person's blood (BAC), measured in milligrams of alcohol in 100 millilitres of blood. (Note: 50 or 80 milligrams are the same as 0.05 or 0.08 grams.)
AA	Appointed Agent
ADP	Administrative Driving Prohibition
ADP/VI	Administrative Driving Prohibition / Vehicle Impoundment system
AG	Attorney General
AA	Appointed agent
ASD	Approved screening device to measure alcohol in the blood; administered at roadside (Alco-Sensor for IRP)
BAC	Blood alcohol concentration
BCDL	BC driver's licence
BTA	Breath test apparatus to measure alcohol in the blood – the BAC Datamaster C – used for 90-day ADPs
CC	Colour code files (from ICBC)
CCC	<i>Criminal Code of Canada / Criminal Code conviction</i>
COA	Certificate of Analysis (Certificate of qualified technician who took BTA samples)
COR	<i>Canadian Charter of Rights and Freedoms</i>
DF	Driver Fitness
DFCMS	Driver Fitness Case Management System
DIP	Driver Improvement Program
DL	Driver's License
DLC	Driver Licensing Centre
DOB	Date of birth
DSP	Driver's licence display
DWP	Driving while prohibited
FOI	Freedom of information
FOIPPA	<i>Freedom of Information and Protection of Privacy Act</i>
GA	Government agent

Acronym	Description
GLP	Graduated Licensing Program
ICBC	Insurance Corporation of BC
IIP	Ignition Interlock Program
ILO	Impound Lot Operator
ILS	Indefinite Licence Suspension
IRP	Immediate Roadside Prohibition
JUSTIN	A courts case management system
MVA	<i>Motor Vehicle Act</i>
MVB	Motor Vehicle Branch
NoDP	Notice of Driving Prohibition
NoI	Notice of Impoundment
OSMV	Office of Superintendent of Motor Vehicles
PoS	Point of Service
RCMP	Royal Canadian Mounted Police
RDP	Responsible Driver Program
RO	Registered Owner
RTCC	Report to Crown Counsel
RTS	Report to Superintendent (from police)
SFST	Standard Field Sobriety Test
SG	Solicitor General
SUS	Prohibition / suspension update screen (Drivers)
UL	Unlicensed Driving Prohibition
VI	Vehicle Impoundment
VT	Violation ticket
WAR	Police warning, caution
XS	Expanded Status screen (Drivers)

Chapter 1, Introduction

- 1.1 Overview
- 1.2 The Adjudicator's Role

Adjudicator's Procedures Manual

Ministry of Public Safety
and Solicitor General

Office of the Superintendent
of Motor Vehicles



1.1, Overview

This section describes the purpose and use of this manual, and provides an overview of the driving prohibition and vehicle impoundment programs managed by the OSMV.

The following topics are covered in this section:

- About the manual
- OSMV mandate
- Driver's statutory right of appeal
- New impaired driving prohibitions
- Non-impaired driving prohibitions and offences
- Previous impaired driving prohibitions (24-hour and ADP)
- Vehicle Impoundment program
- *Types of Prohibitions and Impoundments* (chart)

About the Manual

Purpose The purpose of the *Adjudicators Procedures Manual* is to provide policy and guidance to adjudicators on how to manage review files, conduct reviews and hearings, and write decisions. It covers most types of prohibitions and impoundments, including:

- Immediate Roadside Prohibitions (IRPs) and associated vehicle impoundments, as prescribed by the 2010 amendments to the *Motor Vehicle Act*
- Non-impaired driving prohibitions and associated vehicle impoundments, including for unlicensed driving, driving while prohibited or suspended, excessive speed, and race and stunt offences
- Previously existing 24-hour prohibitions and 90-day ADPs (Administrative Driving Prohibitions)

Refer to the chart at the end of this section: *Types of Prohibitions and Impoundments*.

Note: The new IRPs generally replace the previous 24-hour prohibition and the 90-day ADP, but these remain available for circumstances where the new prohibitions cannot be used.

Adjudicators must follow the relevant legislation and not exceed their jurisdictional limits. The policies and procedures in this manual are intended as guidance except where they are prescribed by legislation or case law. When applying these policies and procedures to help make decisions, adjudicators should remember that every case must be decided on its merits. While guidelines are useful, they cannot be rigidly applied or allowed to replace the adjudicator's own judgment. Adjudicators are independent and are not bound by their own prior decisions or those of other adjudicators.

What this manual covers

This manual covers policies and procedures on:

- Administrative processes, including documents, scheduling of reviews, extending the 21-day review period, cancelling driver's licences, etc.

- Grounds for review of impaired driving prohibitions and vehicle impoundments, including considerations for adjudicators
- Conducting reviews, including hearing guidelines, jurisdictional and bias issues, etc.
- Writing decisions, including types of decisions that can be made and decision standards
- Completing review files, including submitting the decision, system updates, and filing
- Other reviews and inquiries, including judicial reviews, Section 118 appeals, post-reviews, re-hearings, and mailbox inquiries

The Appendices contain supplementary information, such as a summary of administrative law principles, links to relevant legislation, and copies of forms and templates.

Note: Since the manual is written for adjudicators, instructions to adjudicators are rendered in the second person – e.g., “You may use your discretion.” “You must follow the *MVA*.”

What this manual replaces This manual replaces the following manuals and documents, which should be archived or destroyed:

- *ADP Review Adjudicator Training Manual* (Sept 2005)
- *ADP Interpretation Manual*
- *Vehicle Impoundment Adjudication Policy Manual* (June 2007)
- *24-hour Prohibition Review Policy*

This manual does not contain orientation information for new OSMV adjudicators. Please refer to the *Employee Orientation Manual*.

Other sources In addition to this manual, you should refer to the following documents and resources to aid you in your work:

- *Motor Vehicle Act* and other relevant legislation (see links in Appendix 2 of this manual)
- Case law summary and legal opinions (on the common W drive)
- *BC Council of Administrative Tribunals Adjudicators’ Manual* (2008) and *Appendix A*
- *Foundations of Administrative Justice: A New Course for Administrative Tribunal Members* (BC Council of Administrative Tribunals, 1997)

Revising the manual Adjudicators are encouraged to keep this manual up-to-date and accurate by suggesting corrections and additions. Please email your Team Leader with your contributions.

Each section of the manual has its own page numbering and issue date, so that each section can be revised and replaced separately as required.

OSMV Mandate

Driving prohibition and vehicle impoundment programs fall under the mandate of the Superintendent of Motor Vehicles, whose office (the OSMV) is responsible for regulating drivers to enhance public safety on the province’s highways. Since

possession of a driver's licence is a privilege, the OSMV can revoke a licence and impound a vehicle if the licence holder poses a risk to public safety.

Note: The overall OSMV mission is to lead the development and implementation of road safety policies, and to work in collaboration with our partners to maximize safe and responsible operation of motor vehicles in BC.

Driver's Statutory Right of Review

The owner or driver of a motor vehicle has the right to apply for a review of a driving prohibition or vehicle impoundment to the Superintendent of Motor Vehicles, who delegates authority under Section 117 of the *MVA* to review the case to an adjudicator. If the owner or driver is not satisfied with the adjudicator's decision, they can apply for a judicial review at the BC Supreme Court.

Where the owner and driver are not the same, the owner cannot apply for a review of the prohibition and the driver cannot apply for a review of the impoundment.

New Impaired Driving Prohibitions

In the fall of 2010, the province amended the *Motor Vehicle Act* (Sections 194 and 215.41 to 215.51) to introduce a new scheme of driver prohibitions called Immediate Roadside Prohibitions (IRPs). This program allows police to issue prohibitions at roadside that take effect immediately. The duration of prohibitions and associated vehicle impoundments are increased (escalated) by the police officer if the driver has had a previous IRP in the last five years.

The table at the end of this section describes the driving prohibition model (effective fall 2010), which includes:

- Escalating IRPs (3, 7, and 30 days) for impaired driving (a "warn" reading on an ASD) including:
 - Escalating vehicle impoundment period (to match the prohibition – 3 and 7-day at officer's discretion, 30-day is mandatory)
 - Escalating financial penalties (3-day = \$200, 7-day = \$300, 30-day = \$400)
 - \$250 licence reinstatement fee
- 90-day non-escalating IRP for impaired driving (a "fail" reading on an ASD), including:
 - Mandatory 30-day impoundment (Appeal Registry can increase to 60 days if there was another impoundment within the previous two years)
 - \$250 licence reinstatement fee
 - \$500 penalty
- Existing 24-hour prohibition for driving while impaired by alcohol or drugs (with vehicle impoundment at officer's discretion)
- Existing 90-day ADP for impaired driving (driver's BAC exceeds 80 mg% within three hours of driving as a result of alcohol consumed before or while driving), which takes effect 21 days after the ADP is issued and includes a \$250 licence reinstatement fee

Note: A “warn” result is a reading on an approved screening device (ASD) of 50 to 80 milligrams of alcohol in 100 millilitres of blood (mg%), while a “fail” result is over 80 mg%.

In the case of an IRP, police must have reasonable grounds to believe that, as a result of an ASD analysis registering a warn or fail (s. 215.41(3)(b)), a driver’s ability is affected by alcohol based on various indications of impairment, or that the driver failed to comply with or refused to comply with an ASD demand (s. 215.41(4)). The officer then:

- Serves a *Notice of Driving Prohibition* (NoDP) on the driver (s.215.41(3)(d))
- Seizes the driver’s licence, including from out-of-province drivers (s.215.41(3)(c))
- Issues a *Notice of Impoundment* (NoI) for the vehicle (s. 215.46) where warranted

A driver who registers a “warn” or “fail” on the ASD is entitled to a second breath test (s. 215.42) – but only **if they request it** after the NoDP is served. The result of the second test governs. For example, if the result of the first test is a fail and the result of the second test is a warn, the prohibition length would be based on the warn result.

Pursuant to s. 215.41(5), the driver must surrender their licence to ICBC if it is not in their possession when the NoDP is served. The NoDP also sets out the monetary penalty, which the driver must pay within 30 days after being served. The driver has 7 days from the date of the NoDP to apply for a review of the prohibition, and 15 days from the date of the NoI to apply for a review of the vehicle impoundment.

Non-impaired Driving Prohibitions and Offences

Prohibitions and impoundments have also been added or revised in the *MVA* for the following offences:

- Driving while unlicensed (s.251(b), replaces previous 104)
- Driving while prohibited or suspended (s.251(a)(c), replaces previous 105)
- Excessive speed (s.251(d))
- Race (s.251(1)(e))
- Stunt (s.251(1)(e))
- Not sitting properly astride a motorcycle (s.194(1))
- Driving a motorcycle while unlicensed or underlicensed (s.251(1)(f)(ii))

Unlicensed driving prohibitions

When police issue the *Notice of Prohibition from Driving for Unlicensed Drivers* at roadside (*MVA* s.251(1)(h)), they also issue a “No Driver’s Licence” violation ticket under s.24(2).

Unlicensed driving prohibitions are indefinite and remain in effect until the person is issued a new driver’s licence or the prohibition is revoked in a review.

Prohibited or suspended driving prohibitions

Persons who drive while prohibited or suspended are subject to the same penalties as any prohibited driver (conviction under s.95 of the *MVA* and a 12-month automatic prohibition under s.99).

Other non-impaired offences For excessive speed, race and stunt offences, and motorcycle offences, the driver's vehicle is impounded, but there is no accompanying driving prohibition.

Previous Impaired Driving Prohibitions

Selective use of previous prohibitions IRPs generally replace the 24-hour prohibitions and ADPs. However, these prohibitions remain in place for circumstances where the IRPs cannot be used, including:

- When an officer believes someone's ability to drive is affected by alcohol but no ASD is used (24-hour prohibition).
- When an officer believes someone's ability to drive is affected by drugs other than alcohol (24-hour prohibition).
- Where the driver refuses a BTA demand, or the BAC from a BTA exceeds 80 mg% (ADP).
- Where the driver refuses or fails to give a BTA sample, or where blood analysis shows the BAC exceeded 80 mg% (ADP).

Note: Under s.215.41(7), an IRP Notice must not be served on a person if an ADP Notice is served on them under s.94.1. In other words, a person cannot be issued an ADP and an IRP for the same event.

24-hour prohibitions Since the 1970s, police have had the ability to issue an immediate 24-hour driving prohibition at roadside if they believe the driver's ability to drive is affected by alcohol or drugs (s. 215 of the *MVA*). The officer is not required to administer an ASD **unless** the driver requests one. Vehicles may be impounded for 24 hours at the discretion of the officer.

The *Notice of 24-Hour Prohibition* also serves as a *Report to ICBC*. The officer provides details of the prohibition and any associated impoundment, including the grounds and the breath test results if an ASD was used.

Since 2005, drivers have had the right to apply for a review of alcohol-related 24-hour prohibitions. There is no review mechanism under the *MVA* for a drug-related 24-hour prohibition.

90-day ADPs The Province of BC implemented the Administrative Driving Prohibition (ADP) program in 1997, governed by an amendment to the *Motor Vehicle Act* (s.94.1 to 94.6).

The ADP program allows police officers to seize a driver's licence and issue a 90-day driving prohibition if the driver is found to have a blood alcohol concentration (BAC) over 80 mg% within three hours of operating or being in the care or control of a motor vehicle.

- Police test the breath of drivers using an approved instrument (breath test apparatus, BTA) at the detachment.
- If, based on the result of the BTA test, the officer forms grounds to believe that the driver's BAC exceeded 80 mg% within three hours of operating or having care or control of a motor vehicle the officer must issue a *Notice of Driving Prohibition*. Further, the driver must surrender their driver's licence.
- Police also issue an ADP if the driver fails or refuses to comply with a demand for breath or blood samples made pursuant to s.254 of the *Criminal Code*.

- ADPs can be served long after the date of the incident, such as when police have to wait for blood test results.
- The ADP does not take effect until 21 days after the *Notice of Driving Prohibition* has been issued, with the Notice itself serving as a temporary driver's licence (for BC residents only).

Note: A sample of analyzed blood taken by a health professional also fulfills the legal requirements for measuring BAC. For example, if a driver is unable to take a breath test for physical reasons or because they are injured, the police can make a blood sample demand at a hospital, provided a doctor confirms the patient would not be in danger.

Vehicle Impoundment Program

The Vehicle Impoundment Program (VI) is a road safety program that requires police to immediately remove prohibited, unlicensed, or dangerous drivers from the road by impounding the vehicle they are operating.

The legislation governing VI is found in the *Motor Vehicle Act*:

- Owner is not the driver – s.258(1)(a)(b)
- Owner is the driver – s.258(2)(a)(b)(c)
- Race and stunt offences – s.250 and 251(1)(e)
- Motorcycle offences – s.194 and 251(1)(f)(ii)
- IRP impoundments – s.215.46, 250 to 258, and 262 to 267

Note: This manual provides basic information on vehicle impoundment reviews, but VI adjudicators should refer to the *Vehicle Impoundment Manual* for detailed procedures, such as how to update systems.

Depending on the type of driving prohibition, vehicle impoundment is either mandatory or at the discretion of the officer (see below). When police issue a *Notice of Driving Prohibition*, the officer also issues a *Notice of Impoundment* for the vehicle at the same time, if applicable (see chart at the end of this section).

Vehicle owners have the right to apply for a review of a 30 or 60-day impoundment (not 3 or 7-day). A person who cohabitates with the owner can apply for a review on compassionate grounds (under *MVA* s.263) if they need the vehicle for legitimate reasons, such as for medical purposes. Business owners may apply for the early release of their impounded vehicle on economic hardship grounds under *MVA* s.262, including for a 7-day impoundment.

Vehicle owners or their cohabitants have 15 days from the start date of the impoundment to apply for a review.

- **Immediate Roadside Prohibition:** Police impound the vehicle for a term that matches the driving prohibition term, including any escalation in the IRP for impaired driving. Vehicle impoundment is at the officer's discretion for 3 and 7-day prohibitions. A 30-day impoundment is mandatory for 30 and 90-day prohibitions.
- **ADP:** Police do not impound vehicles as a result of ADPs.
- **24-hour prohibition:** Vehicles may be impounded for 24 hours at the discretion of the officer.

- **Unlicensed/prohibited/suspended driving prohibitions:** Vehicle impoundment by the officer is mandatory, but the appropriate escalation is applied by the OSMV. The prohibition includes escalating vehicle impoundment periods of 7, 30, and 60 days, which apply if there are previous impoundments on the driver's record.
- **Other non-impaired offences:** For excessive speed, race and stunt offences, and motorcycle offences, the owner's or driver's vehicle is impounded for 7 days by the officer, but there is no accompanying driving prohibition. The appropriate escalation to 30 or 60 days is applied by the OSMV.

Types of Prohibitions and Impoundments

Prohibition Type	Prohibition Grounds	Penalties and Fees	Impoundment	Prohibition Review
3-Day Impaired Driving Prohibition	Cumulative (escalating) prohibition for impaired driving: <ul style="list-style-type: none"> Blood alcohol level between 50 and 80 mg% 	\$200 Admin Penalty \$250 Reinstatement	3 Days (discretionary)	Yes (written only)
7-Day Impaired Driving Prohibition	Escalation determined by police officer based on past prohibition history: <ul style="list-style-type: none"> 3 days for 1st offence 7 days for 2nd offence within last 5 years* 30 days for 3rd or subsequent offence within last 5 years* 	\$300 Admin Penalty \$250 Reinstatement	7 Days (discretionary)	Yes (written only)
30-Day Impaired Driving Prohibition	<ul style="list-style-type: none"> 3 days for 1st offence 7 days for 2nd offence within last 5 years* 30 days for 3rd or subsequent offence within last 5 years* 	\$400 Admin Penalty \$250 Reinstatement	30 Days (mandatory)	Yes (written and oral)
90-Day Impaired Driving Prohibition at Roadside	Non-cumulative prohibition for impaired driving detected via roadside screening device: <ul style="list-style-type: none"> Blood alcohol level above 80 mg% measured at roadside Driver fails to take or refuses breath/blood alcohol test 	\$500 Admin Penalty \$250 Reinstatement	30 Days (mandatory)	Yes (written and oral)
Non-impaired Driving Offences: <ul style="list-style-type: none"> Driving while unlicensed, prohibited, or suspended Excessive speed Race or stunt Motorcycles: not sitting properly astride / driving while unlicensed or under-licensed 	<p>Driver does not have a valid Driver's Licence and has a <i>Notice of Impoundment</i> on their driving record.</p> <p>Escalation is applied by the OSMV.</p>	\$276 Fine (No DL) \$250 Reinstatement	<p>Mandatory:</p> <ul style="list-style-type: none"> 7 days for 1st offence 30 days for 2nd offence within last 2-years* 60 days for 3rd or subsequent offence within last 2-years* 	Yes (written only)
24-hour Prohibition (previous)	Reasonable and probable grounds to believe that driving ability affected by: <ul style="list-style-type: none"> Alcohol Drugs 	N/A	24 hours, at officer's discretion	Yes (written only; alcohol-related only)
90-day Administrative Driving Prohibition (ADP) (previous)	Non-cumulative prohibition for impaired driving (no roadside screening device): <ul style="list-style-type: none"> Blood alcohol level over 80 mg% measured at detachment Fails to take or refuses breath/blood alcohol test 	No Admin Penalty \$250 Reinstatement	No	Yes (written and oral)

* Previous prohibitions and impoundments under the old ADP/24-hour scheme count towards the escalation of new prohibitions and impoundments.

1.2, The Adjudicator's Role

This procedure outlines the roles of adjudicators, and their key duties and tasks.

Adjudicator's Roles and Duties

The roles of the OSMV adjudicator are to:

- Conduct oral and written reviews of driver prohibitions and vehicle impoundments.
- Make independent and impartial decisions based on:
 - Purpose and requirements of the legislation
 - Facts of the case and evidence presented
 - The four pillars of OSMV: safety, service, fairness, and mobility

The adjudicator's duties are to:

- Ensure a fair process for review applicants.
- Be an impartial finder of fact and an unbiased decision maker.
- Refrain from activities that might lead to an apprehension of personal bias.
- Guard against the apprehension of institutional bias.
- Know how to deal with conflict, threats, and intimidation.
- Know how to distinguish between evidence and arguments.
- Maintain confidentiality of review files.
- Maintain a good understanding of:
 - The IRP, VI, ADP, 24-hour, Race, Stunt, Unlicensed, and Section 118 programs and processes
 - Legislation and case law
 - Principles of administrative justice
 - Jurisdictional limits and errors

Orienting New Adjudicators

Experienced adjudicators may be asked to mentor and train new adjudicators.

Follow these steps:

1. Welcome the new adjudicator to the Office of the Superintendent of Motor Vehicles.
2. Give your background as an adjudicator and a bit about yourself.
3. Ask them to describe their background and a bit about themselves.
4. Introduce them to other adjudicators and show them around the office.
5. Explain what they will be doing for their training, including:
 - Attending an administrative law session
 - Taking an oath
 - Conducting oral hearings and written reviews for driving prohibition and vehicle impoundment programs

- Writing decisions for driving prohibition and vehicle impoundment programs
 - Other related duties
6. Explain what will be expected of them:
 - Complete all reviews assigned to you within the legislated deadlines.
 - Attend all meetings.
 - Ask questions if you do not know.
 - Involve yourself in discussions regarding the programs.
 - Be able to express your views and opinions in a professional manner.
 - Take constructive criticism.
 - Write sound decisions in keeping with current case law.
 - Follow your trainer's advice.
 - Be prompt and on time.
 - Keep statistics and hand them in on time.
 7. Ask them what they know about drinking drivers and BC law.
 8. Show them the PowerPoint presentations relating to their program areas (in the shared W drive).
 9. Provide them with a copy of this manual and ask them to read it.

Overview of Tasks

Task	Details
Administrative / General	<ul style="list-style-type: none"> • Understand and follow the principles of administrative justice, including fairness, confidentiality, and jurisdictional issues. • Follow administrative processes related to reviews. • Extend 21-day review period if required. • Cancel driver's licences. • Attend team meetings. • Orient and mentor new adjudicators, as required.
Accept responsibility for assigned review files	<ul style="list-style-type: none"> • Take responsibility for the review file upon the date of the review. • After that point, make all decisions relating to the file. • Maintain security of review files removed from the OSMV-secured area.
Review for jurisdictional errors	<ul style="list-style-type: none"> • Check that the legal requirements giving you jurisdiction to decide the case have been fulfilled.
Review for administrative errors	<ul style="list-style-type: none"> • Determine whether the applicant/lawyer has been notified of the review date. • Ensure that all the evidence has been properly disclosed to the applicant. • Confirm that the applicant has had sufficient time to prepare their case.
Conduct oral reviews	<ul style="list-style-type: none"> • Call the applicant/lawyer at the scheduled review time. • Confirm disclosure. • Conduct the review and hear oral submissions from the applicant/lawyer. • Assess the credibility and weight that should be given to the testimony of witnesses and other evidence presented. • Extend / re-open / re-hear / adjourn hearings as necessary.

Task	Details
Conduct written reviews	<ul style="list-style-type: none"> • Read all evidence submitted by the parties. • Assess the credibility and weight that should be given to all the evidence presented.
Write decision letters	<ul style="list-style-type: none"> • Make a decision whether to confirm, revoke, or vary a prohibition and/or an impoundment. • Write a decision letter to the applicant/lawyer setting out in clear language the decision and reasons. • Follow administrative processes while writing the decision (templates, checklists, peer review, etc.) • In the case of an IRP or ADP, send the decision letter within 21 days of the date of service (or issue an extension). • In the case of a VI or UL decision, send the decision letter within 7 days of the hearing
Complete review files	<ul style="list-style-type: none"> • Update the APD/VI and Drivers databases with the review decision. • Complete refund forms for successful reviews in which the prohibition and/or impoundment was revoked • Send an <i>Order of Release</i> to the ILO for a successful impoundment review.
Participate in other reviews / inquiries	<ul style="list-style-type: none"> • Understand grounds for judicial reviews. • Adjudicate reviews for Section 118 appeals. • Conduct post-reviews and re-hearings. • Respond to mailbox inquiries.

Chapter 2, General Guidelines and Procedures

- 2.1 Administrative Processes**
- 2.2 Legal and Policy Issues for Reviews**
- 2.3 Cancelling Interim Driver's Licences**

Adjudicator's Procedures Manual

Ministry of Public Safety
and Solicitor General

Office of the Superintendent
of Motor Vehicles



2.1, Administrative Processes

This procedure covers the general administrative processes that adjudicators will need to complete in the course of their duties, and describes the key forms used in the prohibition and review process. It covers the following topics:

- Police documents – IRP/ADP
- Applicant submissions – IRP/ADP
- Vehicle impoundment documents and submissions
- OSMV responsibilities
- Scheduling of reviews
- Incoming review files
- Cancelling reviews
- Refunding fees and penalties
- Systems and databases
- Mailing and faxing deadlines
- Team meetings
- Privacy breaches

Note: The forms and letters that you will need as an adjudicator are available on the W drive. Some are shown in Appendix 3. You can also place shortcut icons on your desktop for easy future access to common forms and templates.

Police Documents – IRP/ADP

Police officers who serve a driving prohibition on a driver are required under s.215.47 of the *MVA* to send the following documents to the OSMV:

- *Notice of Driving Prohibition* (NoDP)
- *Certificate of Service* (part of the NoDP)
- The seized driver's licence
- *Report to Superintendent* (does not need to be sworn)
- *Certificate of Qualified Technician*

Notice of Driving Prohibition

A police officer issues a *Notice of Driving Prohibition* (NoDP) to the driver at the roadside. (For ADPs, it can also be issued at the detachment or sometime after the date of the incident.) The NoDP is a form prescribed by the *MVA* (s.94.1 or s.215.41).

The *Motor Vehicle Act Regulations*, Section 43.01 states:

Notice of driving prohibition

- (1) *The prescribed notice of driving prohibition for the purpose of section 94.1 (3) of the Act is set out in Form 1.*
- (2) *The prescribed notice of driving prohibition for the purpose of section 215.41 (6) of the Act is set out in Form 7.*

The officer sends the NoDP to the OSMV via the Fax Server, along with the *Report to Superintendent*.

The decision of adjudicators must be sent within 21 days of the NoDP date (unless a *Notice of Extension* is issued for the decision). The days are counted in

full days, so the 21-day count starts on the day after the date the prohibition was issued. Adjudicators should use the IRP calculator to verify the date of the 21st day, and ensure their decision is mailed by the end of the 21st day.

The NoDP is considered in both the IRP and ADP review. However, before proceeding with the review, ensure that the following information appears on the NoDP:

- Signature of investigating officer
- Charge box ticked (to indicate the driving offence)

If the NoDP is not signed, the prohibition should be cancelled.

IRPs: If the officer failed to tick one of the boxes indicating an offence, the prohibition must be revoked.

ADPs: If the officer failed to tick one of the boxes indicating an offence, the ADP is deemed to be a nullity (see the BCSC *Lang* decision). The Appeal Registry should remove the prohibition from the driver's record and send the driver a letter. If the wrong box is ticked or more than one box, the situation must be resolved in a review. (See Section 3.1, *Grounds for Review for Impaired Driving Prohibitions*).

Certificate of Service The *Certificate of Service* is located on the bottom of the NoDP. The *Certificate of Service* certifies the date that the NoDP was personally served on the :

- The effective date of an IRP is the same date as the NoDP and the offence, since these are immediate roadside prohibitions.
- The effective date of an ADP is 21 days from the date of service – not 21 days from the date of the offence. (In some cases, the offence may have occurred months before, such as in cases where the police send blood samples to the lab and need to wait for the results prior to serving the NoDP.)

The proof of service is not relevant in the context of review hearings for IRPs, but becomes important if the person drives during the prohibition. The certificate is included in the *Certificate of Superintendent* that is admitted to Court at trial to prove that the person was prohibited from driving at the time of the alleged offence.

Note: If the *Certificate of Service* is incorrect, it does not invalidate the NoDP and has no bearing on the adjudicator's task (*Lemoal* case law).

Seized driver's licence **IRPs:** Police will seize the driver's licence – whether it is a BC or out-of-province licence – and send it to ICBC (*MVA* s.215.41(3)(c)). If the licence is not seized at the time of the IRP, the driver must surrender it promptly to ICBC (*MVA* s.215.41(5)).

ADPs: Police can only seize BC licences, not out-of-province DLs. The seized licence is sent to ICBC (*MVA* s.94.1(d)). If the licence is not seized at the time of the IRP, the driver must surrender it promptly to ICBC (*MVA* s.94.1(2)).

Report to Superintendent The *Report to Superintendent* (RTS) describes the incident circumstances and contains the officer's evidence supporting their decision to issue a prohibition. The officer forwards it to the OSMV along with the driver's licence and a copy of the NoDP with the *Certificate of Service*, (*MVA* s.215.47(a)). For ADPs only, the

officer will also submit any *Certificate of Analysis* issued under Section 258 of the *Criminal Code* (MVA s.94.3(a)).

Two different RTS forms are used for driving prohibitions: one for IRPs and one for ADPs. (The Notice for 24-hour prohibitions includes the officer's *Report to ICBC*). The RTS must be sworn or solemnly affirmed **only** for ADPs. (However, adjudicators can consider it even if it is not sworn. See the MVA s.94.1(2.1) and 94.1(2.2).) The RTS may incorporate by reference another report or reports, such as a *Report to Crown Counsel* (RCC).

**Certificate of
Qualified
Technician (ADPs
only)**

The full name of this certificate is the *Certificate of a Qualified Technician Who Took Samples of Breath*. (The operator of the BTA must be a qualified technician, who may be the officer conducting the investigation.) A Certificate is usually submitted by police in cases where two breath samples are taken for an ADP. The form certifies the identity of the BTA instrument, the lot number of the alcohol solution used in the test, and that the sample readings are true.

If the lot number for the alcohol solution is not provided on the Certificate, the Appeal Registry will not assign the file to an adjudicator (stemming from the *Streeter v. Superintendent of Motor Vehicles* decision, which held that an adjudicator cannot consider a Certificate with a missing lot number). If you receive a Certificate with a missing lot number, return it to the Appeal Registry. If there is any other information missing from the Certificate, see your Team Leader.

Breath test tickets

These are the results produced by the BTA for ADPs, which police may or may not send along with the other documentation. If the police do not send these or if they are not legible, there is no requirement that the Superintendent obtain these from the police (BCCA decision in Bahia).

Applicant Submissions – IRP/ADP

**Application for
Review**

The driver has the option of applying for a review of a prohibition if they wish to dispute it. They must submit an *Application for Review* within 7 days of being served with the *NoDP*. The front of the *NoDP* explains how to apply for a review, and the reverse outlines the grounds for review.

The driver can complete the review application at an ICBC Driver Licensing Centre (DLC), at a Government Agent (GA), or at an Appointed Agent (AA). They may also pick up copies of the police evidence at a DSC, GA, or AA.

Because office hours for these agencies vary (e.g., some are open Saturdays but not others), the OSMV considers Saturday and Sunday to be non-business hours. To enable applicants to apply for a review within the prescribed 7-day deadline, if that deadline expires on a Saturday or Sunday, the time to apply for a review is extended to Monday. If the 7-day deadline expires on a statutory holiday, the time is extended to the next business day.

The applicant indicates on the form the grounds on which they are appealing and the type of hearing they want: written or oral. Sometimes the applicant's written submission will be included with (or on) the application form.

The applicant's address on the form is the address to which the decision letter is sent, if it is different from the information on the computer system. It is the driver's responsibility to ensure that the contact information is correct.

For an adjudicator to have jurisdiction to conduct a review, the applicant's driver's licence must be surrendered (if the police did not already seize it). If a driver's licence was not surrendered, the applicant must complete a *Statutory Declaration: Lost, Stolen or Destroyed Driver's License*.

The applicant must also have paid the review application fee, which is \$100 for a written review and \$200 for an oral review. This fee is non-refundable except if the review was for a revoked ADP.

The driver/lawyer may make either written or oral submissions or both, depending on the type of review requested. Applicant submissions are typically faxed to the OSMV from the local DLC, GA, or AA, or from the applicant's lawyer. Upon receipt of the application the DLC and GA book a review. AAs must contact the OSMV Appeal Registry, which will book a review. For written reviews, the review date and time is the date and time that written submissions should be received from the applicant/lawyer.

Extensions to 7-day limit

If the driver is unable to apply for a review within the 7-day limit because of special circumstances, an extension may be granted (as per the Segers case law). The driver must apply in writing to the Superintendent explaining why they did not apply within the deadline. These Segers applications are reviewed by IRP adjudicators.

Vehicle Impoundment Documents and Submissions

Police must impound vehicles for 30 and 90-day IRP driving prohibitions, and for some non-impaired driving offences. Impoundments for 3 and 7-day driving prohibitions are at the officer's discretion. There are no impoundments associated with ADP.

Police officers who impound a motor vehicle under MVA s.215.46 or 251(1) must provide the following to OSMV:

IRPs:

- *Notice of Impoundment (NoI)*
- *Report to Superintendent*

Unlicensed Driver Prohibitions:

- *Notice of Driving Prohibition (UL)*
- *Notice of Impoundment*
- *Report to Superintendent*
- The seized driver's licence

Race / Stunt: *Report to Superintendent* (see the *Race Training Manual* for more information).

Notice of Impoundment

The police officer issues a *Notice of Impoundment (NoI)* to the driver at roadside. The officer then sends the NoI to the OSMV via the Fax Server, along with the *Report to Superintendent*. (If the impoundment is part of an IRP, the officer issues both the NoDP and NoI at the same time and sends both Notices to the OSMV.)

Owners and drivers have 15 days from the receipt of the NoI to apply for a review. Your decision must be sent within 7 days of the review date.

The Nol constitutes evidence that you can take into account when reaching conclusions. Ensure the following information appears on the Nol:

- Signature of investigating officer
- Impoundment period box is checked
- The date of the violation
- The date, time, and location that the officer believed the offence was committed

Certificate of Service The *Certificate of Service* applies only to the *Notice of Driving Prohibition* for unlicensed driver (UL) offences.

The *Certificate of Service* is located on the bottom of the NoDP form for UL offences. It certifies the date that the NoDP was personally served on the applicant. The proof of service is relevant in the context of the driver being notified of their driving prohibition.

Report to Superintendent The *Report to Superintendent* describes the incident circumstances and contains the officer's evidence supporting their decision to issue an impoundment. The officer forwards it to the OSMV along with the driver's licence and copy of the *Notice of Impoundment*.

Impoundment / UL submissions The owner or driver has the option to apply for a review of an impoundment or an unlicensed driving (UL) prohibition or both. A separate application must be completed for each.

Note: The UL prohibition only applies to the driver, not the owner.

If the owner or driver wants to dispute an impoundment, they must submit an *Application for Review* within 15 days of being served with the *Notice of Impoundment*. There is no time limit for UL and Race applications and Section 118 Appeals (see Part 2.1 of the *MVA*).

OSMV Responsibilities

File creation When an *Application for Review* is received from the applicant or through a DSC, GA, or AA, Intake Agents at the Appeal Registry will:

- Create a file for the prohibition or impoundment review.
- Book a review date for the applicant when they apply at an AA (if they apply at a DLC or GA, the agent will book the review date).
- Link the submissions received by fax from both parties to the file on the ADP/VI system.
- Ensure that the applicant/lawyer receives disclosure of the evidence well before the review date.

Disclosure of evidence If you find that disclosure to the applicant is incomplete, bring it to the Team Leader's attention immediately. You must return the file to the Intake Agent so the review can be rescheduled if necessary to allow for proper disclosure.

Pre-hearing issues The driver is responsible for reading the information and guidelines for the review, which are included on the front of the NoDP. As a courtesy, an Intake Agent who is in direct contact with a driver will ensure that they know the available grounds for review and understand that hardship is not an available ground.

If the driver does not contact OSMV directly, the Intake Agent may not have the opportunity to discuss pre-hearing issues with them. This increases the likelihood of the applicant making irrelevant submissions.

Drivers or their lawyer may write or call in to cancel the review. However, there is no refund of the application fee.

Adjudicator assignment Once a file is assigned to you for review, it becomes your responsibility. Check with your Team Leader on any files with administrative defects.

Your role is to review the facts of the case, conduct the review, and make a decision whether to confirm, revoke, or vary the prohibition (or confirm, revoke, or upgrade/downgrade the impoundment). You must send a decision letter to the applicant within 21 days of the date of service of the NoDP. Decision letters for impoundments must be sent within 7 days of the review. The letter must outline the issues in the case and the reasons for the decision.

**Superintendent's
Report on
Calculating Blood
Alcohol
Concentration**

This OSMV report is used only for ADPs in cases where:

- The recorded BAC does not exceed 80 mg%.
- The BAC results were obtained more than three hours from the time of driving/care or control.
- There is evidence of drinking after driving.

You must disclose the BAC Report to the applicant, and if represented by a lawyer, the applicant's lawyer (at your discretion). It forms part of the evidence you will use to satisfy yourself that the prohibition should be revoked or confirmed.

Scheduling of Reviews

The Appeal Registry schedules and assigns reviews to adjudicators, allowing at least 4 days preparation time between the date the application is received and the date of the review. The Appeal Registry prepares the case files, which must be complete at least 24 hours before the review.

Each adjudicator is assigned similar amounts of work, subject to availability. A new *Review Schedule Report* is published online daily, listing the reviews assigned to adjudicators for the following business day. Before you leave for the day, check the *Review Schedule Report* so you are aware of your assigned oral and written reviews for the next day. Also check your in-tray for files or submissions and if necessary double-check with Intake Agents to ensure you have all required submissions.

If you are off sick, you must let both Team Leaders (in the ADP/IRP) program know. Files will be reassigned to other adjudicators as necessary.

Currently, oral hearings are scheduled on the hour. However, depending on the number of adjudicators available, reviews may be scheduled as frequently as every half hour, using multiple hearing rooms. Hearings last 30 minutes.

If you are not available to conduct an oral review for any reason, speak to your Team Leader to arrange for someone else to conduct the review at the scheduled time. (Once you've conducted a review, the file cannot be transferred to another adjudicator, because the one who heard the case must decide it.)

Incoming Review Files

Review files are provided to adjudicators the day before the review date to allow time to look at the files. Ensure you have a basket for “Incoming Files” in your office or hanging on the wall outside your door.

The Intake Agent staples a tracking sheet to the front of the file, which indicates:

- The date and time of the scheduled review
- Type of review (IRP or VI: oral/written; UL: written)
- Whether you will be dealing with a lawyer or the applicant
- The date the prohibition or impoundment came into effect (or will come into effect for ADPs)

Confirm the date of prohibition by checking the “Prohibition effective date” entered on the tracking sheet. This is the date that the applicant’s IRP took effect, or the date the ADP takes effect if the review results in the prohibition being confirmed. For IRPs, use the VI & IRP Calculator to determine the date the decision needs to be sent.

Cancelling Reviews

Applicants and/or their lawyers may occasionally cancel a review. This is often done with a letter prior to the review, or orally at the outset of the hearing.

If an applicant/lawyer cancels a review before it takes place:

1. In ADP/VI, under the **Review** tab, change the Review Type to **Cancelled Review**.
2. In the **Comments** tab, explain why the review was cancelled.
3. File the review file.
4. Update the Drivers system.

Note: There is no refund for a cancelled review.

As of December 1, 2010, any person who applies for an IRP review has the following status added to their driving record by the Appeal Registry:

- Status code and message = 0IRPR – Review of IRP in Progress
- Effective date = the date Appeal Registry becomes aware of the application for review
- Review date = 5 yr default

This is because when a person is issued an IRP, they are automatically triggered into the Responsible Driver Program (RDP). The RDP team sends a letter to the driver about beginning the RDP process. Sometimes, the driver may have applied for an IRP review at the same time. If the review is successful, the RDP team must send a second letter to the driver telling them to ignore the first letter. This new status will delay RDP action until the IRP review is confirmed.

In case of a cancellation, you must remove this updated status (but leave the prohibition status on the system), and email the RDP team §.15 to send a letter to the driver to begin the RDP process.

Refunding Fees and Penalties

Adjudicators are responsible for refunding review fees, reinstatement fees, and prohibition penalties, when warranted. The following table defines when refunds should be provided.

	Cancelled or abandoned review – application fee	Successful review – application fee*	Reinstatement fee*	Penalty fee*	Towing and storage fees*
ADP (issued before Sept. 20, 2010)	Yes: Oral – \$200 Written – \$100	Yes: Oral – \$200 Written – \$100	N/A	N/A	N/A
ADP (issued on or after Sept. 20, 2010)	No	Yes: Oral – \$200 Written – \$100	N/A	N/A	N/A
IRP	No	No	Yes: DL reinstatement – \$250 2 year DL – \$31	Yes: Warn #1 – \$200 Warn #2 – \$300 Warn #3 – \$400 Fail – \$500	Yes

* if the review was successful

1. Enter a brief comment on the ADP/VI system about the refund.
2. Open the *Refund Request* form template from the W drive.

Note: Complete a *Refund Request* form for each fee being refunded.

3. Check the Driver system to find the Applicant No (use command **qcn**).
4. Ensure you record the ADP/IRP number on the form.
5. Check the bottom right of the *Application for Review* to find the Original Receipt No/Ticket No.
6. Check off the appropriate boxes according to the type of refund (e.g., \$200 for an oral ADP review, or \$100 for a written ADP review).
7. For penalty fees, indicate whether the refund is full or partial.
8. Provide a brief explanation of the type of refund you are giving in the section labelled Select from the drop down Menu **VI/ADP/PR**. For example, if the refund is for the application fee of a successful ADP review, write: “ADP review successful – Refund is for \$100 application fee for ADP review.” Because there is no menu option for IRPs, add “IRP review successful” in your explanation, if the review was for an IRP.
9. Print two copies. Do not save it in MS Word.
10. Staple the *Refund Request* copies to the *Application for Review* copies (so you have two stapled sets).
11. Leave one copy in the refund basket (beside the outgoing mail basket).

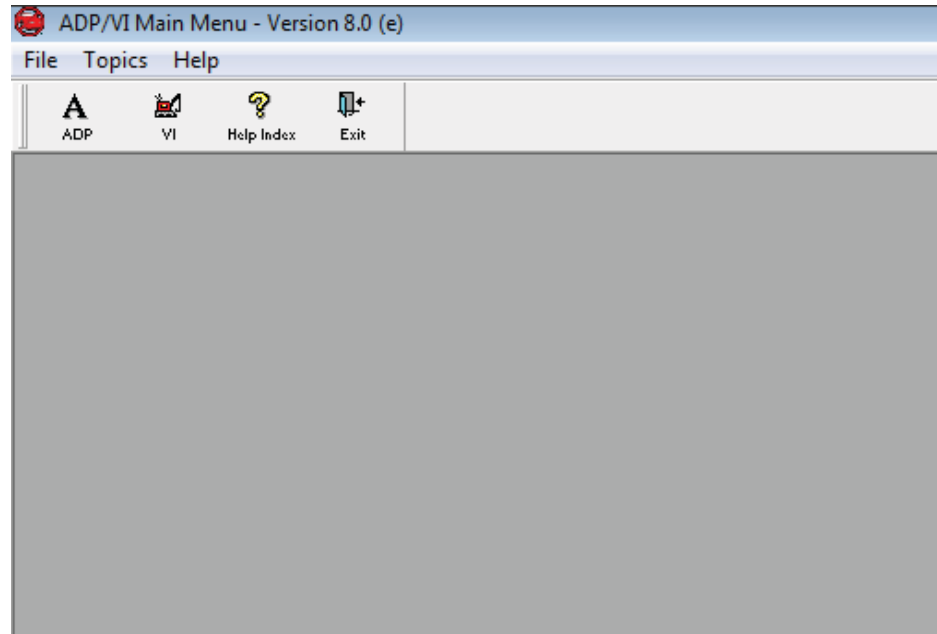
Systems and Databases

ADP/VI system The ADP/VI system is an ICBC program that allows viewing of faxed documents from the police relating to prohibitions and impoundments. The program allows OSMV staff to add, view, and update information. The ADP/VI also consists of the Fax Server, which is where documents are sent by police electronically and then linked by OSMV to applicant files.

To log into and use the ADP/VI system:

1. Double-click the **ADP/VI** icon on your desktop (or click on **OSMV Applications** on the Intranet and select **ADP/VI**).
2. Double-click on the **ADP/VI** icon that appears in the box.
3. Click **Run** at the dialog box prompt.
4. Enter your User ID, s.15 and press the **Tab** key. Your name and the **Mainframe Id** (driver's system sign on code) will automatically display.

5. Enter your **Password** and your **Mainframe Password** s.15
 Click **OK** to display the main menu.



6. Click on the applicable tab: **ADP** or **VI**.
7. Enter the review file number (for IRPs, enter the full 8-digit number, including '20' at the beginning).
8. Press **Enter** twice.

Note: For detailed information on using the ADP/VI system, refer to the *Accessing ADP/VI* instruction document, and the individual VI training manuals.

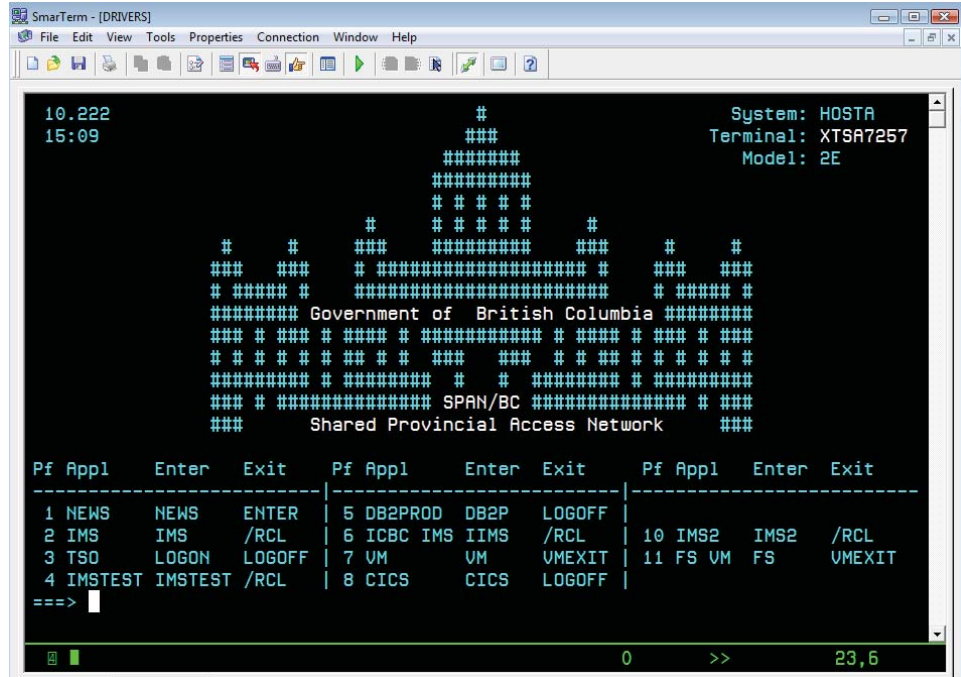
Drivers database

The Driver Licensing System (“Drivers”) is an ICBC database that contains drivers’ records. OSMV adjudicators need to access Drivers for a variety of reasons. You have the ability to update some screens in Drivers, and can view other areas.

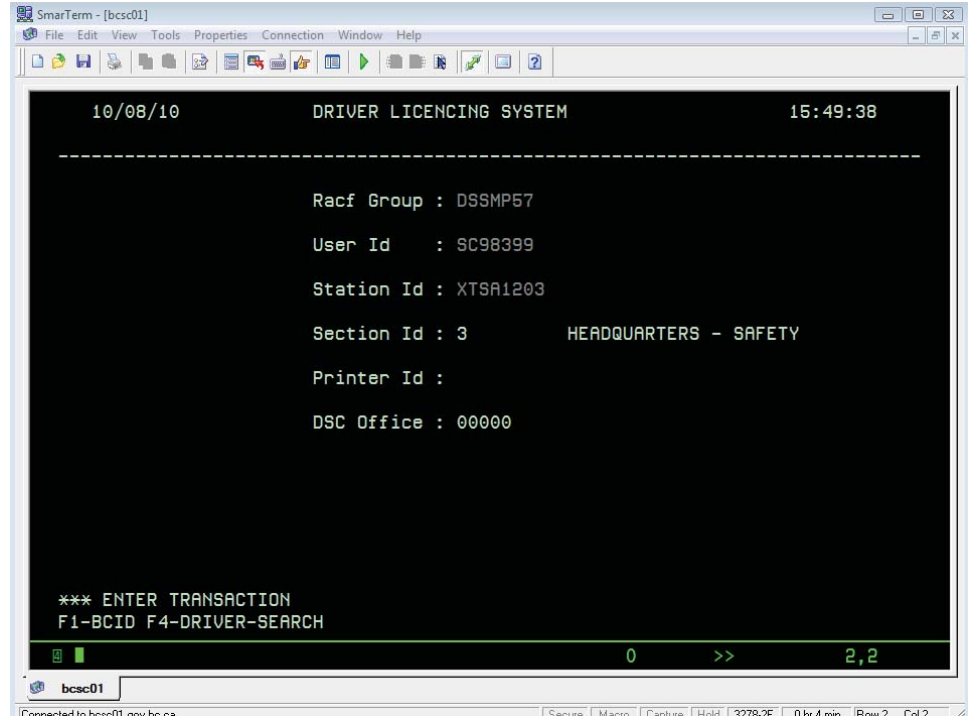
Note: You cannot access Drivers from home.

To access and use Drivers:

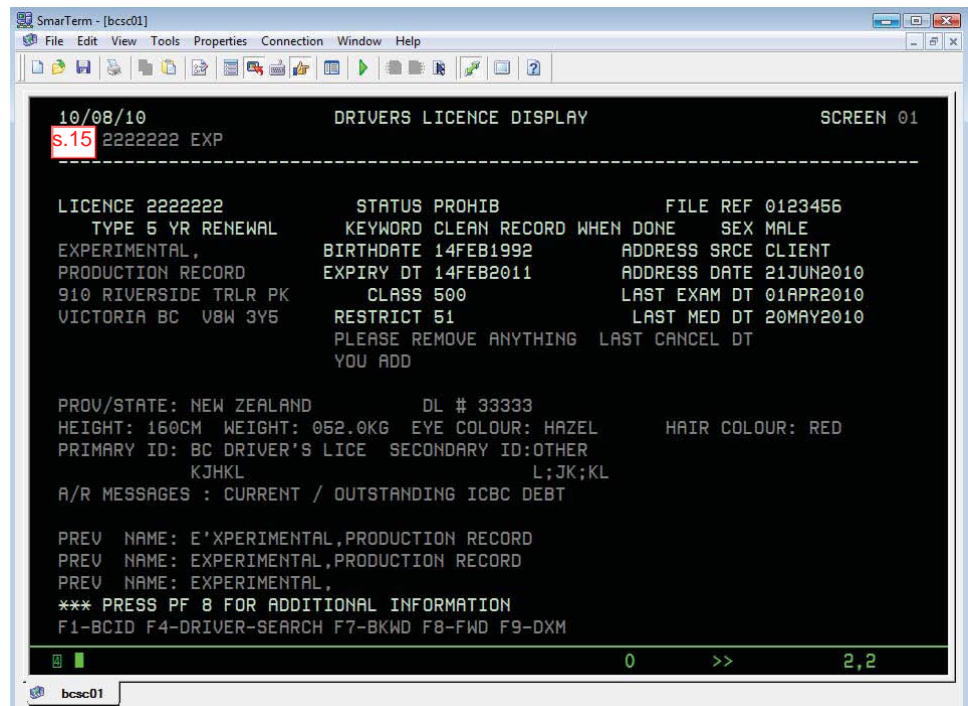
1. Double-click on the **Drivers** icon on your desktop (or click on **OSMV Applications** on the Intranet and select **ICBC - Drivers System**).
2. Press **F2** at the main portal screen.



3. When the screen says **Terminal Connected**, type: */for signon*. Press the spacebar and press **Enter**.
4. Enter your userid and password and press **Enter** s.15. The words **Sign Command Completed** should appear at the bottom of the screen. (If you see **Sign Command Rejected**, see the Note below.)
5. Press the **Pause/Break** key to clear the screen.
6. Type **DSSMTSO**, press the space bar, and press **Enter**. You should now be logged into Drivers.



7. To search for a drivers licence number, type **s.15** in the **bottom field** (where the cursor is), followed by a space, then the 7-digit driver's license number. Press **Enter**.



To navigate Drivers, use the PF buttons at the bottom of the screen. For example, clicking **PF4** allows you to search for an applicant by name or phonetic. Clicking **PF3** returns you to the first page of a driver's record.

s.15



For information on how to use Drivers for the first time, see the *ICBC Drivers System Logon: OSMV Adjudicator Procedures*.

MS Word templates There are several Microsoft Word templates that you will need to use, including letters and notices to applicants, and decision letter templates. In addition, checklists of facts that must be found for your cases are available as an aid. For more information on how to use them, see Section 3.3, *Writing Review Decisions for Impaired Driving Prohibitions*.

To access the templates:

1. Open Microsoft Word.
2. Click on **File, New**.
3. Under General Templates, select **New from Template**.
4. Click on the **adp_vi** templates.
5. Select the appropriate template (failure / refusal / over .08, etc.)
(Note: Templates will be available with the new core operating system.)
6. If prompted, select **Enable Macros** and follow the prompts. The template will fill in much of the information for you.
7. To write decision letters, display the ADP/VI toolbar by clicking on **View, Toolbars**, and selecting **ADP Review**.

Mailing and Faxing Deadlines

Decision letters must be sent to both the applicant and lawyer within 21 days of the NoDP service date (for IRPs and ADPs). However, under the *MVA s.215.5(7)*, that period may be extended if the adjudicator needs more time.

For vehicle impoundments, decision letters must be sent within 7 days of the review date.

1. Don't forget to allow time for the peer reviewer to proofread your decision.
2. Mail your decision in time:
 - **VI**: By the end of the 7th day after the review.
 - **IRP**: By the end of the day on the 21st day

- **ADP:** By the day before the 21st day

Note: Whether or not the driver receives the decision by the 21st day, they are deemed to be prohibited unless they hear otherwise.)

3. Place the decision letter for the driver in the outgoing mailbox. (Mail pickup times are 8:30 am and 1:30 pm.)
4. Immediately fax a copy of the decision letter to the applicant's lawyer (if they have one).

If the applicant does not have a lawyer, also advise them by telephone of a successful (revoked) prohibition.

Team Meetings

Adjudicators must attend monthly scheduled team meetings (or as required). These are structured, formal meetings chaired by the Team Leader.

A team meeting agenda will typically discuss adjudicators' work and workloads, scheduling and vacations, and questions about specific cases. Administrative rules govern decisions made in meetings to ensure decisions in individual cases are not being overridden or influenced by a group decision. For example, the merits or facts of individual cases cannot be discussed, and no new evidence can be introduced or considered.

Smaller, more informal meetings may be held as required between the Team Leader and several adjudicators, to cover any issues that are more appropriate in a small-group setting.

The protocol for formal team meetings is as follows:

- Everyone comes fully prepared for the meeting.
- Everyone has the opportunity to be heard and to pose a question.
- Only one person speaks at a time.
- Everyone's opinions and ideas will be respected, even if they differ from others.
- If you propose an agenda item, indicate if or when a decision is needed, and provide handouts on the issue if that would be useful.
- The Chair will:
 - Bring sidebar discussions back to the group to be discussed by everyone.
 - Bring forward issues from the previous meetings that were not resolved.
 - Keep the meeting on track by bringing discussions to a close, and summarizing the group consensus on each issue.

Privacy Breaches

The OSMV deals with highly sensitive information on a day-to-day basis and it is important to prevent privacy breaches. A privacy breach is any situation where personal information is collected, used, disclosed, accessed, disposed of, or stored, either accidentally or deliberately, that is not authorized by the *FOIPP Act*. Breaches can be on any scale and can happen anytime, such as a person's

name and address being divulged in an unauthorized way. An example is accidentally stuffing into one envelope two different decision letters to two different applicants.

It is crucial for the OSMV to preserve the privacy of all personal information obtained during the course of work. To prevent the inadvertent disclosure of the personal information to the wrong party, adjudicators will follow these guidelines:

- Complete the work on one decision letter at a time. This ensures that the letter you are sending does not accidentally get attached to a different letter or document pertaining to another applicant.
- Ensure that all documents in a file are those that came with the file. If you are dealing with more than one file at a time, a document could end up in the wrong file.
- Always double-check that the address below the name of the applicant is correct. Although peer reviewers will check for spelling and even compare the address with that given in the *Notice of Driving Prohibition*, it is up to each individual adjudicator to ensure that the address of the applicant correct.
- Always remember to shred any photocopies of documents you make.
- Every day before you go home, store all documents from a file within its respective folder.
- Go with your instinct – if you have an inkling that you may have missed something or that you may be sending information to the wrong party, always double check.

2.2, Legal and Policy Issues for Reviews

This section outlines legal and policy issues that adjudicators need to be aware of when conducting reviews of prohibitions and impoundments. It covers the following topics:

- Confidentiality guidelines
- Disclosure
- Independence of adjudicators
- Ensuring a fair process
- Dealing with bias issues
- Dealing with jurisdictional issues
- Distinguishing between evidence and arguments
- Assessing evidence and credibility
- Dealing with difficult applicants/lawyers

Note: For detailed information on conducting hearings, see the manual *Foundations of Administrative Justice*, and/or the *BCCAT Adjudicator's Manual*.

Confidentiality Guidelines

You must never discuss your cases with family members or friends. (Some discussion with colleagues is often a natural part of the adjudicative process, provided the adjudicator who conducts the review also makes the decision.)

If you have a question on a case before you, consult with your Team Leader or mentor if necessary. If you have not yet made a decision, the Team Leader or mentor can suggest options or considerations and offer some guidance, but cannot tell you what decision to make or talk to you in depth if it might influence your decision. (Your mentor will also read your decision letters before they are sent and will help guide you through the process and procedures.)

Since you do not know in advance which cases will come before you, never put yourself in a situation where others are talking about a case. This may occur for example, when an applicant is high profile and there could be media coverage of their drinking and driving offence. If possible, try to avoid media reports, but under no circumstances should you listen to others talk about it.

To safeguard the confidentiality of your work, at the end of each workday:

- Close down all windows on your computer.
- Restart your computer.
- Shred any documentation that might contain sensitive information, such as rough drafts of decision letters.

Disclosure

The Appeal Registry is responsible for ensuring that the applicant and police have submitted all documents required for a review, and that those documents have been disclosed to all parties at least 48 hours before the review. If you find

that some documents have not been disclosed to the applicant, you should return the file to the Appeal Registry to disclose the documents. If there is no time to disclose the documents before the review, you can either obtain the applicant's permission to disclose the documents over the phone at the hearing or adjourn or reschedule the hearing.

Once you have been assigned a review file, any information or advice that you obtain from another source must be disclosed to the applicant. Occasionally, it might be necessary to obtain such information or advice, but in general it should be avoided because it can unnecessarily complicate the review and even undermine the process.

Here are some guidelines to help illustrate what you do and do not have to disclose:

- Do not act as an investigator to gather relevant evidence.
- You can make inferences. Consult your case law summary for the many authorities on this issue.
- You may consider your own knowledge and expertise in coming to a decision.
- Do not substitute your own knowledge for evidence submitted by the applicant/lawyer unless you disclose the information to all parties.
- Avoid telling the applicant/lawyer that you need to contact someone else for information, because this obligates you to do so and to disclose the received information to the applicant.
- You may ask the Team Leader for clarification on an administrative or policy issue, without disclosing to the applicant/lawyer.
- Do not refer to judicial information that is not generally available or known to the applicant/lawyer. This means you cannot seek legal advice on the case unless you disclose it to the applicant/lawyer.
- If you need legal advice, speak to your Team Leader first to determine how best to proceed.
- While conducting an oral hearing, do not leave the hearing room, and do not contact anyone by phone or email, even internally.
- Do not engage in *ex parte* discussions by talking to one party in the absence of another party, even in a social or casual context. It could be assumed that evidence or submissions were discussed or that favouritism was shown.

Independence of Adjudicators

Independence refers to “institutional independence” as well as “impartiality” – the absence of bias, either actual or perceived (see next two headings for more information on bias).

“Institutional independence” means that adjudicators make independent decisions according to their own conscience and opinions, without pressure or undue influence from the government or other parties. The role of adjudicators is to ensure that the evidence that comes before them is reliable and credible, and to conduct reviews within their legal and administrative jurisdiction by using the principles of administrative justice and procedural fairness. For more information, see the *BCCAT Adjudicators Manual* and the *Foundations of Administrative Justice*.

You must make an independent decision on the case before you, regardless of the decisions or reasoning of other adjudicators. For example, sometimes a lawyer will submit a decision from another adjudicator who has revoked a prohibition. You should review that decision, but you are in no way bound by it, even if the case appears identical. However, you must be prepared to stand behind your decision, so be careful to justify your reasoning if another similar case had a different outcome.

Note: When applying policy to help make decisions, remember that the person who hears the case must be the one who decides it, and that every case must be decided on its merits. While guidelines are useful, they cannot be rigidly applied or allowed to replace your own judgment.

Ensuring a Fair Process

Administrative justice (or natural justice) means applying the principles of procedural fairness during the review process. The adjudicator has a duty to act fairly towards a person affected by an administrative decision. The applicant is entitled to:

- Know the case against them, and have the opportunity to reply to it
- Obtain a decision from an impartial and unbiased decision-maker
- Have the person who hears the case decide the case
- Be told the reasons for the decision in writing

You must ensure a fair and impartial review process by ensuring that the applicant has:

- Notice of the review date
- Sufficient information and time to prepare their case
- Full disclosure of the evidence
- An opportunity to present their case

Decisions should be considered in light of the duty to be fair – for example, whether to reschedule a review to accommodate a lawyer whom the applicant has retained close to the review date.

Note: Impartiality does not mean the absence of all constraints or influences, since adjudicators act within their jurisdiction and the law, and apply their skills and experience to conducting reviews. Rather, impartiality means being influenced only by relevant considerations, such as the evidence before the adjudicator and applicable laws.

For detailed information on the duty to act fairly, see Chapter 2 of the *BCCAT Adjudicator's Manual*, and Section 3 of the manual *Foundations of Administrative Justice*.

Dealing with Bias Issues

You must not say or do anything that would lead a reasonable person to conclude there is a reasonable perception of a likelihood of bias. The bias does not have to be conscious or even real. For this reason, you must consider how to conduct yourself in oral reviews and how to handle difficult or hostile applicants (because any non-objective conduct could be interpreted as bias). Also, ensure

that your decision letters are not written in a way that suggests that the decision was a foregone conclusion or that the evidence was not properly considered.

There are two types of bias that you need to be aware of: institutional (or systemic) bias and personal bias. Be prepared to respond to issues of bias. It is important to listen and understand what type of bias it is and how to respond appropriately.

Institutional bias Lawyers typically make allegations of institutional bias before the review proceeds, because if the issue is not raised at the time of the review, it cannot be pursued later with a judicial review.

A common example of alleged systemic bias is when an applicant's lawyer argues that you have lost jurisdiction to review the case due to a reasonable apprehension of bias in favour of the police. Issues raised may include (for example) the role of the police in adjudicator training, or communications with police to improve the quality of police evidence.

You must guard against the perception of institutional bias. Some practices may contribute to that perception or create subtle pressure on adjudicators to inadvertently lean in a particular direction – for example:

- Roundtable discussions by adjudicators that focus on a specific case
- The use of compiled statistical data on the number of confirmed and revoked prohibitions
- Over-reliance on policy and guidelines when making decisions with insufficient weight given to adjudicator experience or discretion

Personal bias The applicant/lawyer may allege a personal bias on your part. A common example is when the applicant has had a prior review with you in which the prohibition was confirmed. Therefore, the applicant/lawyer feels that your previous decision may bias you towards confirming a prohibition again.

Once you listen to the applicant/lawyer's allegations, your training and experience should enable you to immediately determine whether or not you are biased. The criteria for judging bias are discussed in Section 3.4 of the manual, *Foundations of Admin Justice*, and include:

- You have a personal financial interest in the case.
- You are related to or have a personal relationship with one of the parties in the review.
- You previously represented one of the parties to the review in some other context (i.e., acting as counsel, advisor, expert, or consultant).
- Your conduct or language shows bias or hostility.

If you do have such a bias, you must release the case to another adjudicator, even if you believe you can act fairly. If you determine that you do not have such a bias, simply tell the applicant/lawyer that there is no personal bias and that you will continue with the review. You must give reasons for your determination of non-bias in written decisions, but do not have to do so during an oral hearing.

If the applicant/lawyer argues or objects, the best response is: "I've heard you on this issue. I've made a decision, and I'd like to go ahead." It is important that you hold your ground if you believe there is no bias. If the applicant/lawyer is still unhappy, they can apply for a judicial review after you submit your decision.

Dealing with Jurisdictional Issues

You must be sure you have the legal authority and jurisdiction to make a decision as an adjudicator. It is important to understand the limits of your jurisdiction in order to determine which evidence and arguments are relevant. It may be helpful to re-read the enabling legislation when seeking clarification. Following is further guidance on some jurisdictional issues that you should be aware of.

If the applicant/lawyer alleges during a hearing that you do not have jurisdiction to consider evidence or make a decision, you have a duty to be fair and listen, then decide whether you do have proper jurisdiction under the circumstances. If so, respond as you would for alleged bias (described above). For example: “I believe I do have jurisdiction, so let’s proceed.” Or: “I’ve listened to your arguments, but I’ve determined I do indeed have jurisdiction, so let’s go ahead.”

Jurisdiction when police evidence is flawed

You have no jurisdiction to review a case if police failed to check off one of the charge boxes on the *Notice of Driving Prohibition*, according to *Lang*).

ADPs: The prohibition becomes a nullity. You should return the file to the Appeal Registry, who will ask the police to re-serve the prohibition.

IRPs: Immediately revoke the prohibition or impoundment (under *Lang*) and inform the applicant/lawyer before they make submissions.

Note: The OSMV does not ask police to re-serve IRP prohibitions that are revoked under *Lang*, because this would create a second prohibition and a second impoundment.

With IRP prohibitions, two possible scenarios may occur when police fail to check off a charge box:

Scenario 1: Police recognize their mistake and immediately correct it by informing the applicant of the box that was supposed to have been checked, and provides this evidence in their Report to Superintendent (RTS) or PRIME report. You may proceed with the review in this case.

Scenario 2: The OSMV receives the police evidence and no explanation from the officer in the RTS or PRIME report that the officer has informed the applicant of the box that was supposed to have been checked. You must revoke the prohibition in this case.

However, you should proceed with the review in other situations where police evidence is flawed – for example:

- The police ticked the wrong charge box on the *Notice of Driving Prohibition* or more than one box. (The *MVA* s.215.5(3) allows you to substitute a warn for a fail and s.215.5(5) allows you to confirm as a warn even if the result was a fail.)
- Police documents are missing (e.g., *Report to Superintendent*, *Certificate of Analysis*).

Motor Vehicle Act jurisdiction

The *Motor Vehicle Act* narrowly defines an adjudicator’s jurisdiction. For example, there is no discretion granted to increase the term of the driving prohibition. You are limited to determining only whether to confirm or revoke the prohibition or shorten its duration, as well as upgrade/downgrade the impoundment, according to whether the evidence corresponds to the fact pattern set out in the legislation.

Just as adjudicators can exceed their jurisdiction by deciding issues irrelevant to the mandated decision, adjudicators can sometimes fail to exercise their jurisdiction by avoiding a determination of relevant issues. For example, you must make a finding with respect to the issue of whether or not the person was operating or in care and control of a motor vehicle, regardless of whether or not the applicant raised it as an issue. See the *Checklists of Facts* in Appendix 3, *Forms and Templates*, for information on the issues that must be considered.

**Criminal Code
jurisdiction**

In making a decision to confirm or revoke a driving prohibition, you may need to consider the criminal law process by which evidence was obtained. For example, in assessing whether an excuse for refusing to provide breath samples is reasonable, you must consider whether a proper demand was issued by the police officer pursuant to s.254 of the *Criminal Code*. Another factor may be whether or not an applicant who refused a demand because they wanted to talk to a lawyer was informed of their right to retain a lawyer.

However, you have no jurisdiction to determine criminal wrongdoing in cases where the driver is also being charged with *Criminal Code* offences for driving while impaired. Confusion may arise because the police enforce both the federal *Criminal Code* and the *MVA*, which is a provincial civil statute. This may lead applicants to submit criminal law arguments in presenting their cases, or to believe that a prohibition will not take effect if the criminal charges are not pursued.

**No jurisdiction for
Charter of Rights**

If an applicant's constitutional rights have been allegedly violated, the decision in *Buhlers v. British Columbia* made it clear that an adjudicator has no jurisdiction to hear *Charter of Rights and Freedoms* arguments. Therefore, you have no authority to remedy perceived Charter rights violations by excluding evidence (such as a *Certificate of Analysis*). Criminal law lawyers who argue that their applicant's Charter rights were violated are usually unaware that following this strategy will not result in evidence being excluded in reviews.

During an oral hearing, you should make clear to the applicant/lawyer the limits of your jurisdiction, especially if the lawyer is making constitutional arguments. Written decisions must have a section explaining preliminary matters including biases, limitations, and jurisdiction.

**Remedy for
jurisdictional errors**

If you make a jurisdictional error in your decision, the applicant/lawyer can request a judicial review. The two major causes of jurisdictional error that lead to a decision being judicially reviewed are:

- Misinterpreting the *Motor Vehicle Act*
- Failing to follow the rules for procedural fairness regarding the evidence

For more information on judicial reviews, see Section 5.1, *Judicial Reviews*, as well Section 2 of the manual *Foundations of Administrative Justice*.

Distinguishing Between Evidence and Arguments

Evidence consists of the facts, which are what happened and who said what. Conflicting facts are still evidence. Some common types of evidence include:

- Oral testimony from witnesses
- Opinion evidence from expert witnesses based on the facts
- Affidavit evidence in written form
- Demonstrative evidence such as photographs

- Documentary evidence such as correspondence, articles, or reports

Arguments are the interpretation of the facts and support for the evidence. Arguments also include hypotheticals and presumed facts (such as when the police forgot to check a box on a form and it's assumed it should have been checked).

“Evidence is the material which is submitted to establish the factual basis against which legal interpretation, policy, and logical reasoning will operate.” (*Sprague* case law, p.14) For example, adjudicators must not accept into evidence simple assertions from lawyers such as: “My applicant advises that he had no intention of driving.”

Assessing Evidence and Credibility

The *MVA* allows the adjudicator to determine the weight to be given to any document or other information submitted, including unsworn evidence. As a finder of fact, you must draw conclusions or inferences from the evidence by assessing its relevance, reliability, and weight. Impartiality is critical. Once you are satisfied that the evidence is sufficiently relevant and reliable, you must decide how much weight to give to it.

Relevance means the evidence logically assists in proving or disproving a fact in issue in the case before you. Reliability focuses on whether the evidence is trustworthy and likely to be true, which involves considerations of the source and form of the evidence. Reliability also goes to weight. For example, a written statement from a third party in affidavit form given under oath will have greater reliability and should be accorded more weight than a written statement whose truth cannot be tested (an exception might be an unsworn police report). Hearsay evidence may be admitted only if you find it to be inherently reliable or more likely to be accurate than not. (Hearsay evidence is secondhand information the person had no direct experience with.)

You may also need to analyze a set of facts to make a finding on a legal issue. For example, the facts in a particular case may or may not constitute a person being found to have care and control of a motor vehicle.

Note: The standard of proof for adjudicators' decisions is the civil standard of “on a balance of probabilities”, rather than the stricter criminal standard of “beyond a reasonable doubt.” “On a balance of probabilities” means that there is more evidence in favour of the conclusion than against the conclusion.

Follow the “best evidence rule” in fact finding:

- In general, evidence should be accepted unless there is contrary evidence or unless there is good reason to believe that it is not credible or trustworthy.
- Similarly, when evidence is presented but the other party is silent on the issue, you must not reject the evidence without a good reason.
- Good reasons for rejecting evidence might include (but are not limited to):
 - Internal inconsistencies in the witness' story
 - The witness' lack of credibility due to a motivation to lie
 - Previous lies by the witness

- The fact that the issue was not raised at the time of the incident
- When the applicant/lawyer disputes the evidence, you must make a decision about whose evidence is more credible.
- If you must decide which of two versions of events to accept as fact, you may prefer the evidence of more impartial witnesses over those who have something to win or lose from the decision.
- However, if you are unconvinced by one party's evidence, do not render the decision for the other party by default. Their evidence must be relevant and reliable on its own.
- Exercise caution when assessing a witness's credibility based on their demeanour, since cultural conditioning can affect perceptions of what seems honest or dishonest.
- An opinion is not evidence, except when it is expert opinion from an expert witness.

Here are some basic guidelines for how much weight to give certain types of evidence:

High weight – very relevant:

- Direct evidence – I saw, I heard, I tasted, I touched
- Evidence given under oath or affirmation, by affidavit, or sworn police documents
- Indirect evidence – highly reliable sources, e.g., bank statement
- Tends to prove or disprove a fact in issue

Medium weight – relevant:

- Direct evidence but less reliable than above (e.g., unsworn police documents)
- Good hearsay, that is, it is reliable and/or necessary
- Helps to prove a fact in issue
- Witness has not taken an oath or affirmation or is not present for questioning

Low weight – borderline relevant:

- Direct evidence that has weak credibility
- Indirect evidence that is weak in reliability and credibility
- Bad hearsay
- Weak tendency to prove or disprove a fact in issue
- Documentary evidence from an unreliable source (e.g., newspaper)

For more information on weighing evidence and credibility, see the manual *Foundations for Administrative Justice* or the *BCCAT Adjudicator's Manual*.

Dealing with Difficult Applicants/Lawyers

Adjudicators must be trained in conflict resolution techniques. Since oral reviews are only 30 minutes long, difficult or emotional situations must be dealt with quickly.

Reducing your own fear or anxiety

During hearings, you must maintain a judicial temperament. Always listen attentively, patiently, and courteously to all participants. No matter how exasperating the conduct of the participants may be, you need to stay in control

of your emotions and not use indiscreet or disrespectful language. Try to maintain a “poker face.”

Remember that if an applicant or lawyer becomes difficult, it is not about you personally – they are responding to their own situation and their own perceptions of your professional role as adjudicator. A good way to defuse possible tensions or misunderstandings between any party in the review, including yourself, is to explain upfront the limits of your jurisdiction to make a decision, and your professional and legal obligations to be fair, objective, and independent.

If you fail to maintain a judicial temperament, there may be an apprehension that the case is not being decided on an impartial, objective basis. This alone can be grounds for a successful judicial review.

Angry or emotional applicants

You must be able to stay calm in order to listen, understand, and respond constructively to the concerns of an angry or crying person.

It is important to act in a neutral manner and not be overly sympathetic or partisan. For example, do not say “I’m here to help you,” because you are not an advocate for either side; you are an independent decision-maker.

Here are some sample recommended statements:

- “I understand your frustration, but to do my job, I need you to give me information in a calm way.”
- “It’s important that I understand what you’re saying, so please take a moment to calm down and then let’s continue.”
- “I realize this is difficult for you, but I need to take your information and the only way I can do that is if you’re calm.”

Note: You may offer a few minutes break if an applicant becomes upset during a hearing. Keep in mind that hearings are only 30 minutes long and cannot be put on hold or extended – however, there is usually some leeway in scheduling to allow you to go over the limit by a few minutes if necessary. If you are conducting the review in a hearing room, it may be necessary to adjourn the hearing so that you can call back the applicant and complete the hearing from your office phone.

Bullying and intimidation

Generally, lawyers make their submissions in a respectful manner. However, on occasion, lawyers may speak or act disrespectfully and may try to bully the adjudicator. This is not acceptable. If it happens, you must explain to the lawyer that improper conduct will not be tolerated. If it continues, you have the right to adjourn the hearing for 15 minutes. If that is not successful, you may adjourn the hearing to contact the client directly, in which case the lawyer will not be permitted to make any further submissions on that file.

The following script may be helpful when dealing with difficult lawyers:

“Mr./Ms. [*lawyer’s name*], I am not comfortable with your tone/comments. Please continue in a respectful/professional manner.”

If the conduct continues:

“Mr./Ms. [*lawyer’s name*], I am adjourning the hearing because you continue to speak in a [*disrespectful/unprofessional*] manner. I will contact

you at this number in 15 minutes. At that time, if you continue to speak to me in this fashion, I will contact your client directly to continue the hearing.”

After 15 minutes:

“Mr./Ms. [*lawyer’s name*], please proceed with your submissions”.

If the lawyer continues with the disrespectful behaviour:

“Mr./Ms. [*lawyer’s name*], I asked you to provide your arguments/evidence in a respectful manner. As you have chosen not to do that, I will contact your client directly to continue this hearing”.

If the client is with the lawyer, or if you cannot reach the client, or if the client wishes to obtain another lawyer, you can advise that you will briefly adjourn the hearing to another day/time to do the hearing, either with the client alone or with new representation. You may decide the appropriate length of time for the adjournment, but two or three days should be sufficient.

Threats It is a serious matter if you believe that an applicant/lawyer is threatening you. You must deal with it immediately and put it on the record (in the ADP/VI system).

1. Confirm a perceived threat by saying, for example: “Are you telling me that if I don’t release your vehicle, you will come and do something to me?”
2. If the applicant/lawyer confirms or repeats the threat, say: “This is what I heard you say... [*repeat threat*]. I take that as a threat and I’m going to contact the police.”
3. End the review immediately, especially if you feel in any way unsafe.
4. Inform the Team Leader about the threat and contact the police.

2.3, Cancelling Interim Driver's Licences

This procedure describes how to cancel interim driver's licences because of unpaid driving prohibition penalties. The OSMV will initiate licence cancellation, which is done by adjudicator Team Leaders.

Overview

All drivers who receive an IRP must pay an Administrative Prohibition Penalty ranging from \$200 to \$500.

- For 30 and 90-day prohibitions, drivers must pay the penalty in full (at an ICBC Point of Service) before they can reinstate their licence.
- For 3-day and 7-day prohibitions, the driver can defer the payment for 30 days. ICBC will then issue an interim 60-day licence. If the full prohibition penalty payment is not received within 30 days of the payment deferral, the driver's licence may be cancelled by the OSMV.

ICBC produces a daily query called the *Daily File Review Report* that identifies licensed drivers with 3-day and 7-day prohibitions who have not paid the deferred prohibition penalty within 30 days. The report is compiled from the Drivers system and submitted to the OSMV every day. Using this report, the OSMV will cancel interim driver's licences where warranted.

Procedure

When Team Leaders receive the *Daily File Review Report* from ICBC, they will assign an adjudicator to review each identified case on the report to confirm that cancelling the interim driver's licence is appropriate.

1. In Drivers, display the driver's record and verify that the penalty has not yet been paid. If it has been paid, no further action is required.
2. Initiate the licence cancellation if payment is still outstanding (shown on Drivers as: **3 Hold \$2/300 IRP penalty – pay in full**).
3. Enter this status code in the **XS** screen on Drivers: **3-ICAN – CANCELLATION IN PROG-UNPAID IRP FEE** with a 30-day review date.

Note: If the driver does not pay the prohibition penalty within those 30 days, the Drivers system will automatically cancel the licence and remove the cancellation code, while leaving a code to indicate that a payment remains outstanding.

4. Send a reminder letter to the driver notifying them that the prohibition penalty payment is overdue and their licence will be cancelled in 30 days unless they pay the penalty. Use the IRP Monetary Penalty letter located at *W:\Correspondence Unit\adp_v\Deferred Penalty\IRP Cancellation Letter Template* (see sample letter below).
5. Add the driver's personal information from ADP/VI (enter the DL and Name in **Search for Existing ADPs**).

6. Select either 3 or 7 days for the respective \$200 or \$300 penalty.
7. Ensure the cancellation date coincides with the 30-day review date as entered in Drivers.
8. Save the file (e.g., IRP123456Doe) to: W:\Correspondence Unit\adp_vi\Deferred Penalty\Deferred Monetary Penalty Letters.
9. Send a copy of the letter to the driver.
10. In ADP/VI under **Comments**, add:
 - Date you mailed the driver the letter
 - “Sent reminder letter to driver today. Must pay outstanding monetary penalty within 30 days or DL will be automatically cancelled.” (suggested wording)
11. Make an entry for each case of unpaid penalty in the shared Excel spreadsheet for driver’s licence cancellations, called the *Deferred Monetary Penalty Log*. Enter the data for the file name (123456Doe), including the date, DL, IRP number, driver name, and 3 or 7-day penalty.

Reminder Letter Template

[date]
[driver’s name and address]

Dear [name]:

RE: Immediate Roadside Prohibition Monetary Penalty 20-123456

Our records indicate that on [date] you applied for renewal of your British Columbia driver’s licence after serving a [3-day] [7-day] Immediate Roadside Prohibition (IRP). At that time, you chose to defer paying the monetary penalty of [\$].

Under section 215.44 of the Motor Vehicle Act (MVA), drivers are required to pay a monetary penalty before a driver’s licence is issued. However, in the case of a 3-day or 7-day IRP, a driver may choose to defer payment for 30 days from the date they apply for a driver’s licence renewal.

If a driver does not pay the monetary penalty within 30 days of applying for the renewal, the driver’s licence will be cancelled under section 26.1 of the MVA. Records show that you have not paid the monetary penalty within the established time. Your driver’s licence will be automatically cancelled 30 days from the date of this letter, unless you pay the monetary penalty in full.

You may attend any Driver Licensing Centre in British Columbia to make payment. If your payment is made in full within the next 30 days, your driver’s licence will be released for print. Should you have any further enquiries, you may contact the Customer Services department of the Insurance Corporation of British Columbia toll free at: 1-800-950-1498.

Yours truly,

K. Anderson
Manager, Adjudication & Training

Chapter 3, Reviews for Impaired Driving Prohibitions

- 3.1 **Grounds for Review for Impaired Driving Prohibitions**
- 3.2 **Conducting Reviews for Impaired Driving Prohibitions**
- 3.3 **Writing Review Decisions for Impaired Driving Prohibitions**
- 3.4 **Completing Review Files for Impaired Driving Prohibitions**

Adjudicator's Procedures Manual

Ministry of Public Safety
and Solicitor General

Office of the Superintendent
of Motor Vehicles



3.1, Grounds for Review for Impaired Driving Prohibitions

This procedure describes the grounds for review for all driving prohibitions, including:

- Grounds for review for IRPs and ADPs
- Technical grounds for review
- Operation or care or control of a motor vehicle (IRP/ADP)
- Blood alcohol concentration did not exceed 80 mg% (ADP only)
- ASD did not register a warn or a fail (IRP only)
- Did not fail or refuse to comply with an ASD demand (IRP/ADP) or blood/breath test (ADP only)
- Had reasonable excuse for failing or refusing to comply (IRP/ADP)
- Invalid grounds for review
- Grounds for review for 24-hour driving prohibitions
- Grounds for review for unlicensed driving prohibitions

Important Caveats

The considerations, questions, and examples given in this section are intended as guidelines for adjudicators and are not binding. Other situations may occur besides the examples given. Remember that each case is unique based on its facts, even if they appear similar.

You must make a determination of the validity of the grounds by reviewing only the evidence before you, including the applicant's written submissions and oral arguments. If any relevant evidence is missing, you cannot request it from the applicant or their lawyer, even if the lack of it may compromise their case.

You may consult legal opinions, but note that legal opinions are not themselves law, but are an interpretation of law that may be binding on adjudicative decisions. The full text of these opinions is available in the OSMV legal opinion registry.

You must carefully consider all facts before reaching a decision. Depending on the circumstances, certain factors may be given more weight than others.

Grounds for Review for IRPs and ADPs

The applicant selects one or more grounds on the *Application for Review* form, and they include:

- ADP**
- I did not operate or have care or control of a motor vehicle.
 - The concentration of alcohol in my blood did not exceed 80 milligrams in 100 millilitres of blood.
 - I did not fail or refuse to comply with a demand under Section 254 of the *Criminal Code* to supply a breath or blood sample.

I had a reasonable excuse for failing or refusing to comply with a demand under Section 254 of the *Criminal Code* to supply a breath or blood sample.

- IRP**
- I was not driving or in care or control of the motor vehicle.
 - An approved screening device did not register a WARN reading (50 mg%).
 - An approved screening device did not register a FAIL reading (80 mg%).
 - I did not fail or refuse to comply with the peace officer's demand to provide a breath sample.
 - I had a reasonable excuse for failing or refusing to comply with the peace officer's demand to provide a breath sample.
 - My 7-day or 30-day prohibition should be reduced because I did not have the required number of previous IRP(s).

Changed ground in submissions If the selected grounds for review are not the grounds upon which the applicant submissions are based, that does not invalidate the application, as you may consider other applicable grounds. For example, if the applicant applies on the ground that they had a reasonable excuse for failing or refusing to comply with the ASD demand, but provides evidence that they were not the driver, the adjudicator must consider that evidence.

Technical Grounds for Review

Technical grounds for revoking a prohibition are usually caught at the intake level, but adjudicators should check to be sure.

Prohibitions must be revoked when no box on the *Notice of Driving Prohibition* (NoDP) was ticked off by the police officer (*Lang* case law).

ADPs If the officer did not forward a *Certificate of Analysis* issued under s.254 of the *Criminal Code*, as required by the *MVA* s.94.3(e), you have no jurisdiction to remedy the officer's failure. Instead, you can make a finding on the basis of other evidence of BAC (e.g., breath test tickets, *Report to Superintendent*).

However, when the officer checks the box indicating they attached a Certificate, but it is not attached, the Appeal Registry will make one request for the missing Certificate before giving the file to an adjudicator. *MVA* s.94.5(2.1) gives you the authority to proceed with a review in the absence of a document that should have been forwarded by the police.

Additionally, if the lot number for the alcohol solution is not provided on the Certificate, the Appeal Registry will not assign the file to an adjudicator (because of the decision in *Streeter v. Superintendent of Motor Vehicles*, which held that an adjudicator cannot consider a Certificate with a missing lot number). If you receive a Certificate with a missing lot number, return it to the Appeal Registry. If there is any other information missing from the Certificate, please see your Team Leader.

Even if the *Report to Superintendent* (RTS) is not sworn or solemnly affirmed (i.e., it lacks the signature of the commissioner or the officer) as required by s.94.3(d), Sections 94.5(2.1) and (2.2) permit you to consider this evidence and determine the weight to give it.

Operation or Care or Control of a Motor Vehicle (IRP/ADP)

To confirm a prohibition you must be satisfied that the applicant was properly identified by the police officer as the person who was operating **or** had care or control of the vehicle. (See the *Glossary* for definitions.)

This ground for review is most often chosen by the applicant because police found them in the vehicle but they did not intend to drive. In such cases, the vehicle may have been inoperable, or the applicant may have been just sitting or sleeping in the driver's seat. Sometimes the person found in the driver's seat by police may not be the driver of the vehicle because, for example, they switched places with the actual driver after an accident. There is a great deal of case law in this area (see the case law summary). The main issues are the risk to public safety, the intent of the alleged driver, and the actions of the alleged driver.

Note: Although the *MVA* does not require an adjudicator to consider the driver's intention in the context of assessing wrongdoing, intention does have a place in determining whether or not a person is in care or control of a motor vehicle.

Proof that the police properly identified the applicant as the driver includes:

Direct police observation:

- The driver produced a photo driver's licence.
- Schriver's testing – Vital statistics on the driver's licence were compared to the physical characteristics of the suspect, such as eye colour or height.
- The driver's identity was confirmed by police through an interview.

Witness observation (admissible hearsay):

- A witness directly observed the applicant operating or in care or control of the vehicle.

Based on the submissions, you should try to answer the following questions to determine whether the applicant was operating the vehicle:

- Does the applicant admit to driving the vehicle?
- Was the vehicle in operation at the time the officer found the vehicle?
- Did the officer or any witnesses see the applicant operating the vehicle?
- Is there evidence that the applicant was operating the vehicle prior to the time they were found by the police officer?

If the vehicle was not in operation, consider these questions to determine whether the applicant was in care or control of the vehicle:

In what position was the applicant found?

- In, near, or away from the vehicle
- Awake or asleep
- Lying down, seated upright, or slumped
- Occupying the front or back seat
- Occupying the passenger or driver's seat
- Lying with their head or feet on the driver's seat

Where were the keys to the vehicle found?

- On the applicant's person
- In the vehicle

In what state was the vehicle found?

- Engine running or off

- Vehicle's transmission standard or automatic
- Vehicle in gear, park, or neutral
- Parking brake engaged
- Anti-theft device on steering wheel
- Obstructions behind or in front of the vehicle

Note: There are a number of legal opinions on care or control. For example, see ad-20100125 in the ADP legal opinions folder. Also, refer to legal opinion ad-20100125, which contains various legal memos on this issue.

**Successful grounds
for review**

The following examples illustrate when you may be satisfied that the applicant did **not** operate or have care or control of a motor vehicle:

- s.15
-
-
-

**Unsuccessful
grounds for review**

The following examples illustrate when you may be satisfied that the applicant **did** operate or had care or control of a motor vehicle:

- The applicant makes an unsubstantiated claim that someone else was driving. For example: "Someone dropped me off and I fell asleep in my car." "Someone else was driving but they fled the vehicle."
- The applicant claims they were only moving the vehicle a short distance and no one else was available to do it.
- The officer observed the applicant in care or control of the vehicle, but approached the applicant after they had relinquished care or control.
- The applicant provides statements naming another person as the driver, but there is credible evidence that the applicant and the alleged driver switched seats. (For example: The officer observed the switch while approaching the vehicle; see legal advice in the ADP folder ad-17072006.)
- The applicant claims that they had no intention to drive. (For example: "I was just starting the car but I wasn't going to drive." "It was cold outside." "I started the car to get warm and then I was going to walk home." "I wasn't even driving." "I was going to sleep in the car until I felt OK to drive.")
- The applicant was found in the driver's seat with the engine running and there were no obstructions in front of or behind the vehicle.

Blood Alcohol Concentration Did Not Exceed 80 mg% (ADP Only)

To confirm an ADP issued on the basis that the individual's BAC exceeded 80 mg%, you must be satisfied that the person's BAC exceeded 80 mg% at any

time within three hours after the time of operation or care or control of the vehicle. Further, you must be satisfied that this was as a result of alcohol consumed prior to or while driving.

The applicant may claim this ground if they believe that the breath test reading was not valid, either because the breath test equipment was faulty, or the operator did not follow proper procedures. See a Team Leader for any ADPs where there is only one breath sample, where there is less than 15 minutes between samples, or where there is more that 20 mg% between the samples.

The applicant may also claim this ground if their BAC reading was over the legal limit because they consumed alcohol after driving.

**Successful grounds
for review**

The following examples illustrate when you may be satisfied that the applicant's BAC did **not** exceed 80 mg%:

Evidence deficiencies or discrepancies:

- s.15
-

Instrument error:

- s.15

Unabsorbed alcohol:

- s.15

Note: You may have to assess the amount of alcohol consumed after driving and its effect on the BAC reading, in order to determine whether enough alcohol was consumed before or while driving to cause the person's BAC to exceed 80 mg% within 3 hours after driving. Further, it may be necessary to consider the credibility of the applicant's overall drinking pattern in order to accept evidence that they consumed alcohol after operating or being in care or control of a vehicle.

**Unsuccessful
grounds for review**

The following examples illustrate when you may be satisfied that the applicant's BAC **did** exceed 80 mg%:

- The applicant claims that the instrument readings must be incorrect because:
 - They are inconsistent with the stated drinking pattern, or
 - They indicate a level of impairment inconsistent with the applicant's impairment indicators,
 - **But** the applicant does not provide satisfactory evidence that the instrument was not working properly.
- The applicant provides:
 - A drinking pattern statement, or
 - The results of their own simulated test, or
 - A forensic alcohol specialist's statement,

- **But** the applicant does not provide satisfactory evidence that the instrument was not working properly.
- The applicant claims that the time of driving or the time of the accident is unknown; however, it is substantiated by the evidence – e.g., by a witness or driver statement at the scene.
- The applicant questions the legality or validity of the officer's demand for a breath sample. (The validity is not relevant if the applicant provided a sample.)
- The applicant claims they had blood in their mouth and this would have affected the readings.
- The applicant claims that the readings are unsuitable because:
 - There are three readings.
 - There is a 20 mg% difference between the readings.
 - The second reading was higher than the first, and this indicates that their BAC was rising.

ASD Did Not Register a Warn or a Fail (IRP Only)

Successful grounds for review The following examples illustrate when you may be satisfied that the ASD did **not** register a warn or a fail:

- s.15
-
-
-
-
-

Unsuccessful grounds for review The following examples illustrate when you may be satisfied that the ASD **did** register a warn or a fail:

- The ASD calibration or expiry date is the same day as the incident.
- The applicant was already prohibited for 3, 7, or 30 days at the time they provided a fail sample on the ASD. (In this case, you must confirm the prohibition – see *MVA* s.215.5(5).)
- The applicant was already prohibited for 90 days when they provided a warn sample on the ASD, but the officer issued the IRP on the basis of a 'fail.' (In this case, you must substitute the prohibition for the appropriate length of 3, 7, or 30 days – see *MVA* s.215.5(3)(a).)

Did Not Fail or Refuse to Comply with ASD Demand (IRP/ADP) or Demand for Blood/Breath Test (ADP only)

To confirm an IRP, you must be satisfied that the applicant failed or refused, without reasonable excuse, to comply with an ASD demand. To confirm an ADP, you must be satisfied that the applicant failed or refused, without a reasonable excuse, to comply with a demand to supply a sample of their breath or blood

under Section 254 of the *Criminal Code*. Under the *MVA*, you must take into consideration any reasonable excuse.

You must also confirm that a valid demand was made by the police officer. The demand must leave the applicant in no doubt of their legal obligation to provide a sample or samples. A request or offer to take a test is not sufficient. The precise wording is not set out, but most officers read the demand from an official card.

This ground is often misinterpreted by applicants to apply in cases where the BAC was properly demanded and found to be over 80 mg%, or in cases where they provided a sample on an ASD and it registered a warn or a fail. In effect, the applicant is claiming that because they provided breath samples, they did not fail to comply with the demand (and presumably should have the prohibition revoked).

Refer to the case law summary for case law definitions regarding a failure or refusal to comply.

**Successful grounds
for review**

The following examples illustrate when you may be satisfied that **no** ASD demand or demand for blood or breath samples was made:

- s.15
-
-

The following examples illustrate when you may be satisfied that the applicant did **not** fail or refuse to comply with an ASD demand or a demand for blood or breath samples.

- s.15
-
-
-
-

**Unsuccessful
grounds for review**

The following example illustrates when you may be satisfied that the police **did** make an ASD demand or a demand for blood or breath samples:

- The applicant claims no demand was made, but there is strong police evidence that it was.

The following examples illustrate when you may be satisfied that the applicant **did** fail or refuse to comply with an ASD demand or a demand for blood or breath samples.

- The refusal was explicit (i.e., verbal) or implied by the individual's behaviour (e.g., willfully burping, vomiting, sucking back on the tube, releasing air from the nose, blowing too hard or too softly or too briefly).
- The applicant claims "I was trying," but the evidence indicates they were unresponsive to the officer's instructions.
- The applicant gave only one sample when two were demanded.
- The applicant gave one or two samples that were unsuitable.
- The applicant refused to provide any additional samples and does not provide satisfactory evidence that the samples were in fact suitable.
- The applicant refused to take an ASD test, but offered to provide a sample on a BTA at the police station or offered to provide a blood sample.

**Legal issues
regarding demands**

ASD demands:

- Before making an ASD demand, the police officer must have a suspicion that the driver has alcohol in their body.
- The driver has no right to consult with a lawyer.
- The *Charter of Rights* warning does not have to be read by the police officer.
- The time it takes to administer the test is not considered a detention if the ASD is done "forthwith" – usually within 15 minutes, although the officer may delay the sample if the driver has mouth alcohol (e.g., burp, recent drink).

BTA demands:

- Before making a demand for a breath test, the officer must form an opinion on reasonable and probable grounds that the driver's ability to drive is impaired by alcohol.
- Administering a BTA involves a detention, so the officer must read the *Charter of Rights* warning.
- Once the *Charter of Rights* warning is read, the driver has a right to consult a lawyer and be given a reasonable opportunity to do so.

BAC grounds:

- **IRPs:**
 - One breath sample must be taken on an ASD.
 - If the driver requests a second test, they must be given an opportunity to provide it, but on a different ASD).
- **ADPs:**
 - BTA reading(s) must be obtained using an approved instrument operated by a qualified technician.
 - For ADPs where there is only one breath sample, where there is less than 15 minutes between samples, or where there is more than 20 mg% between the samples, see a Team Leader..

Had Reasonable Excuse for Failing or Refusing to Comply (IRP/ADP)

To revoke a prohibition, you must be satisfied that all the evidence supports the applicant's claim that they had a reasonable excuse to refuse to comply with a

demand. It is not sufficient for the applicant to simply make that claim – they must provide corroborating evidence.

Many applicants apply on this ground when they attempted to blow but failed to provide valid breath samples. However, a failure is the same offence as an outright refusal, even if the evidence shows that the applicant was willing to continue the attempts.

The issue is whether the applicant has an excuse *in fact* – i.e., the reason they refused at the time of the demand.

Successful grounds for review

The following examples illustrate when you may be satisfied that the applicant **did** have a reasonable excuse to fail or refuse to comply with a demand:

Legal counsel:

- s.15

-

Note: The right to legal counsel applies in cases of refusal if the police officer read the *Charter of Rights* warning (i.e., to bring the driver to the detachment for a BTA test).

However, if the police officer advised the applicant they had a right to legal counsel (without the Charter warning), and then did not provide the driver with a reasonable opportunity to speak with legal counsel, the right to legal counsel may be said to exist. In that case, the driver may have a reasonable excuse for failing to comply with the demand. But if the driver simply told police they wanted to contact a lawyer, there is no right to counsel and the officer has no obligation to provide the opportunity.

Health issues:

- s.15

-

-

Other:

- s.15
-
-

Unsuccessful grounds for review

The following examples illustrate when you may be satisfied that the applicant did **not** have a reasonable excuse to fail or refuse to comply with a demand:

Applicant's concerns:

- The applicant did not feel that they were impaired.
- The applicant believed that giving one satisfactory sample was sufficient (for ADPs).
- The applicant's religious beliefs prevented them from agreeing to the demand.
- The applicant feared that medication would interfere with the results.
- The applicant held an unsubstantiated belief that the instrument wasn't working properly.
- The applicant was having personal problems or was too upset to take the test, but was not suffering from a documented mental illness.

Legal counsel:

- The applicant was not advised of their right to legal counsel. (If the *Charter of Rights* warning was read, that is evidence the applicant was advised of their right to legal counsel; otherwise there is no such right.)
- ADPs: The applicant was unable to contact a lawyer despite being provided with a reasonable opportunity to do so.
- The applicant was unable to contact the lawyer of their choice but showed diligence in the attempt.
- The applicant's lawyer advised them not to comply.

Health issues:

- The applicant feared catching a disease but was given a wrapped mouthpiece.
- The applicant claims that a medical condition prevented them from complying but does not provide satisfactory evidence to support the claim.

Other:

- You are not satisfied that the applicant did not understand the consequences of their actions.
- The applicant offered a blood or urine sample instead of a breath sample.

- The applicant refused to comply with an ASD demand but offered to provide a blood sample or breath sample for a breathalyser (BTA).
- The applicant was too drunk to understand the consequences of their actions or to comply.
- The applicant was not present while the instrument was being calibrated.
- The RTS indicates that the applicant's efforts were consistent with a willful avoidance to provide a sample.

Invalid Grounds for Review

The *Motor Vehicle Act* does not contain any provisions that allow adjudicators to modify the parameters of the penalties being imposed, or to consider any personal circumstances including economic hardship. (except for impoundments of vehicles owned by businesses, as per *MVA* s.262).

The following arguments offered by applicants are examples of **invalid** grounds for review:

- "I need my driver's license to get to work."
- "Can you give me a partial prohibition and allow me to drive during the hours of...?"
- "I need a couple of weeks to get my things in order and then I'll comply with the prohibition."
- "I need my driver's license to drive myself or someone else to the hospital for medical treatment."
- "There is no public transportation where I live."
- "I was under a lot of stress."
- "I will never do it again."
- "I have a good driving record."
- "My safety will be jeopardized if I can't drive."
- "I was driving on non-provincial land."
- "Someone else was pouring my drinks and I didn't know how much alcohol I had consumed."

The applicant may also make technical arguments that are not valid grounds for review, including but not limited to:

- The time of driving supported by the evidence (RTS) is not exactly the same as that indicated on the NoDP.
- Personal information is missing from the NoDP (address, date of birth, etc.). This is irrelevant because the applicant is identified by name and driver's licence number.
- The wrong offence box is ticked off on the NoDP or more than one box. (s.215.5(3) allows you to substitute a warn for a fail and s.215.5(5) allows you to confirm as a warn even if the result was a fail.)
- The police officer did not forward a RTS as required by s.94.3(d) or s.215.47(d). You can proceed with the review based on whatever is in the file (see *MVA* s.94.5(2.1) and s.215.49(3)).

Grounds for Review for 24-hour Prohibitions

There are two possible grounds for a review of a 24-hour prohibition (*MVA s.215.3*):

1. The police officer failed to administer a blood alcohol test when requested by the driver after the NoDP was served.
2. The person served with the prohibition alleges they were not the driver of the motor vehicle.

For the first ground, a driver who is served a 24-hour prohibition notice does **not** have the right to request or undergo a test if (see *MVA s.215(6.2)*):

- The officer had already performed a test of the driver's BAC with an ASD.
- The test indicated that the driver's BAC exceeded 50 mg%, and the officer used the results of the test as part of the basis on which they formed reasonable and probable grounds to believe that the driver's ability to drive was affected by alcohol.

Factors to consider In considering an application for review, you may only consider (see *MVA s.215.2*):

- The *Notice of 24-Hour Prohibition and Report to ICBC* issued under *MVA s.215(10)*.
- Other relevant information provided by the police officer with the report
- Any written statements or other relevant information provided by the person on whom the notice of driving prohibition was served

The onus is on the driver to provide evidence on the issues to be determined. In order to revoke the prohibition, you must be satisfied that one of the criteria is met as set out in s.215.3 according to the balance of probabilities:

- The driver had a right to a test and requested the test, but was denied the test, or
- The person was not the driver or did not have care or control of the vehicle.

The absence of evidence does not lead to a revocation of the 24-hour prohibition. For example, the absence of a report from the police officer is not in itself grounds for revoking the prohibition.

This table lists some factors to consider when reviewing the grounds. However, keep in mind that you can confirm the prohibition based solely on the driver's name on the front of the *Notice of 24-Hour Prohibition*.

Ground	Questions to consider
The police officer failed to administer a blood alcohol test when requested.	<ul style="list-style-type: none"> • Did the applicant have a right to request a test? • Did they request a test? • How did the officer respond? • Was a proper breath test administered?
<p>Note: The police officer is not required to administer a further breath test if the officer used the results of the first test as part of the basis on which the officer formed reasonable and probable grounds to believe that the driver's ability to drive was affected by alcohol.</p>	

Ground	Questions to consider
The person was not the driver or did not have “care or control” of a vehicle on a highway or industrial road	<ul style="list-style-type: none"> • What brought the applicant to the attention of police? • Was the applicant driving the vehicle? • Was the applicant seated in the driver’s seat? • Was the vehicle operable? • Was someone else driving? • Did the police or someone else see the applicant driving? • Did the applicant get out of the car before the police approached them? • Where were the keys? • Was the engine on or off? • Was the transmission in park or in gear? • Were the headlights on or off?
<p>Note: Although “intent to drive” should be considered as a factor, it is not determinative, because an intention to set the vehicle in motion is not an essential element of care or control. A person can be in care or control without intending to drive in some cases. You can consider the risk to the public when determining whether someone was in care or control.</p>	

Other factors – legal opinions

Several legal opinions have been received on 24-hour prohibition reviews. The following is a high-level summary of the legal opinions to help guide decision making. The legal opinions are not themselves law, but they are an interpretation of law that may be binding on adjudicative decisions. The full text of these opinions is available in the OSMV legal opinion registry.

- **Blood test versus breath test:** Legal advice suggests that a driver who specifically requests a blood test cannot rely on s.215(6) to say that they requested a test of their BAC. The option of obtaining a blood test to dispute a 24-hour prohibition was removed from the statute in January 2005 because this option was unused and impractical. Medical practitioners generally will not provide the test, and when available it is not done in a time-frame that reflects the driver’s blood alcohol at the time of driving. Similarly, if a driver requests a test and the ASD is not working, the police should take the person to the police station to undergo a BTA test.
- **Submission – no evidence:** In a 24-hour prohibition review (unlike for an ADP), the onus is on the driver to provide evidence to support the allegations in their submission or the prohibition cannot be revoked.
- **Relevant information:** The sentence “relevant information provided by the person on whom the notice of driving prohibition was served” (s.215(2)(b)) should be interpreted broadly. Therefore, witness statements given by a passenger can be considered, provided that they are relevant to the issues to be determined under s.215.3. Submissions by an applicant’s lawyer would also be permitted under this provision.
- **When a driver must request a breath test:** Although s.215(6) states that the driver must request a breath test *after* being served with the 24-hour prohibition, the timing issue is not critical. The court took a more nuanced approach to this requirement in *Auja v. Superintendent* (see legal advice in 24-20081212).

3.2, Conducting Reviews for Impaired Driving Prohibitions

This procedure outlines how to conduct both oral and written reviews for impaired driving prohibitions. It covers the following topics:

- Types of review
- What to consider in a review
- Reviewing the file
- Conducting an oral hearing
- Conducting a written review
- Changing a review date
- Adjourning reviews

For detailed information on conducting hearings, see the manual *Foundations of Administrative Justice*.

Note: For information on reviews for non-impaired driving prohibitions (such as unlicensed driving), see Chapter 4 of this manual, *Reviews for Vehicle Impoundments*.

Types of Review

In most cases, applicants can apply for either a written or oral review.

Prohibition Type	Oral Review	Written Review
Escalating immediate roadside prohibition for impaired driving (3-day, 7-day)	No	Yes
Escalating immediate roadside prohibition for impaired driving (30-day)	Yes	Yes
Non-escalating 90-day immediate roadside prohibition for impaired driving	Yes	Yes
24 hour prohibition for driving impaired by alcohol or drugs	No	Yes (for alcohol-related only)
90-day ADP for impaired driving	Yes	Yes

Written reviews Applicant submissions for a written review range from a single handwritten statement to multipage submissions including sworn affidavit evidence from experts and witnesses, and even photographs. The lawyer's written arguments may include copies of supporting legal cases or transcripts of criminal proceedings.

The applicant (owner or driver) is responsible for supplying all relevant evidence to support their case.

Oral reviews The same material submitted for a written review may also be submitted for an oral review.

Oral reviews are conducted by telephone, and must be done in a place that provides privacy for both you and the applicant. Hearing rooms are available for oral reviews.

Note: Do not arrange in-person reviews at the OSMV office because there is not enough space. If there is a very compelling reason for an in-person review, discuss the situation with your Team Leader before scheduling it.

There are several advantages to an oral review compared to a written review:

- It allows the adjudicator to clarify issues relating to the evidence.
- It allows the applicant/lawyer to address questions raised by the adjudicator.
- It can help the adjudicator better assess the applicant's credibility (and that of any witnesses)
- Complex arguments are more easily discussed and understood in an oral review.
- The applicant may have personal circumstances they are reluctant to share in a written submission.

What to Consider in a Review

It is your duty to review all evidence before you, no matter how extensive, and to not exclude any relevant evidence from consideration when making a decision. You must consider the following in a review:

- Relevant written statements and evidence submitted by the applicant, including affidavits, witness statements, or photographs
- Relevant evidence or representations made at an oral hearing
- *Notice of Driving Prohibition*
- *Report to Superintendent*
- Any other relevant information submitted by the police (such as a *Certificate of Analysis* for a ADP)
- In the case of a second or subsequent prohibition for a warn result on an ASD (i.e., a 7-day or 30-day IRP), the driver's driving record (to determine whether a prohibition was escalated appropriately)

Note: Adjudicators may proceed with a hearing even if the police have not forwarded all the required documents (s. 94.5(1)(2.1) and 215.49(3) of *MVA*).

You **cannot** look at or consider the following:

- The driver's record, if this is a 3-day or a 90-day prohibition (in the case of a 7-day or 30-day IRP, you can only review the record to determine the number of previous IRPs)
- Evidence of hardship, transportation needs, personal circumstances, prior criminal convictions, and similar irrelevant evidence.
- Any other arguments and evidence that you determine are not relevant to the issue at hand or outside your jurisdictional limits (see Section 2.2, *Legal and Policy Issues for Reviews*).

For driving prohibition reviews, you are limited to the information you have in the file. In addition, you have access to relevant case law provided to you during training and the legal opinion folder on the common drive. You cannot research additional case law to apply your knowledge to a specific case. However, if a lawyer submits criminal case law as evidence, you can consider its relevance as it relates to the administrative law you are applying.

Note: Be aware of the danger of being unduly influenced by one case. Lawyers often submit cases that do not provide you with an objective picture of the state of the law on a particular issue. For example, there might be related or subsequent court rulings that differ from the one submitted or which provide more nuance.

Reviewing the File

Each adjudicator can develop their own method of reviewing a file, but the important thing is to read all the evidence and address the issues that will determine the outcome.

When reviewing the file, keep the file contents in the same order they were in when you received the file. This will enable you and anyone looking at the file to quickly determine which documents were faxed to the lawyer.

You may make a copy of the file to highlight and make notes on, but do not write on the evidence itself. You may also make case notes, but do not include them in the file. Any file copies and case notes must be destroyed after the review.

Note: If issues come up around the grounds for review while you're reviewing the file, refer to Section 3.1, *Grounds for Review for Impaired Driving Prohibitions*.

Reviews are carried out in a similar manner for all prohibitions, but considerations may be different depending on the prohibition and its circumstances. The following is a recommended way to review a file (see the *Foundations of Administrative Justice* manual for more suggestions).

1. Check that the box on the *Notice of Driving Prohibition* is marked to indicate which offence the person has been charged with. The officer's failure to tick any box leads to an ADP being deemed a nullity (*Lang* case law) and to an IRP being revoked (see Section 3.1 for more information):
 - **IRP:** 3, 7, or 30 days for a "warn" result, 90-days for a "fail" result, or 90 days for "failed or refused without a reasonable excuse to comply with a demand".
 - **ADP:** "Driver is alleged to have driven while over 80 mg%," and/or "Driver is alleged to have failed/refused to comply with a demand to provide breath or blood samples."
2. If the Notice was not served at roadside, make sure it was served by the investigating police officer within a reasonable time period.
3. Check that the *Notice of Driving Prohibition* was signed by the police officer.
4. Check that the *Report to Superintendent* from police is completed fully and accurately:
 - How was the applicant identified as the driver in care or control of the vehicle? (If the officer did not provide this evidence and the driver did not raise the issue, confirm the prohibition.)
 - Did the officer have the grounds to make the demand? (for refusal cases)

- Did the officer make a demand? (for refusal cases) (Failure by the police to establish this does not automatically lead to a revocation. There needs to be evidence from the applicant that they consumed alcohol after driving.)
- Was the demand made as soon as practical? (for refusal cases)
- Is the ASD test result indicated?
- Are the calibration expiry and service expiry dates current? If not, or if either is missing, revoke the IRP.
- Did the officer provide the serial number?
- If the driver asked for a second test, was it given?
- Did the applicant fail or refuse to comply with the demand? If so, is there a reasonable excuse in fact? (i.e., why the applicant refused)
- Is the RTS signed by the investigating officer?

Note: For further existing legal advice on the RTS, ask your Team Leader or check the Case Law files.

5. Check ADP/VI to verify the effective date of prohibition, the review date, and the phone number to call if it is an oral review.
6. **ADPs:** Check to see if the prohibition date has been extended. If so, the file will contain a *Notice of Extension* with the new effective date.
7. Check the number of pages of disclosure faxed to the applicant/lawyer against the documents or evidence you will be considering. Check that the disclosed evidence was sent to the correct fax number by checking the number on the fax transmittal report against the number for the lawyer listed on the cover sheet.

Note: You are not allowed to read the **Comments** in ADP/VI written by the Intake Agents.

8. **ADPs:** If there is evidence of post-driving consumption of alcohol, (i.e., if BAC readings were obtained outside the 3-hour window or did not exceed 80 mg%), ensure that you disclose the *Superintendent's Report on Calculating BAC* to the applicant.
9. Read the evidence to form a picture in your mind of what happened.
10. Assess the credibility and weight of the evidence by considering sworn vs. unsworn evidence, hearsay evidence, expert opinion evidence, and so on.

Note: If you discover errors or missing information in the file, return the file to the Appeal Registry. Examples may include where evidence has not been disclosed to the applicant, or the driver did not surrender their licence and there is no *Statutory Declaration: Lost, Stolen or Destroyed Driver's License*. (Adjudicators do not have jurisdiction to conduct a review if the driver's licence has not been surrendered.)

Conducting an Oral Hearing

A sample script for an oral hearing is included in Appendix 1.

Note: The Team Leader may occasionally sit in on oral hearings for monitoring and evaluation purposes.

Calling the applicant/lawyer

The applicant's telephone number can be found on the *Application for Review* form, or on the ADP/VI database or *Review Schedule Report*.

If there is no answer or the number is busy, double-check to be sure you have the correct number. If you get voicemail and need to leave a message and call-back number, **do not leave your own name and number**. Provide the Appeal Registry phone number: 250-356-6573 (fax: 250-356-6544).

If you cannot reach the applicant/lawyer at the scheduled review time, leave a message asking the applicant to call the Appeal Registry as soon as possible, but also state that you will call back in 10 minutes to try and conduct the hearing. If you call back in 10 minutes and again cannot reach the applicant, leave the same message again. If on the third try, you still get voicemail, inform the applicant that the oral review cannot be rescheduled and has now reverted to a written review. Make a note of the calls in the **Comments** tab in the ADP/VI system.

When you reach the applicant/lawyer to conduct the review, you may wish to identify yourself only as an adjudicator with the Office of the Superintendent of Motor Vehicles, for safety reasons. Some adjudicators identify themselves as "Adjudicator (last name)" while others state only their first names. If you do not wish to use your real name, you may use an alias with prior approval from your Team Leader.

You are not responsible for providing a teleconference call to enable all parties to participate. It is preferable for the applicant, lawyer, and any witnesses to be together at the lawyer's office. If the applicant/lawyer wishes to set up a teleconference call, you must be able to call in or link in at the scheduled time yourself, rather than the applicant/lawyer calling you.

Note: Keep in mind that hearings are only 30 minutes long and cannot be put on hold or extended. It is important that you maintain control of the hearing by not allowing participants to introduce irrelevant matters or evidence. Although there is usually some leeway in scheduling to allow you to go over the 30-minute limit by a few minutes, this should rarely be necessary and is strongly discouraged.

Verifying attendees

Before starting the oral hearing:

- Verify the applicant's name, the prohibition number, and whether the applicant has received disclosure of all the evidence before you.
- Verify that the lawyer is present, if the applicant has one.
- Verify the presence of any witnesses and have them identify themselves.
- Verify whether an interpreter is present and if so, have them identify themselves. (The interpreter's role is confined to translating, not advocating for the applicant.)

For sworn testimony, the applicant's lawyer should swear in their applicant and any witnesses. This enables the applicant to present sworn testimony in response to the lawyer's questions or to tell the adjudicator directly their sworn version of events. It is not necessary for witnesses to be approved or have their names submitted in advance of the hearing. You must be prepared to take evidence from witnesses if the applicant/lawyer supplies any.

Note: If the applicant has a lawyer, the applicant is not obligated to attend the hearing with the lawyer. Alternatively, the applicant may choose to be present, but not participate.

Clients without lawyers If the applicant does not have a lawyer, you should go over the available grounds for review with the applicant, in case the applicant has prepared only a hardship submission.

Adjudicator participation in the review You have some discretion in terms of how much you participate in the hearing. Your main role is to hear the applicant's story and evidence, so if you prefer, you can limit yourself to accepting and listening to submissions. Alternatively, you may direct the interview to encourage the applicant to cover ground they may not have considered. However, keep your direction general and suggestive; do not ask specific questions in order to obtain missing evidence.

You may also wish to adjust your interviewing style if the applicant has a lawyer, since lawyers will present their applicant's case in the manner they think best.

Your role is neither a therapeutic nor a combative one. Refrain from "descending into the arena" or you will risk allegations of apprehension of bias.

Note-taking You should take notes during hearings, either on a computer or by hand. You will need your notes to write the decision, so ensure they are complete and legible. They must accurately reflect the arguments and evidence presented, in a format you can understand.

Note: Your notes are private and non-disclosable, even if the applicant/lawyer later alleges a perceived bias. Never keep your notes in the file, as they may be disclosed if there is a judicial review. Your notes should be destroyed after you submit your decision.

Adjourning a hearing An oral hearing in progress can be adjourned if the applicant/lawyer needs more time to locate missing documents, affidavits, or witnesses. Do not close the hearing, because evidence cannot be submitted after a hearing is closed. An oral hearing can also be adjourned to a written review when written evidence is being submitted.

Allow a reasonable amount of time for an adjournment, depending on the circumstances. You may adjourn hearings for just a few minutes if, for example, you need to move to a different phone to call back the applicant and complete the review. If the applicant/lawyer needs to obtain missing information and can do so quickly, adjourn the hearing until later in the day. If documents must be obtained from police or an expert, a week's adjournment may be required. There is no maximum adjournment period, but it should be no longer than necessary. One day to a week should suffice for most requests, but keep in mind that any adjournment beyond the 21-day period will require an extension and possibly a stay.

Conducting a Written Review

All reviews, including written reviews, are scheduled for a certain time of day on the *Review Schedule Report*. Currently, oral reviews are scheduled hourly on the hour from 9 am to 2 pm and written reviews are all scheduled for 9:30 am. Wherever possible, you should conduct written reviews at the scheduled time, or on the same day as written submissions were received from the applicant/lawyer. All reviews must be completed within 21 days of the date of service of the *Notice of Driving Prohibition*.

Do not contact the applicant to ask for a written submission. A written review can proceed without any submissions from the applicant. In other words, if there is a lack of evidence to support the application, there is nothing you can do about it. You must make a decision based only on the evidence in front of you.

If someone does not appear for an oral hearing at the date and time scheduled, the hearing reverts to a written review, which you should conduct immediately or later on the same day.

Changing a Review Date

A review date can be changed to another time during the 21-day decision window without the need for an extension. The 21-day window itself can be extended in some cases, using the adjudicator's authority under the *MVA* s.94.6(4) or s.215.5(7). See Section 2.3, *Extending the 21-day Review Period* for detailed information.

An applicant/lawyer seeking to change the review date will generally make that request in advance of the hearing and prior to the file being assigned to an adjudicator. In those cases, an Intake Agent will respond to the request and decide whether or not to change the hearing date to another day within the 21-day period.

Sometimes, the applicant/lawyer will ask for a postponement at the outset of the hearing. Some common reasons you might agree to postpone the hearing include:

- The applicant has retained a lawyer and the lawyer needs time to prepare.
- The lawyer has an unforeseen conflict in their schedule.
- The applicant/lawyer has not received full disclosure.

If you decide to accommodate the request, or if you need to postpone the hearing yourself, set a new review date within the 21-day window. Confirm the new date and time both orally and in writing (see Appendix 3 for sample extension letters). If the applicant has a lawyer or provided their own fax number, send the written confirmation by fax. If the applicant is not represented and did not provide a fax number, send the letter by regular mail. Finally, add comments in ADP/VI to indicate the new hearing date and time.

3.3, Writing Review Decisions for Impaired Driving Prohibitions

This procedure outlines policies and guidelines for writing review decisions for immediate roadside driving prohibitions (IRPs), as well as ADPs and 24-hour prohibitions. It covers the following topics:

- Confirming a prohibition
- Substituting a prohibition
- Revoking an impaired driving prohibition
- Justifying a decision
- Decision standards
- Legal issues / legal advice
- Re-opening a hearing for clarification
- Using the letter templates
- Using the checklists
- Peer review of decision

ADP and IRP decision must be made and sent within 21 days of the date of service of the *Notice of Driving Prohibition*. Although there is no legislated timeframe for reviews of 24-hour prohibitions, there are policies around this—for example, review decisions for 24-hour prohibitions must be sent for peer review within 7 days from the date the file was assigned.

After analyzing the nature, quality, and sufficiency of the evidence from both the applicant and the police, you will decide whether or not to revoke the prohibition.

Under s.215.5 (IRP), your decisions are limited to the following:

- Confirming a prohibition
- Revoking a prohibition
- Substituting (reducing) a prohibition term if an incorrect term was applied at roadside
- Downgrading or upgrading an impoundment (see Section 4.3, *Writing Review Decisions for Vehicle Impoundments*)

Under s.94.6 (ADP), you can only confirm or revoke a prohibition.

Under s.215.3 (24-hour prohibition), you can only revoke a prohibition. This means that rather than confirming when the applicant is unsuccessful, you state that you cannot revoke the prohibition.

Note: Once you have finished your written review, you are under no obligation to accept late applicant/lawyer submissions. At your discretion however, you may accept late submissions if you have not yet sent the decision. (Late submissions **cannot** be accepted after an oral hearing.)

Confirming a Prohibition

When a driving prohibition is confirmed, the impoundment is also confirmed (if the vehicle is still impounded). The prohibition will remain on the driver's record

and will be considered in Driver Improvement Program reviews and as a trigger for the Responsible Driver Program.

ADP To confirm an ADP (*MVA* s.94.6(1)(a) and s.94.6(a)(b)), you must be satisfied either that:

- The applicant was the driver as defined in *MVA* s.215.41(1) (operated or had care and control of a motor vehicle), and
- The applicant had a BAC that exceeded 80 mg% within 3 hours after operating or having care and control of the motor vehicle, and
- The applicant's BAC was a result of alcohol consumed prior to or while driving.

Or, you must be satisfied that:

- The applicant was the driver (operated or had care and control of a motor vehicle), and
- The applicant failed or refused to comply with a demand made on the person to supply a sample of their breath or blood under Section 254 of the *Criminal Code*, and
- The applicant did not have a reasonable excuse for failing or refusing to comply with the demand.

IRP To confirm an IRP (*MVA* s.215.5(1)), you must:

- Be satisfied that the applicant was the driver (operated or had care and control of a motor vehicle), and
- In the case of a 3, 7, or 30 day prohibition, have evidence that an ASD registered a "warn", and
- In the case of a 90 day prohibition, either the ASD registered a "fail," or the driver failed or refused to provide a breath sample for an ASD without a reasonable excuse to comply with the demand.
- Be satisfied that a 7-day prohibition was the driver's second prohibition, and a 30-day prohibition was a third or subsequent prohibition.

Substituting a Prohibition (IRP)

Once the prohibition has been confirmed, you must look at whether the appropriate prohibition term was applied. For a 7-day or 30-day prohibition, you must review the driving record to determine whether the prohibition was correctly escalated (s.215.5(2)). For a 90-day prohibition, if the result was a warn and not a fail, you must reduce the length of the prohibition (s.215.5(3)).

Note: Adjudicators can only make prohibition terms shorter, never longer. Substitutions are only done in cases where the police made an error and applied the wrong prohibition term, or OSMV systems updated the prohibition term incorrectly.

To reduce a prohibition term, you must:

- Confirm the prohibition itself according to the grounds described above (under *Confirming a Prohibition*).
- Vary a 7-day or 30-day prohibition by substituting a 3-day or 7-day prohibition, as applicable.

- Vary a 90-day prohibition by substituting a 3-day, 7-day, or 30-day prohibition, as applicable.
- Vary the monetary penalty and impoundment period accordingly (subject to any other offences related to the impoundment, such as excessive speed; see Section 4.3, *Writing Review Decisions for Vehicle Impoundments*).

Revoking an Impaired Driving Prohibition

ADP To revoke an ADP (*MVA* s.94.6(2)(a) and s.94.6(2)(b)) where the ADP was served as an “over 80,” you must be satisfied that the applicant:

- Did not operate or have care and control of a motor vehicle, or
- Did not have a BAC that exceeded 80 mg% within 3 hours after operating or having care and control of the motor vehicle, or
- Had a BAC that exceeded 80 mg% within 3 hours after operating or having care and control of the motor vehicle, but only due to alcohol consumed after operating or having care and control of a motor vehicle.

Where the ADP was served as a “fail or refuse,” you must be satisfied that the applicant:

- Did not operate or have care and control of a motor vehicle, or
- Did not fail or refuse to comply with a demand made on the person to supply a sample of their breath or blood under Section 254 of the *Criminal Code*, or
- Had a reasonable excuse for failing or refusing to comply with the demand.

24-hour prohibition To revoke a 24-hour prohibition, you must be satisfied that the applicant:

- Had the right to request, and did request that the peace officer administer a test to indicate their blood alcohol level, but the peace officer failed to provide the opportunity to undergo the test, or
- Was not a driver within the meaning of the *MVA* s.215(1),

IRP To revoke an IRP (*MVA* s.215.5(4)), you must be satisfied that the applicant:

- Was not the driver (under s.215.41(1)), or
- Was the driver, and did not refuse an ASD test, but you find there is insufficient evidence that the ASD registered a “warn” for 3, 7, or 30-day prohibitions, or a “fail” for 90-day prohibitions.

Note: You cannot revoke a 3, 7, or 30-day prohibition if the ASD registered a “fail” rather than a “warn” (*MVA* s.215.5(5)).

For a 90-day prohibition for refusal or failure to take a breath or blood test, you must be satisfied that the applicant was the driver, but *not* satisfied that the person failed or refused without a reasonable excuse to comply with an ASD demand.

If a prohibition is revoked, it is not necessary to consider any other issues.

Vehicle impoundments When you revoke an IRP, you must also cancel the monetary penalty and revoke the impoundment (subject to any other offences related to the impoundment,

such as excessive speed). If an impaired driving prohibition is varied (substituted), the corresponding vehicle impoundment should be downgraded accordingly, as per the *MVA s.253.8*. See Section 4.3, *Writing Review Decisions for Vehicle Impoundments*.

Justifying a Decision

Reasons for the decision must be given in the decision letter, as required by the *MVA s.215.5(6)*.

- (6) *Subject to subsection (7), the decision of the superintendent and the reasons for the decision must be in writing and a copy must be sent to the applicant within 21 days of the date the notice of driving prohibition was served on the applicant under section 215.41.*

Note: In some judicial reviews of OSMV decisions, the courts appeared to suggest that written reasons were not necessary. However, courts have also said they need to see how the adjudicator reached their conclusion. Therefore, OSMV policy is to have adjudicators provide written reasons in their decisions.

The reasons must be clear and logical, and drawn from your findings of fact. Properly justifying a decision fulfills the criteria of administrative justice, and allows the applicant to consider whether or not to judicially review the decision.

If any evidence or arguments presented by the applicant/lawyer were rejected, you must give reasons (e.g., because they were irrelevant or lacked credibility).

If there is an allegation of bias by the applicant/lawyer, you must determine if the evidence satisfies the test of whether or not an informed person would think a reasonable apprehension of bias exists in that particular case. If not, you can proceed with writing the decision.

Downgrading an Impoundment

For an owner or driver to be subject to a 30 or 60-day vehicle impoundment, they must have had one or more prior impoundments within 2 years of this impoundment.

If the driving prohibition period is downgraded to a shorter term, you must also vary the impoundment period to the same term (if there are no other offences associated with the impoundment). Where there is a separate review for an impoundment, you may vary the period of the impoundment if you find that the impoundment period imposed is not supported by the facts of the case.

Note: Impoundment periods can be reduced or increased, while prohibition periods can only be reduced.

Decision Standards

You must follow these standards when writing the decision:

- Write clearly and concisely, in plain English.
- Avoid using legal terms unfamiliar to laypersons (e.g., “The applicant has an excuse *in fact*.”)

- Express yourself in neutral terms and do not show any bias.
- Include a section explaining preliminary matters including biases, limitations, and jurisdiction.
- Clearly identify the issues at the outset.
- State your decision and the reasons for it. (Use the appropriate *Checklist of Facts* in Appendix 3.)
- Ensure your reasoning is clear and understandable, and leads to a logical conclusion.
- Identify a clear set of relevant findings of fact, fairly drawn from the evidence.
- Enumerate the information and evidence you reviewed to make the decision.
- Where there is conflicting evidence, explicitly identify the findings of fact on which the conclusion is based and the reasons for it.
- Respond to all the relevant submissions and arguments.
- If irrelevant or non-credible evidence was presented, explain why you have not considered it.
- If you have no jurisdiction to answer a question or offer a remedy, acknowledge this. (*Charter* arguments and hardship arguments are examples.)
- Cite the relevant case law.
- Do not venture beyond what needs to be decided – avoid editorial comments, such as observations about lack of evidence, or what the result “might have been” with different evidence. Also, avoid criticizing any person and disclosing unnecessary personal information.

Note: Anything relevant in your hearing notes must be included in the decision. However, your notes are private and non-disclosable, even if the applicant/lawyer later alleges a perceived bias. (They must be kept separate from the file and will be destroyed later.)

Legal Issues / Legal Advice

You are not allowed to do your own legal research, since that would put you in the role of investigator. You have access only to the relevant case law provided to you during training, and the legal opinion folder on the common W drive. Your role is to listen to what’s presented to you, and then apply the relevant case law and legal opinions, which you should be familiar with.

You are not permitted to contact OSMV legal counsel. If you need legal advice, consult the Team Leader, who will attempt to resolve the issue directly, or who obtain legal advice or talk to a member of senior management at the OSMV.

In cases where the applicant/lawyer is aware that you need to ask for legal advice (for example, on an interpretation of the evidence), you must disclose the information you receive to the applicant/lawyer. This is not necessary for simple clarifying questions.

Re-opening a Hearing for Clarification

Once a hearing is closed, additional evidence or arguments cannot be submitted or considered.

However, when writing the decision, you may discover that you need clarification of the evidence or arguments from the applicant/lawyer or witnesses. In this case, you will need to continue the hearing by re-opening it.

1. Phone the applicant/lawyer to explain you have clarifying questions.
2. Set up a date and time to go over the questions by phone (if the applicant/lawyer is not available now). It should be done as soon as possible, but at the convenience of the applicant/lawyer.
3. Emphasize that new evidence cannot be introduced; the re-hearing is only to clarify previously heard evidence or arguments.

There is no need to update ADP/VI with the re-opening information.

Note: If the re-hearing cannot take place before the end of the 21-day decision period, you must arrange an extension (and probably stay the prohibition). See Section 2.3, *Extending the 21-day Review Period* for detailed information.

Using the Letter Templates

Several Microsoft Word templates allow adjudicators to more easily prepare decision letters. A template saves having to retype the basic structure and elements of a decision letter and helps standardize its appearance. The templates can be modified (except for the Extension Letter) and are not mandatory to use, but keep in mind that the OSMV has formatting policies for all correspondence leaving the office. For example, no underlining or the use of bold for emphasis is permitted.

The following templates are available, and the body of most templates is reproduced in Appendix 3, *Forms and Templates*, complete with instructions for use:

- Over 80 decision letter (ADP)
- Fail/refusal decision letter (ADP)
- ASD warn/fail decision letter (IRP)
- ASD fail/refuse decision letter (IRP)

While writing your decisions, save drafts to the **In-progress** folder on the W drive.

Using the Checklists

Checklists of facts that must be found for some cases are available in Appendix 3, *Forms and Templates*:

- *Checklist of Facts – Over 80* (ADP)
- *Checklist of Facts – Fail or Refuse* (ADP, 90-day IRP)

The checklists are a valuable tool to help you make correct decisions under the correct grounds for review. The appropriate checklist must be completed and placed in the file after you write your decision.

Peer Review of the Decision

Once you've written the decision, it must be edited by a peer reviewer (who may be another adjudicator).

1. Do not record your decision yet in ADP/VI.
2. Complete the *Adjudicator Decision Checklist* (see Appendix 3) and place it in the file.
3. Order the file materials in a way that makes it easier and faster for the peer reviewer to find and review documents. For example, if you have several legal cases, staple the pages of each case together and then clip the cases together.
4. Place the file in the peer review basket (based on the date you require it back) and fill in the Peer Review log.

Note: Record which files you have sent for peer review, and when they need to be sent to the applicant. It is your responsibility to ensure that you do not miss any deadlines.

5. After receiving the edited decision (see below), review the corrections and make the necessary revisions to your decision. You may discuss any of the requested corrections with the peer reviewer.
6. Finalize the decision and record it in ADP/VI (see Section 3.4, *Completing Review Files for Impaired Driving Prohibitions*).

The peer reviewer will conduct a comprehensive review of the decision letter, including:

- Correcting punctuation, spelling, and grammar
- Ensuring the decision is clearly written
- Ensuring the reasons for your decision are understandable
- Verifying correct name and address of applicant, dates, file numbers, etc.
- Substantively reviewing the decision to ensure that all arguments and evidence have been properly evaluated and addressed
- Signing off on items checked off on the checklist once satisfied that they have been appropriately addressed

Note: If a peer reviewer notes any significant misapprehensions by the adjudicator on the evidence or arguments, the peer reviewer will discuss the issue with the adjudicator in a respectful and constructive manner. If they cannot agree and the peer reviewer feels the matter is crucial, the peer reviewer should bring the file to a Team Leader.

3.4, Completing Review Files for Impaired Driving Prohibitions

This procedure outlines how to complete review files for impaired driving prohibitions, including IRPs, ADPs, and 24-hour prohibitions. It covers procedures for finalizing the paperwork, updating databases, sending the decision to the applicant/lawyer, and filing the file, in each of these circumstances:

- Revoked driving prohibition
- Confirmed driving prohibition
- Varied driving prohibition (IRP only)

Note: If an applicant/lawyer cancels a review before it takes place, simply update the ADP/VI system accordingly, explaining in the **Comments** tab why the review was cancelled. Then file the review file. There is no refund for a cancelled review.

Revoked Driving Prohibition

IRP procedure Follow this procedure for a successful IRP review:

1. In MS Word, freeze the date in your decision letter (i.e., change the date to a hard format so it will no longer automatically update to the current date).
2. Print two copies of the decision and the *Application for Review*.
3. Save the decision on the W drive (W:\Correspondence Unit\adp_vi\IRP Revoked – Current Month).
4. If the applicant has a lawyer, send them a fax:
 - Open a fax cover sheet by selecting from MS Word: **File, New, General Templates, More** (tab), **Faxes, FAX-General.dot**.
 - Follow the prompts and fill in the information (enter your name, title, fax number, and total number of pages).
 - Enter the fax subject as: "Review Decision for driving prohibition # [number, name]."
 - Print the fax cover sheet. Do not save it in MS Word.
 - Fax the decision to the lawyer (using the number from the disclosure fax confirmation).
 - Keep the fax confirmation sheet in the review file and dispose of the fax cover sheet.
5. If the vehicle needs to be released, complete an *Order of Release* by hand:
 - Ensure the **Vehicle Impoundment Number** includes the prefix "20-".
 - For the **Impound Lot Address**, enter their fax number.
 - If the review was successful on any of the VI grounds, check the box: "Collect towing and storage costs from the owner or authorized person."
 - Fax the *Order of Release* to the ILO (impound lot operator).

Note: The vehicle may already be released if the impoundment period has expired, or if the owner was unlicensed and has now obtained a valid licence, or if the vehicle was stolen.

If the reduced impoundment period has not expired yet, notify the ILO of the new impoundment term length, and process the *Order of Release* on the release date.

6. Update the ADP/VI and Drivers systems by following the steps outlined in the detailed procedure document located at W:\Correspondence Unit\adp_vi\Policies and Procedures\IRP Procedures.

Note: There is no refund of the fee for IRP reviews, regardless of outcome.

7. At the same time you remove the prohibition status in Drivers, also remove the **OIRPR – Review of IRP in Progress** status.
8. Mail one copy of decision to the applicant.
 - Ensure you have the applicant's complete and accurate name and address (take from the *Application for Review*).
 - Fold the letter along the small black lines located on the left and right edges of the paper.
 - Place it in a window envelope with the Ministry name and logo.
 - Ensure that only the applicant's name and address is visible in the window.
 - Place the sealed envelope in the outgoing mail basket.
9. File the completed folder in the file room:
 - Remove from the file any notes, including your hearing notes.
 - Remove the *Adjudicator Worksheet* stapled to the front and the file tracking sheet from the front of the file.
 - Mark or stamp as "File Copy" the second copy of the decision and the *Refund Request*.
 - Place the file in the appropriate place in the file room. Files are stored in numerical order by month served (the date on the file's tab).
 - Shred your notes and the *Adjudicator Worksheet*.
 - Place the *Checklist of Facts* in your Team Leader's inbox.
10. Complete the *Prohibition Log* (see later in this section for more information).

ADP procedure Follow this procedure for a successful ADP review:

1. In MS Word, freeze the date in your decision letter (i.e., change the date to a hard format so it will no longer automatically update to the current date).
2. Print two copies of the decision and the *Application for Review*.
3. Save the decision on the W drive (W:\Correspondence Unit\adp_vi\ADP Revoked – Current Month).
4. If the applicant has a lawyer, send them a fax:
 - Open a fax cover sheet by selecting from MS Word: **File, New, General Templates, More** (tab), **Faxes, FAX-General.dot**.

- Follow the prompts and fill in the information (enter your name, title, fax number, and total number of pages).
 - Enter the fax subject as: "Review Decision for driving prohibition # [number, name]."
 - Print the fax cover sheet. Do not save it in MS Word.
 - Fax the decision to the lawyer (using the number from the disclosure fax confirmation).
 - Keep the fax confirmation sheet in the review file and dispose of the fax cover sheet.
5. Complete a *Refund Request* to reimburse the fee for the ADP review (see procedure in Section 2.1, *Administrative Processes*).
6. Update the ADP/VI system:
- In the **Review** tab, click **Decision**.
 - Indicate the decision (**Revoked**), review date, your name (first initial and last name only), date applicant was called (if applicable), date decision letter was mailed, and the grounds for review.
 - Add the following in the **Comments** tab: "Review successful, letter faxed to lawyer and [if lawyer involved] mailed to applicant; refund of review fee initiated."
 - Press **Save** and **OK**.

Note: If more than one review was conducted (e.g., a re-hearing), note the details in the **Comments**.

7. Update ICBC's Drivers system to ensure the prohibition has been revoked. (When you enter the decision on ADP/VI, the pending prohibition status in Drivers should be automatically removed. If not, remove the prohibition in the **XS** screen).
8. Mail one copy of decision to the applicant.
- Ensure you have the applicant's complete and accurate name and address (take from the *Application for Review*).
 - Fold the letter along the small black lines located on the left and right edges of the paper.
 - Place it in a window envelope with the Ministry name and logo.
 - Ensure that only the applicant's name and address is visible in the window.
 - Place the sealed envelope in the outgoing mail basket.
9. File the completed folder in the file room:
- Remove from the file any notes, including your hearing notes.
 - Remove the *Adjudicator Worksheet* stapled to the front and the file tracking sheet from the front of the file.
 - Mark or stamp as "File Copy" the second copy of the decision and the *Refund Request*.
 - Place the file in the appropriate place in the file room. Files are stored in numerical order by month served (the date on the file's tab).
 - Shred your notes and the *Adjudicator Worksheet*.
 - Place the *Checklist of Facts* in your Team Leader's inbox.

10. Complete the *Prohibition Log* (see later in this section for more information).

24-hour prohibition procedure

Follow this procedure for a successful review of a 24-hour prohibition:

1. On the *24-hour Review Checklist* stapled to the front of the file, in the section labelled **Adjudicator Log**:
2. Check the box next to **Review decision made**.
3. Circle **Revoke**.
4. Place the file in the tray labelled **24 Hour** in the Appeal Registry.
5. Complete the *Prohibition Log* (see later in this section for more information).

Note: There is no refund of the review fee for 24-hour prohibition reviews, regardless of outcome.

Confirmed Driving Prohibition

ADP and IRP procedure

Follow this procedure for an unsuccessful review that confirmed a prohibition (and associated impoundment if applicable):

1. In MS Word, freeze the date in your decision letter (i.e., change the date to a hard format so it will no longer automatically update to the current date).
2. Print two copies of the decision.
3. Save the decision on the W drive (W:\Correspondence Unit\adp_vi\ADP Confirmed – Current Month).
4. If the applicant has a lawyer, send them a fax:
 - Open a fax cover sheet by selecting from MS Word: **File, New, General Templates, More** (tab), **Faxes, FAX-General.dot**.
 - Follow the prompts and fill in the information (enter your name, title, fax number, and total number of pages).
 - Enter the fax subject as: "Review Decision for driving prohibition # [number, name]."
 - Print the fax cover sheet. Do not save it in MS Word.
 - Fax the decision to the lawyer (using the number from the disclosure fax confirmation).
 - Keep the fax confirmation sheet in the review file and dispose of the fax cover sheet.

Note: Do **not** notify the applicant of the prohibition by telephone.

5. Update the ADP/VI system:
 - In the **Review** tab, click **Decision**.
 - Indicate the decision (**Confirmed**), review date, your name (first initial and last name only), and the grounds for review.
 - Add the following in the **Comments** tab: "Review unsuccessful, letter faxed to lawyer and (if lawyer involved) mailed to applicant." (If more than one review was conducted, note the details in the **Comments**.)

- Press **Save** and **OK**.

6. For an IRP, update the Drivers system:

- Remove the status code and message placed by the Appeal Registry: **0IRPR – Review of IRP in Progress**
- However, leave the prohibition status on the system.

As of December 1, 2010, applicants for an IRP review have that status added to their driving record by the Appeal Registry. This is because when a person is issued an IRP, they are automatically triggered into the Responsible Driver Program (RDP). The RDP team sends a letter to the driver about beginning the RDP process. If the driver has applied for an IRP review that turns out to be successful, the RDP team must send a second letter to the driver telling them to ignore the first letter. This new status will delay RDP action until the IRP review is confirmed.

7. Email the RDP team s.15 to send a letter to the driver to begin the RDP process.

8. Mail one copy of decision to the applicant.

- Ensure you have the applicant's complete and accurate name and address (take from the *Application for Review*).
- Fold the letter along the small black lines located on the left and right edges of the paper.
- Place it in a window envelope with the Ministry name and logo.
- Ensure that only the applicant's name and address is visible in the window.
- Place the sealed envelope in the outgoing mail basket.

9. File the completed folder in the file room:

- Remove from the file any notes, including your hearing notes.
- Remove the *Adjudicator Worksheet* stapled to the front and the file tracking sheet from the front of the file.
- Mark or stamp as "File Copy" the second copy of the decision and the *Refund Request*.
- Place the file in the appropriate place in the file room. Files are stored in numerical order by month served (the date on the file's tab).
- Shred your notes and the *Adjudicator Worksheet*.
- Place the *Checklist of Facts* in your Team Leader's inbox.

10. Complete the *Prohibition Log* (see later in this section for more information).

24-hour prohibition procedure

Follow this procedure for a review that confirmed a 24-hour prohibition:

1. On the *24-hour Review Checklist* stapled to the front of the file, in the section labelled **Adjudicator Log**:
 - Check the box next to **Review decision made**.
 - Circle **Cannot Revoke**.
2. Place the file in the tray labelled **24 Hour** in the Appeal Registry.
3. Complete the *Prohibition Log* (see later in this section for more information).

Varied Driving Prohibition (IRP)

Follow this procedure to vary (substitute) the prohibition term (and an associated impoundment if applicable):

1. In MS Word, freeze the date in your decision letter (i.e., change the date to a hard format so it will no longer automatically update to the current date).
2. Print two copies of the decision and the *Application for Review*.
3. Save the decision on the W drive (W:\Correspondence Unit\adp_vi\ADP Confirmed – Current Month).
4. If the applicant has a lawyer, send them a fax:
 - Open a fax cover sheet by selecting from MS Word: File, New, General Templates, More (tab), Faxes, **FAX-General.dot**.
 - Follow the prompts and fill in the information (enter your name, title, fax number, and total number of pages).
 - Enter the fax subject as: "Review Decision for driving prohibition # [number, name]."
 - Print the fax cover sheet. Do not save it in MS Word.
 - Fax the decision to the lawyer (using the number from the disclosure fax confirmation).
 - Keep the fax confirmation sheet in the review file and dispose of the fax cover sheet.
4. If the applicant does not have a lawyer, notify the applicant of the variance by telephone.

Note: If you get an answering machine, leave only your name and number, or try back in 10 minutes. Do not leave a message about the variance, as the applicant may not be the only one to hear the message.

5. If the vehicle needs to be released, complete an *Order of Release* by hand:
 - Ensure the **Vehicle Impoundment Number** includes the prefix "20-".
 - For the **Impound Lot Address**, enter their fax number.
 - If the review was successful on any of the VI grounds, check the box: "Collect towing and storage costs from the owner or authorized person."
 - Fax the *Order of Release* to the ILO (impound lot operator).

Note: The vehicle may already be released if the impoundment period has expired, or if the owner was unlicensed and has now obtained a valid licence, or if the vehicle was stolen.

If the reduced impoundment period has not expired yet, notify the ILO of the new impoundment term length, and process the *Order of Release* on the release date.

6. Update the ADP/VI system:
 - In the **Review** tab, click **Decision**.
 - Add the variance to the **Comments** tab in ADP/VI, including the variance for the impoundment if applicable.

- Indicate the review date, your name (first initial and last name only), date applicant was called (if applicable), date decision letter was mailed, and the grounds for review.
- Press **Save** and **OK**.
- If the vehicle needs to be released:
- Note in the **Comments** that it's being released because of a varied prohibition.
- Open the associated VI file.
- In the **Misc** tab, select the **Release Reason** and indicate the authorized release date under **MVB Auth. Release Dt.**
- Press **Save** and **OK**. (ICBC's Vehicles and ADC systems will be automatically updated with the authorized release date.)

Note: If more than one review was conducted or multiple grounds were considered, note the details in the **Comments**. Also, if you could not vary an associated impoundment because of additional offences, give details in the **Comments**.

7. Update ICBC's Drivers system to vary the prohibition.

- After logging in, type **<dsp>**, and press the space bar.
- Enter the applicant's license number and press **Enter**.
- Vary the prohibition by replacing incorrect **XS** statuses related to it:
- **Effective Prohibition** code: Set to the code corresponding to the shorter prohibition length.
- **Prohibition Penalty Required** code: Set to the code corresponding to the reduced prohibition.

Note: If these statuses are no longer on the record, it means the prohibition has expired and the applicant has reinstated their licence and paid the prohibition penalty. In this case, do not replace the expired statuses.

- Go to the **SUS screen** and update the prohibition record with the correct prohibition type.
 - Check Drivers to see if the driver has already paid the prohibition penalty. If so, the penalty must be partially refunded:
 - Retrieve the refund number from Drivers.
 - Complete a *Refund Request* form for the partial fee to be refunded.
 - Indicate the fee being refunded, that it is a partial refund, and the total refund amount.
 - Fax the *Refund Request* to ICBC.
8. Mail one copy of decision to the applicant. (If the owner and driver are different, mail one copy to each.)
- Ensure you have the applicant's complete and accurate name and address (take from the *Application for Review*).
 - Fold the letter along the small black lines located on the left and right edges of the paper.
 - Place it in a window envelope with the Ministry name and logo.
 - Ensure that only the applicant's name and address is visible in the window.
 - Place the sealed envelope in the outgoing mail basket.

9. File the completed folder in the file room:
 - Remove from the file any notes, including your hearing notes.
 - Remove the *Adjudicator Worksheet* stapled to the front and the file tracking sheet from the front of the file.
 - Mark or stamp as “File Copy” the second copy of the decision and the *Refund Request*.
 - Place the file in the appropriate place in the file room. Files are stored in numerical order by month served (the date on the file’s tab).
 - Shred your notes and the *Adjudicator Worksheet*.
 - Place the *Checklist of Facts* in your Team Leader’s inbox.
10. Complete the *Prohibition Log* (see below).

Note: When you vary the prohibition term, the escalating financial penalty will automatically be adjusted. For example, if the prohibition is changed from 30 days to 7 days, the 7-day fee would apply. If the driver has already paid the fee, you must complete a refund request.

Prohibition Log

For statistical purposes, you must keep a record of the results of every written and oral review you complete.

The *Prohibition Log* can be found at: W:\Correspondence Unit\VI Team Folder\VI Stats\VI Team Stats.xlsx. It is an Excel spreadsheet.

To complete the log:

1. Enter the required data under each column in the table.
2. Enter statistics in the format requested. For example, the required date format is **dd-mmm-yyyy**.

Note: Do not cut and paste data from a Word document or email program, as this will interfere with the functionality of the Excel sheet.

3. As you enter the data in each cell, press **Enter** to save it.
4. After entering all the data, double-check the accuracy, especially your numbers, the prohibition file number, and applicant name.
5. Save the Prohibition Log.
6. **Important:** Close the log, as it can only be accessed by one person at a time.

Chapter 4, Reviews for Vehicle Impoundments

- 4.1 **Grounds for Review for Vehicle Impoundments**
- 4.2 **Conducting Reviews for Vehicle Impoundments**
- 4.3 **Writing Review Decisions for Vehicle Impoundments**
- 4.4 **Completing Review Files for Vehicle Impoundments**

Adjudicator's Procedures Manual

Ministry of Public Safety
and Solicitor General

Office of the Superintendent
of Motor Vehicles



4.1, Grounds for Review for Vehicle Impoundments

This procedure describes the grounds for review for vehicle impoundments and the criteria to test each ground. It covers:

- Grounds for police impoundment
- Reviewing the grounds / changing the grounds
- Disallowed grounds for review
- Wrongful impoundment
- Where owner is driver
- Where owner is not driver
- Owner disputes period of impoundment
- Compassionate grounds for cohabitants
- Economic hardship grounds for business owners
- Grounds for non-impaired driving offences

The considerations, questions, and examples given in this section are intended as guidelines for adjudicators and are not binding. You must make a determination of the validity of the grounds by reviewing only the evidence before you, including the applicant's written submissions and oral arguments. If any relevant evidence is missing, you cannot request it from the applicant/lawyer, even if the lack of it may compromise their case.

Keep in mind that although cases may appear to be similar, each case is unique based on its facts. All facts must be carefully considered before reaching a decision. Depending on the circumstances, certain factors may be given more weight than others.

Grounds for Police Impoundment

Impaired driving prohibitions

Police may issue a *Notice of Impoundment* to the driver at the same time they issue an immediate roadside prohibition (IRP) for impaired driving under the *MVA* s.215.43(1) or (2):

- 3, 7, or 30-day impoundment for a BAC between 50 and 80 mg%, to match the driving prohibition term (the escalation depends on the number of previous impaired driving prohibitions the driver has had in the last five years).
- 30-day impoundment for a BAC of 80 mg% or higher, or for failing or refusing to submit a breath/blood sample for an ASD.

Note: 3 and 7-day impoundments for impaired driving are at the discretion of the officer, while 30-day impoundments are mandatory.

There is no review process available for a 3 or 7-day impoundment. An owner or driver who wishes to dispute a 30-day vehicle impoundment on the grounds that they disagree with the associated impaired driving prohibition must apply for a review of the IRP. The outcome of that review will resolve whether a vehicle should be released, provided there are no other outstanding offences associated with the impoundment (such as excessive speeding and race and stunt offences).

Under the *MVA* (Sections 256 to 258) there is a right to apply for early release of a vehicle under certain grounds that are independent of the driving prohibition. Those who reside with a vehicle owner and hold a valid driver's licence may apply for a release on compassionate grounds. Business owners may apply for early release of their vehicle on economic hardship grounds. They must apply within 15 days of the *Notice of Impoundment*.

Non-impaired offences Police must impound vehicles for 7 days (*MVA* s.251) when they have reasonable and probable grounds to believe that a driver:

- Was driving while prohibited under the *Motor Vehicle Act* or the *Young Offenders Act*
- Was driving while suspended under the *MVA*
- Was driving while unlicensed and was not otherwise exempt from the requirement to hold a licence
- Was driving in excess of 40km/h over the speed limit in violation of *MVA* s.148
- Was engaged in a race where the officer intends to charge the driver with a serious offence related to the race
- Was engaged in a dangerous driving activity (stunt)
- Was not sitting properly astride a motorcycle
- Was driving a motorcycle while unlicensed or underlicensed

If the owner or driver had one or more previous impoundments in the last two years, an OSMV Intake Agent will escalate the 7-day impoundment to 30 days for a second impoundment, or 60 days for a third or subsequent impoundment.

The owner or driver may only apply to the OSMV for a review of an impoundment that has been escalated to 30 or 60 days by the OSMV.

Reviewing the Grounds / Changing the Grounds

Reviewing the grounds When the driver applies for a review, the Appeal Registry determines if the grounds for review are valid. However, you should always check to be sure when you are assigned the file. For example, check the Drivers system to determine if the driver was unlicensed or prohibited at the time of the impoundment, and whether the prohibition (if any) led to the vehicle impoundment.

If you determine that the grounds selected are not applicable, you can proceed with alternate grounds with the applicant's consent.

Changing the grounds If evidence supports returning a vehicle to an applicant on grounds other than that chosen by the applicant on the *Application for Review*, you should change to another ground on the application that would allow for the return of the applicant's vehicle.

An Economic Hardship or Compassionate Grounds claim requires an applicant to file a different *Application for Review* form.

Disallowed Grounds for Review

Regardless of the ground that the owner or driver applies under, it is not your role to determine whether or not the individual was actually driving.

You can only review vehicle impoundments under the grounds provided for in the legislation (*MVA s.258*). Grounds that cannot be considered include (this list is not exhaustive):

- Identity of the driver (this has already been established by the police)
- Hardship for spouse or others (except for a cohabitant of the vehicle owner)

The Economic Hardship ground is only available to a business owner, while the Compassionate Ground is only available to a cohabitant of an owner. All other grounds for review are available only to the vehicle owner.

Wrongful Impoundment

Sometimes the police will notify the OSMV that an impoundment was in error. If the police provide sufficient information to demonstrate that the impoundment was wrongful, you may release the vehicle and the owner will not be subject to any towing and storage fees. However, if the police do not provide sufficient information, contact the police to determine why the vehicle was wrongfully impounded (e.g., police or system error). Police evidence should be provided in writing and with reasons.

Another reason for wrongful impoundment is if the police issued an impoundment notice using the old form. After September 2010, only the new *Notice of Impoundment* (MV 2721, 09/10) is considered valid. If the wrong Notice was issued, the impoundment must be annulled without a review.

Once you are satisfied that a motor vehicle has been wrongfully impounded, you may, under *MVA s.266*:

- Order the release of the vehicle from impoundment.
- Waive any fee, cost, or charge payable to the OSMV.
- Indemnify the owner of the motor vehicle for any direct cost incurred for the impoundment.

If you are not satisfied that the police information demonstrates that the vehicle was wrongfully impounded, do not release the vehicle. The vehicle owner then has the option of applying for a review under any of the grounds set out in the *Application for Review*.

Where Owner Is Driver

When a vehicle is impounded for 30 days or 60 days, the owner of a motor vehicle (who was also the driver) may apply for a review on at least one of these grounds. Each is described in more detail below.

- The driver was not prohibited or suspended from driving under any provision in the *MVA s.251(1)*.
- The driver had no reason to believe they were prohibited or suspended.
- The driver held a valid driver's licence or was otherwise exempt from the requirement to hold a licence.
- The driver had a reasonable belief that they held a valid driver's licence or were otherwise exempt from the requirement to hold a licence.
- A notice to impound the vehicle should not have been on the driver's record under *s.252(1)*.

Driver not prohibited or suspended

A prohibited driver is one that has been prohibited under the:

- *Motor Vehicle Act*
- *Youth Justice Act (BC)*
- *Youth Criminal Justice Act (Canada)*
- *Criminal Code*

A suspended driver is one that has been suspended under the *MVA* Sections.89(1)(b) or (c), 232, or 233. A suspended driver cannot apply for or obtain a driver's licence.

The test under this ground is one of fact. If there is evidence to convince an adjudicator, on a balance of probabilities, that the driver of the motor vehicle was prohibited or suspended at the time of the impoundment, then the motor vehicle must remain impounded.

Grounds	Take into consideration
Driver not prohibited or suspended under any provision in the <i>MVA</i> s.251(1).	<ul style="list-style-type: none"> • Does the driving record show that the driver was prohibited or suspended at the time of vehicle impoundment?

Driver had no reason to believe they were prohibited or suspended

The test under this ground is also one of fact, but in addition includes examining whether or not the person had a reasonable belief that they were not prohibited or suspended from driving a motor vehicle under any provision in the *MVA*.

Grounds	Take into consideration
Driver had no reason to believe they were prohibited or suspended under any provision in the <i>MVA</i> (Sections 251(1)(a) or (b), 89(1)(b) or (c), 232, or s.233).	<ul style="list-style-type: none"> • Why does the applicant believe they were not prohibited or suspended? • Did they have (or could have had) a driver's licence in their possession? • Did they receive a notice telling them they were prohibited or suspended? • Did they attend court under any of the <i>MVA</i> provisions? • If they did attend court, what did the judge tell them? • If they attended court and had legal counsel, what did legal counsel tell them?

A person who has been prohibited from driving under the *MVA* s.99 (automatic prohibition against driving on conviction) is deemed to know that they were prohibited from driving.

If the applicant can satisfy you that they did not know they were convicted under Section 95,102, 224 or 226(1) of the *MVA*, or a motor vehicle-related *Criminal Code* offence, then they would satisfy the requirement of having "no reason to believe" they were prohibited.

Likewise, if an applicant could show an officially induced error, such as the court advising that they were not prohibited under the *MVA* s.99, they might be able to show they had no reason to believe they were prohibited. The error would have to be specific to s.99 and must be based on a statement from an appropriate official.

Driver held a valid driver's licence or was exempt

The test under this ground is one of fact. If a person holds an out-of-province driver's licence and does not ordinarily reside in British Columbia, they are exempt from holding a BC driver's licence. In this case, the vehicle should be released if all of these conditions are met:

- The driver is able to produce a valid out-of-province driver's licence.
- The driver's record suggests they do not ordinarily reside in BC (i.e., have never held a BC driver's licence, or have no record of offences in BC).
- The police officer's report does not indicate that the officer had reason to believe that the driver actually resides in BC.

Grounds	Take into consideration
Driver held a valid licence issued under the <i>MVA</i> , or was otherwise exempt from holding a licence under the <i>MVA</i> .	<ul style="list-style-type: none"> • Does the applicant hold a valid, out-of-province driver's licence? • Is there any reason to believe the applicant resides in BC (e.g., driving record, police report)? • Is the applicant a new resident of British Columbia (less than 90 days)? • Is the applicant a non-resident of BC with a valid licence from their home jurisdiction, but no International Driving Permit, and are within the 6-month limitation for obtaining a BC driver's licence? • Is the applicant a student registered at a specified educational institution with a valid licence from their home jurisdiction?

If a person holds an International Driving Permit, they must also hold a valid driver's licence from their home country and must produce both for a police officer if stopped. Applicants must provide both documents on review.

Driver had reasonable belief they held a valid driver's licence or was exempt

In this case, the driver should provide some reason for why they believed they held a valid driver's licence.

Grounds	Take into consideration
Driver had a reasonable belief that they held a valid driver's licence or were exempt from holding a driver's licence under the <i>MVA</i> .	<ul style="list-style-type: none"> • Why does the driver believe they held a valid driver's licence or were exempt from holding a driver's licence?

Notice to impound vehicle should not have been on driving record

The test for this ground is one of fact. The applicant should be able to demonstrate why a *Notice of Impoundment* should not have been placed on their driving record.

Grounds	Take into consideration
<i>Notice of Impoundment</i> (under <i>MVA s.254(1)</i>) should not have been placed on the driving record (under <i>s.252(1)</i>).	<ul style="list-style-type: none"> • Was the driver ever convicted under the <i>MVA s.24(1)</i>? (Check the system for a flag: conviction of previous offence as unlicensed). • Did the driver successfully appeal or dispute the <i>s.24(1)</i> conviction? • Does the driver have an active appeal or dispute of the <i>s.24(1)</i> conviction? • Has the driver been issued a licence since their last conviction?

Where Owner Is Not Driver

When a vehicle is impounded for 30 days or longer, the owner of a motor vehicle (who was not the driver) may apply for a review on at least one of these grounds:

- The driver was neither prohibited nor suspended under any provision in the *MVA* (Sections 251(1)(a) or (b), 89(1)(b) or (c), 232, or 233).
- The driver held a valid driver's licence or was otherwise exempt from the requirement to hold a licence.
- A notice to impound the vehicle should not have been on the driver's record.
- The owner exercised reasonable care and diligence in entrusting the vehicle to the driver.
- The driver took the vehicle without the owner's knowledge or consent.

Note: Considerations for the first three grounds are the same as described above, under *Where Owner is Driver*.

Owner exercised reasonable care and diligence in entrusting vehicle to driver

Under the *MVA s.258(1)(b)*, an owner can apply for a vehicle impoundment review if they believe that they acted with reasonable care and diligence in entrusting the motor vehicle to the person who was in possession of the motor vehicle at the time of impoundment.

Note: Detailed information on the reasonable care and diligence ground, including criteria (tests), specific procedures for hearings, legal opinions and case law, and system updates, see the *Reasonable Care and Diligence Training Manual* (part of the *Vehicle Impoundment Manual*).

Acting with reasonable care and diligence means that, at the time the owner entrusted their vehicle with the driver:

- The owner actively considered whether or not the person was licensed and had reason to believe they were.
- The owner observed the driver's licence or took steps to determine the status of the licence.

The observations and steps taken will reflect the degree of care and diligence taken by the owner. It is not enough for the owner to have assumed that the driver held a valid driver's licence without having a satisfactory basis for that assumption.

Each situation will be unique and you must assess the totality of the evidence when determining what the owner did, and whether or not that evidence would

lead someone to reasonably conclude that the person to whom the vehicle was entrusted was licensed.

In cases where the owner did not actually observe a licence at the time they entrusted the vehicle, there must be other evidence consistent with the owner's belief that the driver was properly licensed. If a valid licence was observed in the past for example, the degree of evidence needed to support the reasonable belief that the driver was licensed will depend on how long ago the owner observed the licence.

The question of what is reasonable must take into account the circumstances. For example, the standard of reasonable care and diligence may not be applicable in an emergency situation where a person's health or life was at stake.

Grounds	Take into consideration
Vehicle owner had a firm basis for believing that the prospective driver possessed a valid driver's licence and was eligible to drive.	<ul style="list-style-type: none"> • When did the owner give the vehicle to the driver? • What steps or measures did the owner take to make sure the driver had a driver's licence? • What made the owner believe the driver had a driver's licence before the impoundment? • Has the owner ever seen the driver's licence? • What is the relationship between the owner and driver? • How long has the owner known the driver? • Under what circumstances did the owner lend their vehicle to the driver? • Has the owner ever lent the vehicle to the driver in the past? • Is the owner aware of any traffic violations, prohibitions, or suspensions that the driver had?

The question of what is reasonable will also vary depending on whether the owner is a rental company or a business.

Rental companies:

In cases where the driver has rented from a rental car company, the company should have evidence that they reviewed the driver's licence. They should have checked the photo and expiry date and recorded the driver's licence number.

Grounds	Take into consideration
Car rental company (vehicle owner) had a firm basis for believing that the prospective driver possessed a valid driver's licence and was eligible to drive.	<ul style="list-style-type: none"> • Does the company have an agreement in writing with the renter? • What steps did the company take to ensure the driver held a valid driver's licence before renting the vehicle to them? • Do they have a photocopy of the driver's licence?

Businesses using company vehicles:

For some types of vehicles, employers must obtain a driver's abstract prior to hiring an employee, and on the anniversary of hire every year, as per the *National Safety Code*. Vehicles covered by the *Code* include:

- Commercial vehicles licensed with a gross vehicle weight of more than 5,000 kg

- Vehicles operating under the *Passenger Transportation Act*
- Vehicles with a seating capacity of 10 or more passengers plus the driver

Except in extenuating circumstances, it is reasonable to expect that an employer would have a copy of a driver's abstract and that they monitor the status of an employee's driving record. It may be helpful for the company to provide you with the most recent driver's abstract, although it's not essential.

Grounds	Take into consideration
The business (vehicle owner) had a firm basis for believing that the prospective driver possessed a valid driver's licence and was eligible to drive.	<ul style="list-style-type: none"> • What types of licence checks are in place? • What is company policy? • Do they request to see the employees' driver's licence before they drive the vehicle? • How often do they check the employees' driving status? • What type of work is involved? • How long has the driver been employed with the company? • Have they ever given this individual a vehicle to drive before?

Driver took vehicle without owner's knowledge or consent

Under the *MVA s.258(1)(a)*, the owner of a vehicle can apply for release if they can demonstrate that the driver took the vehicle without the owner's knowledge or consent. Knowledge is a factual question: Did the owner actually know that the driver took the vehicle? The test is not whether a reasonable person should have been expected to know that in the circumstances the person was likely to take the vehicle – only whether the owner actually knew that the vehicle had been taken.

Lack of knowledge by itself is not enough to demonstrate a lack of "knowledge or consent." In this context, the word "or" creates multiple obligations rather than one alternative obligation. Therefore, if you can establish that the owner had no knowledge that the vehicle was being taken, you must establish whether or not there was consent. Consent refers to implicit as well as explicit consent, and to a general pattern of consent as opposed to a particular instance.

- The test for explicit consent is a factual determination: If evidence suggests that the applicant explicitly consented to the use of the vehicle, you can establish consent and confirm the impoundment.
- If you cannot establish explicit consent, you must consider whether or not there was implied consent. Consent can be implied where it is likely that, if the driver had sought consent, the owner would have granted it as a matter of course.

Grounds	Take into consideration
Driver was in possession of the motor vehicle without owner's knowledge or consent.	<p>Evidence going to knowledge:</p> <ul style="list-style-type: none"> • Where was the owner when the vehicle was taken? • Where was the vehicle when it was taken? • How did the driver take the vehicle without the owner's knowledge? • Where were the keys kept? <p>Evidence going to consent:</p> <ul style="list-style-type: none"> • Is the driver allowed to drive the vehicle? If no, why not? If yes, ask owner why they applied on this ground, as it may be a case of reasonable care and diligence instead. • Who has the keys to the vehicle? • Where were the keys placed? • How did the driver know where the keys were? • What did the owner do when they noticed the vehicle was gone? Did they report it stolen? • How did the driver take the vehicle without the owner's consent? <p>Evidence going to implied consent:</p> <ul style="list-style-type: none"> • Has the driver ever driven the vehicle in the past? If yes, what led to the withdrawal of consent? • How did the owner advise the driver that they had removed their consent? • If the driver had asked to use the vehicle, how would the owner have responded?

Sometimes the owner may have knowledge that the vehicle was being taken but consent was expressly denied, such as if the keys were taken by force. In such a case, interpretation of the word "or" should not preclude the release of the vehicle, because the grounds for review under knowledge or consent intersect with the grounds of review under reasonable care and diligence. The owner must demonstrate that they took steps to prevent the driver from taking the vehicle, and took steps to ensure that the driver knew they did not have consent.

Note: In cases where the vehicle was stolen according to the police report, the OSMV does not get involved because the police will simply release the impounded vehicle to the owner. However, if the police do not believe the vehicle was stolen, the applicant can apply for a review and try to convince the adjudicator that the vehicle was taken without their knowledge or consent.

Owner Disputes Period of Impoundment

This ground applies if the owner does not own a motor vehicle that was impounded within the last two years. The test under this ground is one of fact. You need only make a factual determination on whether or not the owner is the owner of a vehicle impounded within a two-year period prior to this impoundment, under the same section of the *MVA*. You can confirm the impoundment period under **Vehicle Tab** in ADP/VI by clicking on **Prior VI's** and doing a search.

Note: Upgrading or downgrading of an impoundment is done by the Appeals Registry and is noted on the file cover sheet.

Grounds	Take into consideration
Owner is not the owner of any motor vehicle impounded within two years before the date of this impoundment, under the same section of the <i>MVA</i> .	<ul style="list-style-type: none"> Does the ADP/VI system show that the owner had an impoundment within two years of the date of this impoundment, under the same section of the <i>MVA</i>?

An owner or driver requesting a review (of an IRP or non-impaired offence) might dispute an impoundment term by claiming they did not commit an offence when the prior (shorter) impoundment was issued. You are not obligated to investigate the circumstances of the previous impoundment. However, you should downgrade the term if the owner provides evidence to support their claim.

Compassionate Release Grounds for Cohabitants

A person who lives with the driver (“cohabitant”) may apply for compassionate release of the vehicle under the *MVA* s.263, if they hold a valid driver’s licence and have no reasonable alternative form of transportation.

This ground does **not** apply to the driver or registered owner of a vehicle, only to a cohabitant. Therefore, you do not need to consider whether the vehicle should have been impounded.

A person may apply for compassionate release of a vehicle if they meet all of the following conditions:

- They hold a valid licence or permit to operate a motor vehicle, issued under the *MVA* or in another jurisdiction.
- They are not prohibited or suspended from driving a motor vehicle.
- They are cohabitating with the owner of a motor vehicle at the time the vehicle was impounded under Section 251(1)(a), (b), or (c).
- They have the consent of the registered owner.
- They can demonstrate that the impoundment of the motor vehicle will:
 - Cause them to suffer a loss or curtailment of employment or educational opportunities, or
 - Prevent them, or someone under their care, from obtaining medical treatment.
- They have no reasonable alternative form of transportation, including public transportation that would:
 - Prevent the loss or curtailment of employment or educational opportunities; or
 - Allow the medical treatment to be obtained.

The applicant must demonstrate that any curtailment of employment or educational opportunities will cause hardship, and that the impact of the curtailment on future related activities will be significant. You can use discretion to determine whether or not any given curtailment constitutes a hardship.

Grounds	Take into consideration
Compassionate release of a vehicle to a cohabitant under the <i>MVA</i> s.263.	<ul style="list-style-type: none"> • What is the applicant's relationship with the driver of the impounded vehicle? • Does the applicant hold a valid driver's licence? • Was the applicant cohabitating with the owner at the time of impoundment? • Why aren't other means of transportation available or reasonable to the applicant?

Economic Hardship Grounds for Business Owners

Business owners may apply for the early release of a vehicle on economic hardship grounds under the *MVA* s.262. The ground was designed as a way to recover an impounded vehicle used in an active business; therefore, you do not need to consider whether the vehicle should have been impounded.

You must establish two facts:

- The vehicle is used in an active sole proprietorship, partnership, or company.
- The business has a reasonable prospect of earning income that depends on the impounded vehicle, and the continued impoundment would impose an economic hardship on the company.

Once those two facts are established, other factors to consider include:

- Whether the income generated by the impounded vehicle is a substantial amount of the anticipated income of the business, or
- Whether the impoundment otherwise imposes an economic hardship on the business.

Relevant evidence would include financial documents or other information that establishes the anticipated income of the impounded vehicle, and evidence speaking to the reliance of the business on the particular vehicle in question during the period of impoundment.

Grounds	Take into consideration
Economic hardship grounds for business owners under the <i>MVA</i> s.262.	<ul style="list-style-type: none"> • How many vehicles does the owner's company have? • Is the vehicle in question specialized? • What is the vehicle used for? • Is there any special equipment attached to the vehicle? • What makes the vehicle so important?

Grounds for race offence	Take into consideration
<p>Motor vehicle was not operated in a race as defined under the <i>MVA</i> s.250.</p>	<p>Driving behaviour:</p> <ul style="list-style-type: none"> • Eye or verbal contact between drivers • Revving of engine before accelerating • Quick acceleration from a stationary position • Skid (tire burn) marks • Straddling lines on road in order to pass/keep up with other vehicles • Two or more vehicles travelling close together and/or side-by-side at excessive speeds • Driver(s) ignoring traffic signs/signals • One driver trying to overtake another driver, outdistance another driver, or prevent another driver from passing. <p>Speed</p> <ul style="list-style-type: none"> • What was the speed of the vehicle? • What was the posted speed limit? • How quickly did the driver(s) accelerate? <p>Other:</p> <ul style="list-style-type: none"> • Were there racing modifications to the vehicle? • Was there any evidence of an organized race? • If the incident involved more than one vehicle, did the drivers of the vehicles know each other? • What time of day did the incident occur? (Generally, races take place at night and early morning.)

4.2, Conducting Reviews for Vehicle Impoundments

This procedure contains specific information relevant to conducting reviews for vehicle impoundments, including:

- Types of review
- Owner or driver *Application for Review*
- Information to consider in a review
- Reviewing the file
- Stayed prohibitions

When conducting a VI review, you should apply the same rules, skill sets, and guidelines as you do for driving prohibition reviews. See Section 2.2, *Legal and Policy Issues for Reviews*.

For information on the grounds for review of an impoundment, and what you should consider as criteria for meeting those grounds, see Section 4.1, *Grounds for Review for Vehicle Impoundments*. That section also explains criteria for Compassionate grounds and Economic Hardship grounds.

Note: Detailed information on vehicle impoundment reviews, as well as unlicensed driving prohibition reviews, can be found in the *Vehicle Impoundment Manual*.

Owner or Driver Application for Review

An owner or driver who wishes to dispute a 30-day vehicle impoundment on the grounds that they disagree with the associated impaired driving prohibition must apply for a review of the IRP. These reviews, including how to conduct an oral hearing, are covered in Section 3.2, *Conducting Reviews for Impaired Driving Prohibitions*.

An owner or driver can also dispute a 30 or 60-day escalated impoundment by applying for a review of an unlicensed driving prohibition.

The outcome of these reviews will resolve whether a vehicle should be released, provided there are no other outstanding offences associated with the impoundment (such as excessive speed and race and stunt offences). When drivers have a review of their driving prohibition, you must consider all applicable offenses as part of making a decision on whether to release the vehicle.

Under the *MVA* (Sections 256 to 258) there is a right to apply for early release of a vehicle under certain grounds that are independent of the driving prohibition. Those who reside with a vehicle owner and hold a valid driver's licence may apply for a release on compassionate grounds. Business owners may apply for early release of their vehicle on economic hardship grounds. They must apply within 15 days of the *Notice of Impoundment*.

For some non-impaired driving offences, the driver's vehicle is impounded but there is no accompanying driving prohibition. Impoundment-only offences include excessive speed, race and stunt offences, and motorcycle offences. In these

cases, the owner or driver may request a separate review of a 30 or 60-day impoundment that was escalated by the OSMV.

Types of Review

The driver or owner has a right to apply for a review of a 30 or 60-day impoundment under the MVA s. 256(1). There is no review process available for a 3 or 7-day impoundment.

Prohibition / Offence Type	Vehicle Impoundment	Oral Review	Written Review
IRP	30-day mandatory vehicle impoundment	Yes*	Yes
Unlicensed driving prohibition	30 or 60-day escalated vehicle impoundment	No	Yes
Non-impaired offences, including prohibited or suspended driver, excessive speed, race or stunt offence, and motorcycle offences	30 or 60-day escalated vehicle impoundment	Yes	Yes

* For procedures on oral reviews, See Section 4.2, *Conducting an Oral Hearing*

Written reviews Applicant submissions for a written review range from a single handwritten statement to multipage submissions including sworn affidavit evidence from experts and witnesses, and even photographs. The lawyer’s written arguments may include copies of supporting legal cases or transcripts of criminal proceedings. The applicant (owner or driver) is responsible for supplying all relevant evidence to support their case.

Oral reviews The same material submitted for a written review may also be submitted for an oral review.

Oral reviews are conducted by telephone, and must be done in a place that provides privacy for both you and the applicant. Hearing rooms are available for oral reviews.

Note: Do not arrange in-person reviews at the OSMV office because there is not enough space. If there is a very compelling reason for an in-person review, discuss the situation with your Team Leader before scheduling it.

There are several advantages to an oral review compared to a written review:

- It allows the adjudicator to clarify issues relating to the evidence.
- It allows the applicant/lawyer to address questions raised by the adjudicator.
- It can help the adjudicator better assess the applicant’s credibility (and that of any witnesses)
- Complex arguments are more easily discussed and understood in an oral review.
- The applicant may have personal circumstances they are reluctant to share in a written submission.

Information to Consider in a Review

It is your duty to review all evidence before you, no matter how extensive, and to not exclude any relevant evidence from consideration when making a decision. To conduct vehicle impoundment reviews, you must consider the incident report from the police, as well as the *Report to Superintendent (VI)*. You can also access and use the following:

- The information you have before you in the file, including:
 - Any relevant statements or information provided by the police officer, whether sworn or unsworn
 - Any relevant evidence or representations submitted by the applicant/lawyer for the review
- Relevant case law and the legal opinion folder on the common drive.
- The ADP/VI and Drivers databases to look at past reviews, driver history, and previous impoundments. (For example, if the owner says someone took their car without their knowledge or consent, you can look up relevant information such as whether the same person was driving in a previous impoundment incident).

For impoundments associated with an IRP, you may be able to consider the IRP *Report to Superintendent* in addition to the RTS for the vehicle impoundment, according to an OSMV legal opinion. Check with the Team Leader first.

Note: To ensure you have all the evidence submitted, check the ADP/VI system for faxes from the police and the applicant/lawyer, and contact an Intake Agent to see if they received anything. Do not contact the applicant to ask for a submission.

The applicant must provide enough evidence to satisfy you that they meet one of the grounds for release as set out in the *MVA s.258*.

The incident report from the police may be called the *PRIME Report*, or *PRIME Occurrence Report*, or *Report to Crown Counsel*. It outlines the details and circumstances of the event in question, and identifies the "serious offence" with which the officer intends to charge the driver. The incident report may or may not have been completed at the roadside by the police officer. For this reason, you must balance the incident report with the details found in other submissions from the officer when trying to assess whether the owner of an impounded vehicle was involved in a race.

The *Report to Superintendent* includes information similar to that contained in the incident report. Where it is unsafe or impractical to complete an incident report at the side of the road, the police officer may use the *Report to Superintendent* as the incident report.

You **cannot** look at or consider the following:

- Evidence of hardship, transportation needs, personal circumstances, prior criminal convictions, and similar irrelevant evidence (except from co-habitants applying under Compassionate grounds or business owners applying under Economic Hardship grounds).
- Any other arguments and evidence that you determine are not relevant to the issue at hand, or outside your jurisdictional limits. (See later in this section for information on the jurisdictional limits of adjudicators.)

Reviewing the File

Each adjudicator can develop their own method of reviewing a file, but the important thing is to read all the evidence and address the issues that will determine the outcome. You may want to organize the evidence so you can find the information easily if the applicant/lawyer refers to specific sections.

When reviewing the file, keep the file contents in the same order they were in when you received the file. This will enable you and anyone looking at the file to quickly determine which documents were faxed to the lawyer. You may use a highlighter to review a file, but do not write on the evidence itself. You may also make case notes, but do not include them in the file.

Note: If issues come up around the grounds for review while you're reviewing the file, refer to Section 2.2, *Grounds for Review for Vehicle Impoundments*.

The following is a recommended way to review an impoundment file (see the *Foundations of Administrative Justice* manual for more suggestions).

1. Check the Drivers database to ensure the appropriate escalation was applied by the officer for impaired driving prohibitions, or by the OSMV for non-impaired prohibitions and offences.
2. Check that the *Report to Superintendent* from police is completed fully and is signed by the investigating officer.

Note: For further existing legal advice on the RTS, ask your Team Leader or check the Case Law files.

3. Check ADP/VI to verify the date of impoundment, the review date, and the phone number to call if it is an oral review.
4. Check the number of pages of disclosure faxed to the applicant/lawyer against the documents or evidence you will be considering. Also look on the *Application for Review* form to see what documents have been requested by the applicant.
5. Check that the disclosed evidence was sent to the correct fax number by checking the number on the fax transmittal report against the number for the lawyer listed on the cover sheet.
6. Read the file for any administrative and jurisdictional errors, because you may need to inform the applicant of the error before they make submissions.
7. Read the evidence to form a picture in your mind of what happened.
8. Assess the credibility and weight of the evidence by considering sworn vs. unsworn evidence, hearsay evidence, expert opinion evidence, and so on.

Note: If you discover errors or missing information in the file (for example, evidence has not been disclosed to the applicant), return the file to the Appeal Registry.

Conducting an Oral Hearing

A sample script for an oral hearing is included in Appendix 1.

Note: The Team Leader may occasionally sit in on oral hearings for monitoring and evaluation purposes.

Calling the applicant/lawyer

The applicant's telephone number can be found on the *Application for Review* form, or on the ADP/VI database or *Review Schedule Report*.

If there is no answer or the number is busy, double-check to be sure you have the correct number. If you get voicemail and need to leave a message and call-back number, **do not leave your own name and number**. Provide the Appeal Registry phone number: 250-356-6573 (fax: 250-356-6544).

If you cannot reach the applicant/lawyer at the scheduled review time, leave a message asking the applicant to call the Appeal Registry as soon as possible, but also state that you will call back in 10 minutes to try and conduct the hearing. If you call back in 10 minutes and again cannot reach the applicant, leave the same message again. If on the third try, you still get voicemail, inform the applicant that the oral review cannot be rescheduled and has now reverted to a written review. Make a note of the calls in the **Comments** tab in the ADP/VI system.

When you reach the applicant/lawyer to conduct the review, you may wish to identify yourself only as an adjudicator with the Office of the Superintendent of Motor Vehicles, for safety reasons. Some adjudicators identify themselves as "Adjudicator (last name)" while others state only their first names. If you do not wish to use your real name, you may use an alias with prior approval from your Team Leader.

You are not responsible for providing a teleconference call to enable all parties to participate. It is preferable for the applicant, lawyer, and any witnesses to be together at the lawyer's office. If the applicant/lawyer wishes to set up a teleconference call, you must be able to call in or link in at the scheduled time yourself, rather than the applicant/lawyer calling you.

Note: Keep in mind that hearings are only 30 minutes long and cannot be put on hold or extended. It is important that you maintain control of the hearing by not allowing participants to introduce irrelevant matters or evidence. Although there is usually some leeway in scheduling to allow you to go over the 30-minute limit by a few minutes, this should rarely be necessary and is strongly discouraged.

Verifying attendees

Before starting the oral hearing:

- Verify the applicant's name, the VI number, and whether the applicant has received disclosure of all the evidence before you.
- Verify that the lawyer is present, if the applicant has one.
- Verify the presence of any witnesses and have them identify themselves.
- Verify whether an interpreter is present and if so, have them identify themselves. (The interpreter's role is confined to translating, not advocating for the applicant.)

For sworn testimony, the applicant's lawyer should swear in their applicant and any witnesses. This enables the applicant to present sworn testimony in response to the lawyer's questions or to tell the adjudicator directly their sworn version of events. It is not necessary for witnesses to be approved or have their names submitted in advance of the hearing. You must be prepared to take evidence from witnesses if the applicant/lawyer supplies any.

Note: If the applicant has a lawyer, the applicant is not obligated to attend the hearing with the lawyer. Alternatively, the applicant may choose to be present, but not participate.

Clients without lawyers If the applicant does not have a lawyer, you should go over the available grounds for review with the applicant, in case the applicant has prepared only a hardship submission.

Adjudicator participation in the review You have some discretion in terms of how much you participate in the hearing. Your main role is to hear the applicant's story and evidence, so if you prefer, you can limit yourself to accepting and listening to submissions. Alternatively, you may direct the interview to encourage the applicant to cover ground they may not have considered. However, keep your direction general and suggestive; do not ask specific questions in order to obtain missing evidence.

You may also wish to adjust your interviewing style if the applicant has a lawyer, since lawyers will present their applicant's case in the manner they think best.

Your role is neither a therapeutic nor a combative one. Refrain from "descending into the arena" or you will risk allegations of apprehension of bias.

Note-taking You should take notes during hearings, either on a computer or by hand. You will need your notes to write the decision, so ensure they are complete and legible. They must accurately reflect the arguments and evidence presented, in a format you can understand.

Note: Your notes are private and non-disclosable, even if the applicant/lawyer later alleges a perceived bias. Never keep your notes in the file, as they may be disclosed if there is a judicial review. Your notes should be destroyed after you submit your decision.

Adjourning a hearing An oral hearing in progress can be adjourned if the applicant/lawyer needs more time to locate missing documents, affidavits, or witnesses. Do not close the hearing, because evidence cannot be submitted after a hearing is closed. An oral hearing can also be adjourned to a written review when written evidence is being submitted.

Allow a reasonable amount of time for an adjournment, depending on the circumstances. You may adjourn hearings for just a few minutes if, for example, you need to move to a different phone to call back the applicant and complete the review. If the applicant/lawyer needs to obtain missing information and can do so quickly, adjourn the hearing until later in the day. If documents must be obtained from police or an expert, a week's adjournment may be required. There is no maximum adjournment period, but it should be no longer than necessary.

Conducting a Written Review

Written reviews are scheduled for a certain time of day on the *Review Schedule Report*. Wherever possible, you should conduct written reviews at the scheduled time or on the same day as written submissions were received from the applicant/lawyer.

Do not contact the applicant to ask for a written submission. A written review can proceed without any submissions from the applicant. In other words, if there is a lack of evidence to support the application, there is nothing you can do about it. You must make a decision based only on the evidence in front of you.

4.3, Writing Review Decisions for Vehicle Impoundments

This procedure outlines policies and guidelines for writing review decisions for disputed vehicle impoundments. It covers the following topics:

- Revoking an impoundment
- Confirming an impoundment
-
- Justifying a decision
- Decision standards
- Legal issues / legal advice
- Using the letter templates
- Using the checklists
- Peer review of decision

Vehicle impoundment decisions must be made and sent within 7 days of an oral or written hearing.

After analyzing the nature, quality, and sufficiency of the evidence from both the applicant and the police, you will decide whether or not to revoke the impoundment or prohibition.

Under the *MVA* (s. 215.5), your decisions are limited to the following:

- Confirming an impoundment
- Revoking an impoundment

For detailed information on vehicle impoundment decisions, see the *Vehicle Impoundment Manual*.

Note: Once you have finished your written review, you are under no obligation to accept late applicant/lawyer submissions. At your discretion however, you may accept late submissions if you have not yet sent the decision. (Late submissions **cannot** be accepted after an oral hearing.)

Revoking an Impoundment

Under the *MVA* s.258, you must revoke an impoundment if you confirm any of the following:

- The driver was in possession of the vehicle without the knowledge or consent of the owner.
- The owner exercised reasonable care and diligence in entrusting the motor vehicle to the driver.
- For impoundments done under s.251(1)(a), the driver was not prohibited from driving under any s.251(1)(a) provision at the time the vehicle was impounded.
- For impoundments done under s.251(1)(b), the driver's licence and the driver's right to obtain a driver's licence were not suspended under Sections 89(1)(b) or (c), 232, or 233 at the time the vehicle was impounded.

- For impoundments done under s.251(1)(c), the driver held a valid driver's licence, or was exempt under s.34 from holding a driver's licence, or a notice should not have been placed on their record under s.252(1).

However, if there are additional outstanding offences related to the impoundment, do not revoke the impoundment. (You may still consider whether a substitution is warranted.)

If you revoke the impoundment, arrange for release of the vehicle from the impound lot:

- Contact the owner to inform them their vehicle is being released.
- Fax an *Order of Release* to the impound lot.

Note: Because 3 and 7-day impoundments for impaired driving will already be completed by the time an IRP review takes place, a revoked impoundment means that vehicles are released earlier only for 30 and 60-day impoundments. However, all revoked impoundments are removed from the driver's record, with the driver entitled to refunds for towing and storage costs.

Confirming an Impoundment

If you cannot confirm any of the circumstances listed above under *Revoking an Impoundment*, you must confirm the impoundment and not release the vehicle if it is still impounded.

Justifying a Decision

Reasons for the decision must be given in the decision letter, as required by the Supreme Court of Canada in *Baker*. The reasons must be clear and logical, and drawn from your findings of fact. Properly justifying a decision fulfills the criteria of administrative justice, and allows the client to consider whether to exercise their right to a judicial review to the Supreme Court of British Columbia.

If you determine that any evidence or arguments presented by the applicant/lawyer are irrelevant or non-credible, you must include written reasons for rejecting them in both successful and unsuccessful decision letters.

Decision Standards

You must follow these standards when writing the decision:

- Write clearly and concisely, in plain English.
- Express yourself in neutral terms and do not show any bias.
- Include a section explaining preliminary matters including biases, limitations, and jurisdiction.
- If you have no jurisdiction to answer a question or offer a remedy, acknowledge this. (*Charter* arguments and personal hardship arguments are examples.)
- Clearly identify the issues at the outset.
- State your decision and the reasons for it.
- Enumerate the information and evidence you reviewed to make the decision.

- Identify a clear set of relevant findings of fact, fairly drawn from the evidence. Respond to all the relevant submissions and arguments.
- Where there is conflicting evidence, explicitly identify the findings of fact on which the conclusions are based and the reasons for them.
- If irrelevant or non-credible evidence was presented, explain why you have not considered it.
- Ensure your reasoning is clear and understandable, and leads to a logical conclusion.
- Do not venture beyond what needs to be decided – avoid editorial comments, such as observations about lack of evidence, or what the result “might have been” with different evidence. Also avoid criticizing any person and disclosing unnecessary personal information.

Note: Anything relevant in your hearing notes must be included in the decision. However, your notes are private and non-disclosable, even if the applicant/lawyer later alleges a perceived bias. (They must be kept separate from the file and will be destroyed later.)

Legal Issues / Legal Advice

You are not allowed to do your own legal research, since that would put you in the role of investigator. You have access only to the relevant case law provided to you during training, and the legal opinion folder on the common W drive. Your role is to listen to what’s presented to you, and then apply the relevant case law and legal opinion, which you should be familiar with.

You are permitted to contact OSMV legal counsel through your Team Leader. The Team Leader will attempt to resolve the issue directly, obtain legal advice, or talk to a senior member of OSMV.

In cases where the applicant/lawyer is aware that you need to ask for legal advice (for example, on an interpretation of the evidence), you must disclose the information you receive to the applicant/lawyer. This is not necessary for simple clarifying questions.

Using the Letter Templates

Several Microsoft Word templates allow adjudicators to more easily prepare decision letters. A template saves having to retype the basic structure and elements of a decision letter and helps standardize its appearance. The templates can be modified and are not mandatory to use, but keep in mind that the OSMV has formatting policies for all correspondence leaving the office. For example, no underlining or the use of bold for emphasis is permitted.

Sample templates for VI decision letters are included in Appendix 3, *Forms and Templates*, including for:

- Compassionate
- Economic hardship
- Impaired
- Non-Impaired

While writing your decisions, save drafts to the **In-progress** folder on the W drive.

Peer Review of the Decision

Once you've written the decision, it must be edited by a peer reviewer (who may be another adjudicator).

1. Do not record your decision yet in ADP/VI.
2. Complete the *Adjudicator Decision Checklist* (see Appendix 3) and place it in the file.
3. Place a hard copy of the decision letter in the file and put it in the peer review basket (based on the date you require it back). If the review was successful, place a red RUSH flag on the folder.
4. Fill in the Peer Review log.

Note: Record which files you have sent for peer review, and when they need to be sent to the applicant. It is your responsibility to ensure that you do not miss any deadlines.

5. After receiving the edited decision (see below), review the corrections and make the necessary revisions to your decision. You may discuss any of the requested corrections with the peer reviewer.
6. Finalize the decision and record it in ADP/VI (see Section 4.4, *Completing Review Files for Vehicle Impoundments*).

The peer reviewer will conduct a comprehensive review of the decision letter, including:

- Correcting punctuation, spelling, and grammar
- Verifying the impoundment release date
- Ensuring the decision is clearly written
- Ensuring the reasons for your decision are understandable
- Verifying correct name and address of applicant, dates, file numbers, etc.
- Substantively reviewing the decision to ensure that all arguments and evidence have been properly evaluated and addressed
- Signing off on items checked off on the checklist once satisfied that they have been appropriately addressed

Note: If a peer reviewer notes any significant misapprehensions by the adjudicator on the evidence or arguments, the peer reviewer will discuss the issue with the adjudicator in a respectful and constructive manner. If they cannot agree and the peer reviewer feels the matter is crucial, the peer reviewer should bring the file to a Team Leader.

4.4, Completing Review Files for Vehicle Impoundments

This procedure outlines how to complete review files for vehicle impoundments. It covers procedures for finalizing the paperwork, updating databases, sending the decision to the applicant/lawyer, and filing the file, for each of these circumstances:

- Successful impoundment review
- Unsuccessful impoundment review

If an applicant/lawyer cancels a review before it takes place, simply update the ADP/VI system accordingly, explaining in the **Comments** tab why the review was cancelled. Then file the review file. There is no refund for a cancelled review.

Successful Impoundment Review

Towing and storage fees If the applicant succeeds in having their impoundment revoked (not just downgraded), the OSMV pays towing and storage except in the following circumstances:

- **Economic hardship:** The review fee is non-refundable and OSMV does not release the vehicle. Instead, the applicant must be sent to ICBC for release. Enter a comment in ADP/VI that the vehicle can be released on a successful economic hardship review. In addition to towing, storage, and related fees, the applicant must pay an economic hardship fee at a Driver Services Centre.
- **Compassionate release:** The review fee is non-refundable and the applicant must pay a release fee at a Driver Services Centre before OSMV will release the vehicle. The applicant is responsible for all towing, storage, and related costs.

Note: Use this procedure only where the applicant applied for a separate review of the impoundment itself (i.e., not solely because of an associated driving prohibition).

Procedure Follow this procedure for a successful impoundment review:

1. In MS Word, freeze the date in your decision letter (i.e., change the date to a hard format so it will no longer automatically update to the current date).
2. Print two copies of the decision.
3. Save the decision on the W drive (W:\Correspondence Unit\adp_v\VI Decisions – Current Month).
4. If the applicant has a lawyer, send them a fax:
 - Open a fax cover sheet by selecting from MS Word: **File, New, General Templates, More** (tab), **Faxes, FAX-General.dot**.
 - Follow the prompts and fill in the information (enter your name, title, fax number, and total number of pages).

- Enter the fax subject as: "Review Decision for vehicle impoundment # [number, name]."
 - Print the fax cover sheet. Do not save it in MS Word.
 - Fax the decision to the lawyer (using the number from the disclosure fax confirmation).
 - Keep the fax confirmation sheet and fax cover sheet in the review file.
5. If the applicant does not have a lawyer, notify the applicant by telephone of the decision, and tell them their vehicle is being released.

Note: If you get an answering machine, leave only your name and number (250-356-6573), or call back in 10 minutes. Do not leave a message, as the applicant may not be the only one to hear the message.

6. If the vehicle needs to be released, complete an *Order of Release* by hand:
- Ensure the **Vehicle Impoundment Number** includes the prefix "20-".
 - For the **Impound Lot Address**, enter their fax number.
 - If the review was successful on any of the VI grounds, check the box: "Collect towing and storage costs from the owner or authorized person."
 - Fax the *Order of Release* to the ILO (impound lot operator).

Note: The vehicle may already be released if the impoundment period has expired, or if the owner was unlicensed and has now obtained a valid licence, or if the vehicle was stolen.

If an impoundment is downgraded but the impoundment period has not expired yet, notify the ILO of the new impoundment term length, and process the *Order of Release* on the release date. The owner will be responsible for towing and storage costs.

7. For *Notices of Impoundment* prior to September 2010 that resulted in a revocation, complete a *Refund Request*:
- Open the *Refund Request* form template from: W:\Staff\cop\ADP\Refund form 2005.dot.
 - Check the Drivers system for the **Applicant No** (use command **qcn**).
 - Check the bottom right of the *Application for Review* for the **Original Receipt No/Ticket No**.
 - Check off **\$100** for an oral review, or **\$50** for a written review.
 - Print two copies of the refund request. Do not save it in MS Word.
 - Leave one copy in the Team Leader's basket. (The Team Leader will review it and fax it to ICBC.)

Note: As of September 2010, refunds of the impoundment review application fee are no longer provided when the review is successful.

8. Update the ADP/VI system:
- In the **Review** tab, click **Decision**.

- Indicate the decision (**Successful** or **Downgraded**), review date, date mailed, grounds for review, date phoned, and your name (first initial and last name only).
 - Add the following in the **Comments** tab:
 - Successful: "Review successful, letter sent on *[date]*, applicant called, Order of Release faxed to ILO on *[date]*."
 - Downgrade: "Impoundment downgraded to *[period]*, letter sent, called applicant."
 - If more than one review was conducted or multiple grounds were considered, note the details in the **Comments**.
 - Open the VI file.
 - In the **Misc** tab, select the **Release Reason** and indicate the authorized release date under **MVB Auth. Release Dt**.
 - Press **Save** and **OK**. (ICBC's Vehicles and ADC systems will be automatically updated with the authorized release date.)
9. Remove the prohibition and change the date of the VI candidate flag in Drivers to reflect the same date as the *MVA s.24(1)* offence (no driver's licence).
10. Mail one copy of decision to the applicant.
- Ensure you have the applicant's complete and accurate name and address (take from the *Application for Review*).
 - Place it in a window envelope with the Ministry name and logo.
 - Ensure that only the applicant's name and address is visible in the window.
 - Place the sealed envelope in the outgoing mail basket.
11. File the completed folder in the file room:
- Remove from the file any notes, including your hearing notes.
 - Remove the *Adjudicator Worksheet* stapled to the front and the file tracking sheet from the front of the file.
 - Mark or stamp as "File Copy" the second copy of the decision and the *Refund Request*.
 - Place the file in the appropriate place in the file room. Files are stored in numerical order by month served (the date on the file's tab).
 - Shred your notes.
 - Place the *Checklist of Facts* in your Team Leader's inbox.
12. Complete the *Prohibition Log* (see later in this section for more information).

Unsuccessful Impoundment Review

Follow this procedure for an unsuccessful review that confirmed a vehicle impoundment or upgraded it to a longer term:

1. In MS Word, freeze the date in your decision letter (i.e., change the date to a hard format so it will no longer automatically update to the current date).
2. Print two copies of the decision.
3. Save the decision on the W drive (W:\Correspondence Unit\adp_vi\VI Decisions – Current Month).

4. If the applicant has a lawyer, send them a fax:
 - Open a fax cover sheet by selecting from MS Word: **File, New, General Templates, More** (tab), **Faxes, FAX-General.dot**.
 - Follow the prompts and fill in the information (enter your name, title, fax number, and total number of pages).
 - Enter the fax subject as: "Review Decision for vehicle impoundment # [number, name]."
 - Print the fax cover sheet. Do not save it in MS Word.
 - Fax the decision to the lawyer (using the number from the disclosure fax confirmation).
 - Keep the fax confirmation sheet and fax cover sheet in the review file.

Note: If the applicant does not have a lawyer, do **not** notify the applicant of the confirmed or upgraded impoundment by telephone. Impoundments are confidential. Do not leave messages or discuss with anyone.

5. Update the ADP/VI system:
 - In the **Review** tab, click **Decision**.
 - Indicate the decision (**Unsuccessful**), review date, date mailed, grounds for review, and your name (first initial and last name only).
 - Add the following in the **Comments** tab:
 - Unsuccessful: "Review successful, letter sent on [date], applicant called, Order of Release faxed to ILO on [date]."
 - If more than one review was conducted or multiple grounds were considered, note the details in the **Comments**.
 - Press **Save** and **OK**.
6. Mail one copy of decision to the applicant.
 - Ensure you have the applicant's complete and accurate name and address (take from the *Application for Review*).
 - Place it in a window envelope with the Ministry name and logo.
 - Ensure that only the applicant's name and address is visible in the window.
 - Place the sealed envelope in the outgoing mail basket.
7. File the completed folder in the file room:
 - Remove from the file any notes, including your hearing notes and the *Adjudicator Worksheet*.
 - Remove the file tracking sheet from the front of the file and add it to the file along with any final notes you wish to enter.
 - Mark or stamp as "File Copy" the second copy of the decision, *Refund Request*, and *Application for Review*.
 - Place the file in the appropriate VI file in numerical order by month served (the date on the file's tab).
 - Shred your notes.
8. Complete the *VI Log* (see below).

VI Log

For statistical purposes, you must keep a record of the results of every review you complete.

Note: In the future, the ADP/VI system will be able to produce these statistics, but in the meantime adjudicators should continue to use the *VI Log*.

The *VI Log* can be found at: W "W:\Correspondence Unit\VI Team Folder\VI Stats\VI Team Stats.xlsx". It is an Excel spreadsheet.

To complete the log:

1. Enter the required data under each column in the table.
2. Enter statistics in the format requested. For example, the required date format is **dd-mmm-yyyy**.

Note: Do not cut and paste data from a Word document or email program, as this will interfere with the functionality of the Excel sheet.

3. As you enter the data in each cell, press **Enter** to save it.
4. After entering all the data, double-check the accuracy, especially your numbers, the VI file number, and applicant name.
5. Save the VI Log.
6. **Important:** Close the log, as it can only be accessed by one person at a time.

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Not Responsive

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