



~~March 29~~, 2012

REVIEW DECISION Administrative Driving Prohibition (ADP)

Introduction

On March 9, 2012, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Issues

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

Issues

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

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Facts, Evidence and Analysis

Did you fail or refuse to comply with a demand?

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

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

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

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

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

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

Decision

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

I therefore revoke your driving prohibition, as required by section 94.6 of the Act. You may resume driving but only after you have obtained a driver's licence from the Insurance Corporation of British Columbia. A refund of your review fee has been authorized and will be sent to you in approximately 6 – 8 weeks. If you have any outstanding fines or debts owing to the Province of British Columbia, your refund may be used to help offset those debts.

Adjudicator

cc: Dilraj Gosal
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