

REVIEW DECISION

Immediate Roadside Prohibition (IRP) No. [REDACTED]

Introduction

On August 2015, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

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

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

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

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

Preliminary Matters

On your application, you selected all thirteen of the grounds for review, several of which are not applicable to your situation because the officer alleged that you failed or refused, without a reasonable excuse, to comply with a demand for a breath sample, which is the reason you were prohibited from driving. Nonetheless, for your benefit, I have considered all the grounds that are applicable to you in this review.

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

IRP
Refusal
Allegation.
Lawyer
DIL
GOSAL
WINS
CASE!

Issues

The following are the issues in this review:

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

Facts, Evidence and Analysis

I find that there is one issue that is determinative of this review. As such, I will only address the following ground.

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

Considering the entirety of the evidence before me, I am not satisfied that you did intend to fail or refuse to comply with an ASD demand.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by section 215.5(4) of the *MVA*. You may resume driving after you have obtained a driver's licence from the Insurance Corporation of British Columbia. If you hold an Enhanced Driver's Licence, you must make an appointment to reapply for that licence. Please note that this decision does not change any other prohibitions from driving or licensing requirements.

If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including August 2015. You are responsible for any storage costs beyond that date. You should know that if the vehicle is not reclaimed, the impound lot may apply to the Superintendent of Motor Vehicles to dispose of the vehicle.

Adjudicator 

cc: Dilraj Gosal
fax: 604-510-