



JULY 28, 2011

KAMLOOPS BC

FEED FAX THIS END

<b>FAX</b>	
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**REVIEW DECISION Immediate Roadside Prohibition (IRP)**

**Introduction**

On July 10, 2011, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* requires me to confirm your prohibition if I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*, and that the approved screening device (ASD) registered a "fail".

I must revoke your driving prohibition if I am satisfied that you were not a driver within the meaning of section 215.41(1), or that the ASD did not register a "fail".

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

**Preliminary Matters**

Records at this office confirm that disclosure was provided to your lawyer, Dilraj Gosal prior to your scheduled written hearing. I have proceeded with the hearing based on this confirmation.

**Issues**

There are two issues in this review:

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

**Facts, Evidence and Analysis**

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

Constable . . . indicated that on July 10, 2011, at 18:10 hours, you had care or control of a motor vehicle on . . . avenue in . . . in his report, he stated that police received an emergency call from the . . . bingo hall. The officer observed you in the driver's seat of a vehicle, with the keys in the ignition and turned to . . . position.

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In your affidavit, you stated that on the evening in question, you had gone to the bingo hall parking lot to go to KFC with your girlfriend, [redacted] who was driving your car. You said that you did not d

While at KFC, you got into [redacted] and you the

w [redacted] so she could not pick

position. [redacted] could lean and rest. The

is on to [redacted]

Along with your affidavit, you submitted a copy of a letter from [redacted] that at approximately quart [redacted] she received a call from you and you were upset and crying hysterically. [redacted] to your car to wait there for her and she would come a [redacted] She explained that she has two

to get to you. She added that you mentioned that you had something to drink and didn't want to

You also submitted a copy of a statement f [redacted] there ar

In considering this issue, I accept your evidence that you had [redacted] to drive and that you [redacted] Based on the evidence before me, I am not satisfied that you were a driver within the meaning of section 215.41 of the *Motor Vehicle Act* on July 10, 2011, at 18:10 hours.

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

**Decision**

Based on the evidence before me, I am not satisfied that you were the driver as defined under s. 215.41 of the *Motor Vehicle Act*.

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

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If you have not already done so, you may go directly to the location where your vehicle is impounded for the immediate release of your vehicle. The Superintendent of Motor Vehicles will pay towing and storage costs up to and including July 27, 2011, the date you were informed that your vehicle was being released. 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: **Dil Gosal**  
(604) 598-1117