



July :

REVIEW DECISION Immediate Roadside Prohibition No. 2

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, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for an analysis by means of an approved screening device (ASD), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

I must revoke your driving prohibition if I am satisfied that you were not a driver within the meaning of section 215.41(1), 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. If I revoke your prohibition, I must also cancel the monetary penalty for which you would otherwise be liable under section 215.44(1), and revoke the corresponding vehicle impoundment.

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

Preliminary Matters

I will only address the second issue in this review as I find that it results in the prohibition being revoked, so I need not consider any other.

Issues

There are three issues in this review:

1. Were you a driver within the meaning of section 215.41(1) of the *Motor Vehicle Act*?
2. If so, did you fail or refuse to comply with a demand?
3. If so, did you have a reasonable excuse?

IRP Review Decision
Page 2

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.

The officer formed his reasonable suspicion required for the demand at 00:33 hours on July 10, 2011. However, requires that the [redacted] after the officer [redacted] you appeared to be uncooperative after the demand was read, [redacted] This office Although as to why

therefore, do not consider it to be a valid

Given the evidence, I am satisfied that you were not [redacted] id, and therefore, had nothing

Decision

I am not satisfied that you failed or refused to comply with a [redacted] I find the demand [redacted] I therefore revoke your driving prohibition and monetary penalty as required by section 215.5 of the *Motor Vehicle Act*. You may resume driving once you have obtained a driver's licence from the Insurance Corporation of British Columbia

Your vehicle impoundment is revoked. 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. 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: DII Gosal
Fax: (604) 598-1117