



July 2011

REVIEW DECISION Immediate Roadside Prohibition No. 20

Introduction

On July 3, 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* (the 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 Act and that the approved screening device (ASD) registered a warn or a fail.

I must revoke your driving prohibition, cancel the monetary penalty, and revoke any vehicle impoundment 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 warn or a fail.

Section 215.5(2) of the Act states that if I determine that you were prohibited from driving for a longer time period than the Act requires, I must substitute the correct prohibition, vary the monetary penalty for which you are liable under section 215.44(1), and vary or revoke any 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

Records at this office indicate that disclosure documents were provided to you. I have proceeded with the hearing based on this confirmation.

Issues

There are two issues in this review:

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

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Facts, Evidence and Analysis

Did the ASD register a fail?

In the Report to Superintendent (the Report), Constable [redacted] stated that there was a strong odour of liquor detected from your breath, you admitted to consuming some shooters in the morning, and your last drink was at approximately 0700. In section 4 of the Report, he recorded that you registered a fail on an ASD at 21:39 hours. However, upon reviewing the Report, I note that the calibration [redacted] which I infer to mean [redacted]

[redacted] Turning to the Superintendent's Report on ASDs, I note that this report states [redacted] in British Columbia are [redacted] n [redacted] as your test was conducted on July 3, 2011, I cannot be satisfied that the ASD used in your case was [redacted] As such, I cannot be satisfied that the ASD registered a fail.

Based on the evidence before me, I am satisfied that an ASD did not register a fail on July 3, 2011 at 21:39 hours.

Having made this finding, there is no need for me to consider whether or not you were a driver within the meaning of section 215.41(1) of the Act.

Decision

I am not satisfied that the ASD registered a fail on July 3, 2011.

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

Adjudicator

cc: D. Gosal
Fax: 604-598-1117