



January 2015

Alleged Refusal -
-Case Reversed.

Lawyer: DIL
GOSAL

REVIEW DECISION Immediate Roadside Prohibition ("IRP")

Introduction

On [redacted], a peace officer served you with a Notice of Driving Prohibition (the "Notice"). 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);
- 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 Act 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 for review, you selected some of the grounds available to you. For your benefit, I have considered all of the grounds available to you in this review that relate to the reason for which you were prohibited.

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

Issues

The following are the issues in this review:

- Were you a driver within the meaning of section 215.41(1) of the Act?
- 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

Having reviewed the evidence before me, I find there is one issue that is determinative of this review.

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

Based on the evidence before me, I am not satisfied that you failed or refused to comply with an ASD demand. Having made this finding I do not have to consider anything further.

Decision

As a result of my findings, I revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.

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.

Records at this office indicate that the vehicle associated with this IRP has already been released. Since your IRP review is successful and the prohibition is revoked, you are eligible to have the towing and storage costs reimbursed by the Superintendent up to the amounts set out in the *Lien on Impounded Motor Vehicle Regulation* under the *Motor Vehicle Act*. Information concerning this Regulation can be found online

at: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/952568628

Upon receipt of your proof of payment, the Superintendent of Motor Vehicles will pay the towing and storage costs up to and including [REDACTED] *Original receipts and invoices with proof of payment must be submitted for reimbursement.* Examples of proof of payment include a towing and storage invoice created by the impound lot noting payment and a zero balance owing; invoice and cancelled cheque or credit card transaction slip; invoice and copies of identifiable payments from bank or credit card statements. You must also enclose a copy of this letter to ensure the correct charges are refunded to you.

[REDACTED]
[REDACTED]
Adjudicator

cc: Dilraj Singh Gosal
D. Gosal & Associates
[REDACTED]