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## CASE SUMMARY: COURT HELD THAT THE SUPERINTENDENT WAS NOT LEGALLY BOUND TO FOLLOW THE CHAMBERS JUDGE'S OBITER COMMENTS ABOUT HIS POWER TO REOPEN A CASE

**Administrative law – Decisions of administrative tribunals – Superintendent of Motor Vehicles – Powers; Judgments – Obiter dicta; Motor vehicles – Breathalyser test – Medical condition; Judicial review – Jurisdiction – Fresh evidence, admissibility – Standard of review – Reasonableness simpliciter**

[Stenner v. British Columbia \(Superintendent of Motor Vehicles\)](#)

The Court considered whether it was reasonable for an administrative decision maker to disagree with *obiter dicta* from a Supreme Court judgment.

[2016] B.C.J. No. 1939

2016 BCSC 1690

British Columbia Supreme Court

September 14, 2016

N. Sharma J.

The petitioner had sought a judicial review of the Superintendent of Motor Vehicles' decision to issue a driving prohibition against the petitioner. The petitioner had been stopped by a constable who noted the odour of liquor on his breath and the petitioner admitted that he had consumed alcohol. The constable requested a breath sample from the petitioner and gave the petitioner six opportunities to provide a breath sample, but each time was unsuccessful.

In the initial judicial review, the petitioner submitted that he did not intend to refuse to comply but rather had taken medication that caused him to be short of breath, preventing him from being able to provide a sample. The petitioner asked the court to order the Superintendent to consider fresh evidence; namely, a doctor's letter in support of his claim that he did not participate in the breathalyzer because of shortness of breath. The chambers judge ultimately determined that whether the Superintendent had the authority to reopen a review raised an issue of statutory interpretation that should first be brought before the Superintendent, resulting in the petition being dismissed.

The petitioner wrote to the Superintendent requesting that his review be reopened to consider the fresh evidence on the basis of *obiter dicta* of the chambers judge. Though it was unnecessary for the chambers judge to address the issue in his decision, he had expressed an opinion that the Superintendent could reopen reviews on the basis of *Zutter v. British Columbia (Council of Human Rights)* (1995), 3 B.C.L.R. (3d) 321 (C.A.). In *Zutter*, the chambers judge held that the Council's decision could be reopened because the statute contained no right of appeal but had no finality clause from the Council's decisions. The Superintendent denied the petitioner's request to reopen the decision, finding that it did not have statutory authority to reopen a hearing.

The petitioner brought a subsequent judicial review, the matter before the court in this case, to quash the decision of the Superintendent, and for a direction that the Superintendent reopen the review hearing to consider new evidence. The Superintendent disagreed with the comments of the chambers judge at the first judicial review. The Superintendent submitted that he could only have those powers assigned to him by legislation, and there was no express authority in the statute authorizing him to reconsider or reopen a matter once a decision was made.

The chambers judge held that the Superintendent was not legally bound to follow the chambers judge's *obiter* comments about his power to reopen a case.

The court went on to consider whether the Superintendent's decision was reasonable. The chambers judge held that the Superintendent's decision was consistent with evolving administrative law principles and more generally consistent with the nature of the legislation and principles of judicial review.

This case was digested by [JoAnne Barnum](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at [jbarnum@harpergrey.com](mailto:jbarnum@harpergrey.com) review her biography at <http://www.harpergrey.com>.