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## CASE SUMMARY: BC SUPREME COURT QUASHES DRIVING PROHIBITION WHEN OFFICER'S ISSUANCE OF THE PROHIBITION FAILED TO MEET THE REQUISITE STANDARD OF "REASONABLE AND PROBABLE GROUNDS TO BELIEVE"

Application for judicial review of administrative driving prohibition, with review conducted on the basis of the notice of prohibition and officer's notes and report, in the absence of a conventional record of proceedings.

**Administrative law; Decisions reviewed; Motor vehicles; Suspension of driver's licence; Judicial review; Standard of review; Reasonableness; Permits and licences**

*Chatchot v. Jordan*, [2017] B.C.J. No. 1318, 2017 BCSC 1160, British Columbia Supreme Court, July 7, 2017, R.A. Skolrood J. (In Chambers)

On May 7, 2016, the petitioner was pulled over by an RCMP officer (the "Officer") for speeding.

The Officer's notes and report indicated the petitioner was travelling 130 km/hr in a 80 km/hr zone. The petitioner stated he had been travelling on a highway with a speed limit of 110 km/hr, before exiting the highway to an 80 km/hr zone along with other vehicles travelling at the same speed.

The Officer issued the petitioner a 24-hour driving prohibition pursuant to s. 215(3) of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, on the basis the Officer had reasonable and probable grounds to believe the petitioner's ability to drive a motor vehicle was affected by a drug, other than alcohol. According to the Officer's notes and report, he based the driving prohibition on the petitioner's speed, dilated pupils, and poor performance on a standard field sobriety test. The Officer's notes and report indicated the traffic stop occurred at 8:32pm and the notice was issued within three minutes, at 8:35pm.

The petitioner applied for judicial review of the driving prohibition. The scheme for review of a driving prohibition under s. 215(3) of the *Motor Vehicle Act* is unusual in that there is no intermediate review to an administrative decision-maker (for example, the Superintendent of Motor Vehicles) and record of proceedings available to the reviewing court. The judicial review is conducted on the basis of the notice itself; the issuing officer's notes and report; and evidence from the petitioner of what transpired before the issuing officer, in order to provide additional evidence of the circumstances that resulted in issuance of the notice.

On review, the chambers judge held the Officer's issuance of the driving prohibition failed to meet the requisite standard of "reasonable and probable grounds to believe." That standard involves both a subjective belief on the part of the officer and objective justification for that belief. The chambers judge concluded: there was no evidence of erratic driving; there were no overt signs of drug use; there was no explanation of how the petitioner's dilated pupils related to perceived drug use or impairment of physical ability to drive; the field sobriety test was apparently conducted within three minutes of the traffic stop, and there was no record to assess whether the tests were properly administered in that time frame; and there was no indication the Officer considered the petitioner's explanations regarding the effects of medication he was on and how his scoliosis affected his ability to perform the field sobriety test.

The chambers judge recognized the difficulty issuing officers may encounter documenting with complete precision and clarity the basis for a particular decision; however, he held the Officer's subjective belief the petitioner's ability to operate a motor vehicle was impaired was not objectively justifiable.

The petition was granted and the driving prohibition was quashed.

This case was digested by [Joel A. Morris](#) and edited by [William W. Clark](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at [jmorris@harpergrey.com](mailto:jmorris@harpergrey.com) or [wclark@harpergrey.com](mailto:wclark@harpergrey.com) or review their biographies at <http://www.harpergrey.com>.