

CANADA / JUDGMENT

Soychuk v. Superintendent of Motor Vehicles

2004 BCSC 867

COURT

Supreme Court of British Columbia

DECIDED

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2004 BCSC 867.err1.doc Soychuk v. Superintendent of Motor Vehicles IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Soychuk v. Superintendent of Motor Vehicles 2004 BCSC 867 Date: 20040629 Docket: 0421742 Registry: Prince George Between: Reginald John Soychuk Appellant And Superintendent of Motor Vehicles and the Attorney General of British Columbia Respondents Before: The Honourable Mr. Justice Rogers Reasons for Judgment Counsel for the Appellant: R.C. Gibbs, Q.C. Counsel for the Respondent: B.A. Mackey Date and Place of Hearing: June 18, 2004 Prince George, B.C.

Introduction

- [1] In this appeal Mr. Soychuk argues that the four 24-hour roadside suspensions on his driving record ought not to have been taken into account by the Superintendent of Motor Vehicles when the latter issued a two-month prohibition of Mr. Soychuk's driver's license. The facts
- [2] Mr. Soychuk is a 24-year-old resident of Fort Nelson British Columbia. He has a Class 5 driver's license. As of December 2004 his drivers record was thus: Violation Date Contravention February 5, 1999 Drive without consideration February 5, 1999 24-hour prohibition April 16, 1999 Unnecessary noise June 29, 1999 Four-month license suspension December 19, 1999 24-hour prohibition December 19, 1999 Drive without due care January 25, 2000 Disobey stop sign March 3, 2000 Speed against highway sign May 15, 2000 Four-month license suspension December 6, 2001 Speed against highway sign April 19, 2002 24-hour prohibition August 14, 2002 Speed against highway sign November 13, 2003 24-hour prohibition
- [3] On December 4, 2004, the superintendent sent to Mr. Soychuk a Notice of Intent to Prohibit his driver's license for a period of two months. The prohibition was pursuant to s. 93(1)(a)(ii) of the Motor Vehicle Act. The notice invited Mr. Soychuk to make representations to the superintendent why the prohibition should not be ordered or should be for a shorter period of time. Mr. Soychuk did not make any submissions to the superintendent. On March 4, 2004, the superintendent served a two-month notice to prohibit on Mr. Soychuk. Mr.

Soychuk then launched this appeal seeking to overturn the prohibition. Appellant's argument

- [4] Mr. Soychuk says that 24-hour suspensions issued under s. 215 of the Motor Vehicle Act should not be considered by the superintendent when that official decides to impose a prohibition under s. 93 of the Act. Mr. Soychuk argues that two previous decisions of this court, viz. *Scheffer v. Superintendent of Motor Vehicles* 2004 B.C.S.C. 258 followed in *Moy v. Superintendent of Motor Vehicles* 2004 B.C.S.C. 621 and standing for the proposition that s. 215 suspensions may be considered by the superintendent, were wrongly decided. The essence of Mr. Soychuk's position is that in the following in *Scheffer* is wrong in law:
- [23] *Hundal v. Superintendent of Motor Vehicles*² is authority for the proposition that "driving record" is more than a "record of convictions". The issue in *Hundal* was the constitutional validity of s. 86(a)(ii) (now s. 93(1)(a)(ii)) of the Motor Vehicle Act. The contention was that the words "without a hearing" in the section, offended the principles of fundamental justice guaranteed by s. 7 of the Charter of Rights. The contention did not prevail. In holding the section valid, the Court of Appeal said: ... there are adequate procedures in place to ensure only convictions or admitted infractions are placed on the record. As well, clerical or computer errors on the records are adequately guarded against.³
- [24] "Infraction" is defined in the Oxford Universal Dictionary as: The action of infringing (a bond or obligation); breach, violation.
- [25] Section 215 of the Motor Vehicle Act imposes an obligation on motorists in British Columbia to refrain from driving on a highway if their ability so to do is affected by alcohol. The section also prescribes a procedure to be followed, by a motorist, if the motorist would dispute the peace officer's belief, that the motorist's ability to drive, was affected by alcohol. There is no evidence that Mr. Scheffer disputed any of the 24-hour prohibitions.
- [26] Therefore, it is not unreasonable to conclude that Mr. Scheffer admitted the infraction of driving while his ability so to do was affected. A "conviction" for an offence of that description is not a necessary condition before the Superintendent may take the infraction into consideration.
- [5] Mr. Soychuk says that in *Hundal* the Court of Appeal was concerned with the constitutionality of the superintendent's authority to prohibit a driver without offering him a full formal hearing about the issues. In addressing that question the court considered what properly constituted a driver's record. The court concluded that the record could include both convictions and deemed admissions of infractions. The latter was permissible because before a deemed admission became part of the record the driver had had "ample opportunity to contest allegations of driving offences in a court in a full and fair hearing prior to such driving offences becoming part of his driving record". Mr. Soychuk says that in the case of a s. 215 roadside suspension the legislation does not offer the driver an opportunity for anything like a full and fair hearing before the fact of the suspension becomes part of his driving record. Mr. Soychuk points out that:

1. The roadside suspension may be issued under s. 215 if an officer has reasonable and probable grounds to be of the opinion that a motorist's ability to operate a motor vehicle is affected by alcohol or drugs.
 2. Section 215 does not provide any mechanism by which a motorist may overturn the officer's opinion. There is, therefore, no mechanism in the section itself for a motorist to refute the officer's opinion.
 3. The remedial provisions of s. 215 are limited to terminating the roadside suspension earlier than 24 hours. Those remedial provisions are very limited, and in the case of subsection (7) even if successful would not necessarily result in notice of the suspension been added to the motorist's driving record.
- [6] According to Mr. Soychuk, then, s. 215 is not of the same ilk as the sort of infractions considered by the Court of Appeal in Hundal. A s. 215 roadside suspension is not something that can be removed or expunged by a motorist even if the suspension was improperly or unfairly issued. Neither does the Motor Vehicle Act offer a meaningful mechanism by which a motorist can challenge a s. 215 prohibition before it becomes part of his driving record. On this point Mr. Soychuk points out that in the event the police do impose a s. 215 suspension, the only way a motorist can prevent a report going on his record is by requesting a breathalyser test pursuant to s. 215(6), and there is nothing in the statute that requires the police to comply with that request. There is, therefore, no mechanism in the statute that guarantees a motorist can meaningfully challenge the addition of a s. 215 suspension on his record. Because there is no meaningful challenge, there is no opportunity for the kind of full and fair hearing stipulated by the Court of Appeal in Hundal necessary to any addition to a person's driving record.
- [7] Therefore, Mr. Soychuk says that it was improper for Wilson J. to employ the Hundal case to justify his conclusion that roadside suspensions should be part of the driving record considered by the superintendent when the latter contemplates a prohibition under s. 93 of the Act.
- [8] Further, Mr. Soychuk maintains that the only proper use of the presence of a s. 215 roadside suspension on a driving record is to flag for the superintendent a possible need to commence further investigation into the motorist's ability to safely operate an automobile. Mr. Soychuk relies on *Sigurdson v. Superintendent of Motor Vehicles* 2003 B.C.C.A. 535 for that proposition. In *Sigurdson* the motorist had a terrible driving record and numerous roadside suspensions. The superintendent did not issue a prohibition under s. 93; instead the superintendent cancelled Mr. Sigurdson's driver's license under s. 29 of the Act. It appears from the case that the superintendent observed numerous 24-hour prohibitions on Mr. Sigurdson's record and concluded from these prohibitions that Mr. Sigurdson had a problem with alcohol. Having noted these red flags the superintendent then investigated Mr. Sigurdson's relationship with alcohol. The result of that investigation was a conclusion that he ought not to have a driver's license. Mr. Soychuk argues that roadside suspensions should

be employed in the same way when the superintendent makes a decision under s. 93 as under s. 29.

Analysis

- [9] I believe that Mr. Soychuk's argument would have merit were it not for the remedial provisions available to him and any other motorist in British Columbia under the Judicial Review Procedure Act. As I understand it, the Judicial Review Procedure Act may be employed by any motorist who feels that s. 215 has been improperly employed against him. The Judicial Review Procedure Act offers unhappy motorists an opportunity to challenge whether the officer who issued a roadside suspension had the necessary "reasonable and probable" grounds to act. It may be true that few citizens of the province are aware of the Judicial Review Procedure Act and fewer may be, on their own, able to advance a challenge under that Act. Nevertheless, the Judicial Review Procedure Act is available and can be a powerful check against improper use of statutory authority. Given that there are no time limits on the initiation of a Judicial Review Procedure Act proceeding it would seem an excellent avenue for a motorist to challenge a s. 215 roadside suspension. Indeed, the fact that such suspensions may be attacked in a Judicial Review Procedure Act proceeding was recognized by Bauman J. in the Moy case, *supra*.
- [10] Accordingly, I find that a mechanism does exist by which a motorist may obtain a full and fair hearing of a s. 215 roadside suspension. That hearing may not erase the inconvenience of a brief license prohibition, but if the review shows that the section was improperly used against the motorist the court can erase the prohibition from the motorist's driver's record.
- [11] As to limiting the probative value of roadside suspensions to red flags or alerts to initiate some other further investigation of a motorist's ability to drive, I observe that there is a substantial difference between a time-limited prohibition under s. 93 and an outright driver's license cancellation under s. 29. The latter is, obviously, more draconian than the former. The superintendent's *modus operandi* in Sigurdson was appropriate for action under s. 29, but it is not necessary in a s. 93 proceeding. In my view, it is entirely reasonable for the superintendent to consider the s. 215 prohibitions on Mr. Soychuk's record when the superintendent imposed the s. 93 prohibition against him.

Conclusion

- [12] It is reasonable and proper for the superintendent to give mind to s. 215 roadside suspensions when considering imposition of a driving prohibition under s. 93 of the Act. That is because there is a mechanism available to remove that suspension from a motorist's driving record in the event that it was improperly issued. That mechanism is review under the Judicial Review Procedure Act. A motorist is not, therefore, left without remedy when he receives a s. 215 suspension and that suspension triggers the superintendent's s. 93 interest. The motorist can challenge the suspension under the Judicial Review Procedure Act and, if successful, he can see to it that the suspension is expunged from his record. Procedural

fairness and natural justice is, therefore, preserved. It matters not that this fairness is achieved by employing a mechanism found outside the Motor Vehicle Act.

- [13] As for Mr. Soychuk's record, I cannot conclude that the superintendent was patently unreasonable when he decided to prohibit Mr. Soychuk from operating a motor vehicle for a period of two months.
- [14] Mr. Soychuk's appeal is, therefore, dismissed. "P. Rogers, J." The Honourable Mr. Justice P. Rogers June 30, 2004 - Revised Judgment On page 3, paragraph 4, "Moy v. Superintendent of Motor Vehicles 2004 B.C.S.C. 61" should read "Moy v. Superintendent of Motor Vehicles 2004 B.C.S.C. 621". The change has been noted and applied.

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