

Review of an Immediate Roadside Driving Prohibition

Application Guide

Requesting a Review of an Immediate Roadside Driving Prohibition (issued for 3, 7, 30 or 90 days)

If you have been issued an Immediate Roadside Prohibition (IRP) and you feel the prohibition was issued in error, you may apply for a review hearing. The following is a list of the possible grounds for review. You may apply for a review if one or more of the following grounds apply:

- you were not the driver, or were not in care or control of the motor vehicle;
- you were not advised of your right to a second test on an approved screening device (ASD);
- you requested a second breath test, but the officer did not perform a second test;
- your second test was not performed on a different ASD;
- the prohibition was not served on the basis of the lower of the two ASD results;
- the result of the ASD test was not reliable;
- the ASD, which formed the basis of the prohibition, did not register a WARN reading;
- the ASD registered a WARN, but your blood alcohol content was less than 0.05% BAC (50mg of alcohol in 100ml of blood);
- the ASD, which formed the basis of the prohibition, did not register a FAIL reading;
- the ASD registered a FAIL, but your blood alcohol content was less than 0.08% BAC (80mg of alcohol in 100ml of blood);
- your 7– or 30– day prohibition should be reduced because you did not have any previous IRP(s);
- you did not refuse or fail to comply with a demand for a breath test, or;
- you had a reasonable excuse for refusing or failing to comply with a demand.

If you do apply for a review, please note that hardship reasons will not be considered as grounds for a review. You must apply for a review within seven days from the date you received the Notice of Driving Prohibition. The driving prohibition will continue while the review process is ongoing.

You may wish to have a lawyer assist you with the review however, it is not necessary to obtain legal advice in order to apply for a review.

The Process of Applying

The form: You will need to attend any driver licensing centre (go to ICBC.com to find locations) to complete and submit the form, “Immediate Roadside Prohibition – Application for Review – Section 215.48 Motor Vehicle Act”. Fill in the blanks and check all boxes that indicate the ‘grounds for review’ — these are your reasons for requesting a review. A sample of the form is on the last page of this fact sheet — it contains some notes to explain what the form questions mean.

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Type of Review and Fee: If your prohibition is for either 3 or 7 days, you may only apply for a written review; if your prohibition is either 30 days or 90 days, you may choose between a written review or an oral hearing:

Written review: You submit your completed form and attach your submission, and supporting documentation in writing. The payment for this type of review is **\$100**.

Oral hearing: You will be given a date and time when an adjudicator with the Superintendent's office will phone you to hear your submission. The payment for this type of review is **\$200**.

Payment: You will have to provide a **non-refundable** payment when you submit your form to the driver licensing centre; payment is accepted by certified cheque or money order and most locations will also accept Visa, MasterCard, American Express, or debit cards.

Supporting Information: When you submit your application, you will have to:

- Show proof of your identity (one piece of photo or signature identification)
- Provide a copy of the Notice of Driving Prohibition issued to you by police
- For both oral hearings and written reviews, all written information you wish to be considered in your review hearing should be provided to the Superintendent by 4:30 p.m., two days prior to the date and time of the scheduled review. The Adjudicator will not consider any information that you submit after the hearing has concluded
- **The burden of proof in a review hearing is on the applicant. The information you provide should focus on the specific grounds of review that you have applied under**
- Written information can be submitted at the driver licensing centre or faxed to the Superintendent's office in Victoria at 250 356-6544

Police Disclosure Information: Before your review, you will receive a copy of the police disclosure information—the descriptive report the police officer records about the event when the Notice of Driving Prohibition was issued. This disclosure information (in combination with the information that you submit) is used by the adjudicator to make a decision about your review. If available at the time, this information will be given to you at the driver licensing centre when you submit your application for review. If it is not available it can be faxed to you later or you can ask them to call you when it is ready for you to pick up from the driver licensing centre. This information will help you prepare for the review hearing. For example, if the police disclosure information is different than your description of the event, you can explain why in your written submission or during your oral hearing.

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The Review

When you submit your application, you will be given a date and time for the hearing.

Written Review: In a written review, you have the opportunity to provide written evidence and/or submissions on the specific grounds for review you have applied under. Your application and submission, along with the police disclosure information, will be reviewed by the adjudicator on the date and time scheduled. There is no conversation between you and the adjudicator.

Oral Hearing: On the date and time scheduled, the adjudicator will call you on the phone number you provided on your application. During the call, you have the opportunity to provide evidence and/or submissions on the specific grounds for review you have applied under. If you miss the phone call, the hearing will change automatically to a written review process.

A review will be scheduled within 14 days of the date of service of the IRP. This works to better ensure a timely decision by the Superintendent within the 21-day timeline legislated under the *Motor Vehicle Act*.

Reviews will only be rescheduled in the event of an emergency. If you are to be represented by legal counsel in your review, you must make sure that your lawyer is available for the scheduled date and time.

Possible Review Outcomes

After the review the adjudicator will send you a written decision. In most cases, the decision will be sent within 21 days from the date you were served with the Notice of Driving Prohibition. The three possible decision outcomes are:

- **Driving Prohibition Revoked:** You will be advised to reapply for a driver's licence. The reinstatement fees and monetary penalties will be waived or refunded, however you will need to pay any outstanding fees or debts owed to the Province or ICBC.
- **Driving Prohibition Varied:** You will be advised that your driving prohibition has been reduced. The monetary penalty may be altered. You will also need to pay any outstanding fees or debts owed to the Province or ICBC.
- **Driving Prohibition Confirmed:** If the adjudicator confirms the driving prohibition, the terms of your driving prohibition will be unchanged.

When a prohibition is revoked or varied, the owner of the impounded vehicle will be reimbursed for eligible towing and storage charges, as long as the vehicle was not impounded for another reason.

The administrative decision (review outcome) is final. If your application is unsuccessful, your only recourse is through a judicial review. Under the *Judicial Review Procedures Act*, any administrative decision may be taken to the B.C. Supreme Court for appeal. (www.courts.gov.bc.ca/court_of_appeal).

*This is general information developed by RoadSafetyBC.
It is not intended to replace qualified legal advice.*

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**IMMEDIATE ROADSIDE PROHIBITION (IRP)
APPLICATION FOR REVIEW
SECTION 215.48 – MOTOR VEHICLE ACT**

Complete the following information		IRP No. 2 -
DRIVER'S NAME:		BC DRIVER'S LICENCE/CLIENT NUMBER:
STREET ADDRESS:		CITY/TOWN:
PROVINCE:	POSTAL CODE:	OTHER PHONE NUMBER(S):

GROUND(S) FOR REVIEW for which you intend to provide evidence and/or submissions in the review. Only check those grounds that apply to you, and only check those grounds for which you intend to provide evidence and/or submissions in the review.

<input type="checkbox"/> I was not driving or in care or control of the motor vehicle.	<input type="checkbox"/> The ASD registered a WARN, but my blood alcohol content was less than 0.05 (50 milligrams of alcohol in 100 millilitres of blood).
<input type="checkbox"/> I was not advised of my right to a second test on an approved screening device (ASD).	<input type="checkbox"/> The ASD, which formed the basis for the prohibition, did not register a FAIL reading.
<input type="checkbox"/> I requested a second test but the officer did not perform the test.	<input type="checkbox"/> The ASD registered a FAIL, but my blood alcohol content was less than 0.08 (80 milligrams of alcohol in 100 millilitres of blood).
<input type="checkbox"/> My second test was not performed on a different ASD.	<input type="checkbox"/> I did not refuse or fail to comply with the officer's demand to provide a breath sample.
<input type="checkbox"/> The prohibition was not served on the basis of the lower test result.	<input type="checkbox"/> I had a reasonable excuse for refusing or failing to comply with the officer's demand to provide a breath sample.
<input type="checkbox"/> The result of the ASD is not reliable.	<input type="checkbox"/> My 7-day or 30-day prohibition should be reduced because I did not have the required number of previous IRP(s).
<input type="checkbox"/> The ASD, which formed the basis for the prohibition, did not register a WARN reading.	

You must enter this number... it can be found on the Notice of Prohibition issued to you by the police.

Check one or more of these 13 reasons you are applying for a review. They are the only 'grounds' on which a review can be considered by the Superintendent.

Review scheduled for: _____ DATE _____ TIME _____ () AM () PM TELEPHONE NUMBER _____

If you are to be represented in your review, you must ensure your representative is available for the scheduled date and time. Reviews will not be rescheduled, except in extraordinary circumstances. Reviews will be scheduled within 14 days of the date of service of the IRP notice. You will be offered a minimum of 2 review slots within that timeframe. If you are unable or unwilling to schedule the review within the 14 day time period, it may delay a decision within the 31 day timeframe and a stay of your driving prohibition may not be granted.

Is the review booked within 14 days of the IRP being served? Yes No, if not provide rationale: _____

All written information you wish to be considered in your review hearing should be provided to the Superintendent by 4:30 p.m., two days in advance of the scheduled review. After the review hearing has concluded, no further evidence or submissions will be accepted for consideration.

DISCLOSURE ← This refers to any information or evidence provided by the police.

A copy of the following information will be provided to you to consider during the review:

<input type="checkbox"/> Notice of Prohibition	<input type="checkbox"/> Report to Superintendent	<input type="checkbox"/> Police Narrative	<input type="checkbox"/> ASD Information	<input type="checkbox"/> Driving Record (for a 7-day and 30-day prohibitions only)	<input type="checkbox"/> Other (specify): _____
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Disclosure information not available at time of application, AND

Applicant has provided a fax number to which information will be sent as it becomes available.

Fax number not provided; applicant or their representative will pick up information. Name of representative (if applicable): _____

SIGNATURE OF CUSTOMER SERVICE REPRESENTATIVE _____

The applicant must ensure that addresses, phone numbers, and contact names are up to date.

OFFICE USE ONLY:

Driver's Licence	<input type="checkbox"/> Seized by Police	<input type="checkbox"/> Surrendered to ICBC	<input type="checkbox"/> Cash	<input type="checkbox"/> Credit Card (where accepted)
	<input type="checkbox"/> Never Licensed	<input type="checkbox"/> Statutory Declaration	<input type="checkbox"/> Cheque	<input type="checkbox"/> Interac (where accepted)

SIGNATURE OF CUSTOMER SERVICE REPRESENTATIVE	OFFICE	DATE	RECEIPT NUMBER
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The personal information is collected under section 26 (a) and (c) of the Freedom of Information and Protection of Privacy Act for the purpose of administering the Motor Vehicle Act. If you have any questions about the collection, use and disclosure of the information collected, contact RoadSafetyBC at PO Box 9254 Stn Prov Govt, Victoria BC, V8W 9J2, phone 250-387-7747.

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