

**RoadSafetyBC**  
**Ministry of Public Safety and Solicitor General**

**24-Hour Prohibition Reviews:  
Policies and Procedures**

**February 20, 2019**

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## Glossary<sup>1</sup>

**24-Hour Prohibition** – A prohibition from driving for 24 hours, issued under section 215 of the *Motor Vehicle Act*. The prohibition is issued when a police officer has reasonable grounds to believe that an individual's ability to drive is affected by alcohol or a drug.

**Adjudicator** – An independent decision-maker to whom the Superintendent has delegated the authority to conduct 24-hour prohibition reviews.

**Applicant** – A person who has been served with a Notice of 24-Hour Prohibition and, within seven days of the date of service, filed a complete *24-Hour Prohibition Application for Review* (MV2648) at an ICBC driver licensing office or Service BC office, and paid the prescribed fee.

**Approved Screening Device ("ASD")** – A prescribed roadside screening device used by police officers for the purpose of alcohol screening. All police agencies in BC use the Alco-Sensor FST

**Blood Alcohol Concentration ("BAC")** – The concentration of alcohol in a person's blood, expressed as "mg%" (milligrams of alcohol per 100 millilitres of blood).

**BAC Test** – A test to determine the amount of alcohol in a person's body. The ASD measures the person's BAC, from the sample of breath the person provides into the ASD.

**Blood Drug Concentration ("BDC")** – The concentration of drugs in a person's blood, expressed as "ng/ml" (nanograms of a drug per 100 millilitres of blood).

**Care or Control** – Courts have defined this term as meaning an intentional course of conduct associated with a motor vehicle by a person whose ability to drive is impaired, or whose blood alcohol or blood drug level exceeds the legal limit in circumstances that create a realistic risk of danger to persons or property.

**Drug Recognition Expert ("DRE")** – A police officer who is accredited by the International Association of Chiefs of Police to recognize impairment in drivers under the influence of drugs.

**Decision** – The decision made by the adjudicator after considering a 24-hour prohibition review.

**Disclosure** – The act of providing an applicant with copies of all materials the police officer provided to ICBC. This ensures applicants are fully aware of the case that they must address.

**Driver** – Includes, but is not limited to, a person having care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle is in motion.<sup>2</sup>

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<sup>1</sup> Note: Some of the terms and acronyms listed above do not appear in this document, but may be used in evidence that is provided to applicants, such as the police officer's report.

<sup>2</sup> For the purposes of this document, "driver" may be used generally to refer to the person on whom the prohibition was served, who has yet to apply for a review.

**Fail** – An ASD reading which indicates a BAC of 80 milligrams of alcohol per 100 millilitres of blood (80 mg%) or greater as determined by an analysis of a breath sample.

**Ignition Interlock Program (“IIP”)** – A remedial program for drivers who have received alcohol-related driving prohibitions. An ignition interlock device prevents a driver from driving a vehicle if they have alcohol in their body. Program participants are required to have the device installed in all of the vehicles that they drive.

**Oral Fluid Screening Device (“OFS”)** – A prescribed screening device used by police officers for the purpose of drug screening. The OFS detects the presence of drugs in oral fluid (saliva). The Dräger DrugTest 5000 is currently approved for use in Canada.

**Prescribed Physical Coordination Test** – A physical coordination test prescribed by the *Physical Coordination Test Regulation* that consists of the following standard field sobriety tests administered together: (a) the horizontal gaze nystagmus test; (b) the walk-and-turn test; and (c) the one-leg stand test.

**Representative** – A lawyer, translator, guardian, or other person authorized by the applicant to deal with matters relating to the 24-hour prohibition review process on their behalf.

**Representation Authorization** – A document signed by an applicant which provides written authorization permitting RoadSafetyBC to deal directly with a representative and provides the representative’s contact information. Unless otherwise set out in the authorization, RoadSafetyBC may provide disclosure and a copy of the review decision to the representative.

**Responsible Driver Program (“RDP”)** – A remedial education and counselling program for drivers who have received alcohol- or drug-related prohibitions.

**Superintendent** – The Superintendent of Motor Vehicles, or a person to whom his or her powers, duties or functions have been delegated.

**Warn** – An ASD reading which indicates a BAC of 50 milligrams of alcohol per 100 millilitres of blood (50 mg%) or greater as determined by an analysis of a breath sample.

## Acronyms

**Act** - Motor Vehicle Act

**ASD** – Approved screening device

**BAC** - Blood alcohol concentration

**BDC** – Blood drug concentration

**DLO** - ICBC driver licensing office

**DRE** – Drug recognition expert

**ICBC** – Insurance Corporation of British Columbia

**OFS** – Oral Fluid Screening Device

**MVI** – Motor vehicle incident

**SFST** – Standard Field Sobriety Test

## Section 1: Introduction

Driving while affected by alcohol, drugs, or a combination of alcohol and drugs, remains a leading cause of death on British Columbia's roads. Even small amounts of alcohol or drugs can affect a person's ability to drive, thus increasing the risk of motor vehicle incidents and serious injury or death.

24-hour driving prohibitions were introduced in British Columbia in 1966 to enable police to immediately remove alcohol-affected drivers from the road. In 1982 the prohibition was expanded to include drug-affected drivers. If police have reasonable grounds to believe that a person's ability to operate a vehicle is affected by alcohol and/or drugs, they may issue a Notice of Prohibition to the driver prohibiting them from driving for 24 hours and request the driver surrender their licence. Police also have the discretion to immediately impound the driver's vehicle for a 24-hour period.<sup>3</sup>

An individual who receives a 24-hour prohibition for alcohol or drugs may apply to the Superintendent of Motor Vehicles for an administrative review of the prohibition. Reviews have been available for alcohol-related 24-hour prohibitions since 2005; reviews for drug-related 24-hour prohibitions were implemented in October 2018.

This document provides an overview of the 24-hour prohibition review process and the procedures used by the Superintendent. It also provides general information to individuals who have received a Notice of 24 Hour Prohibition that will assist them in understanding the issues that are relevant for their submissions to the Superintendent. This document is intended as a guideline, and adjudicators are not bound by the guidelines or policies found in this document, except where statutorily required by the Motor Vehicle Act.

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<sup>3</sup> There is no provision for the review of 24-hour vehicle impoundments.

## Section 2: Legislative Authority and Delegation

### 2.0 Legislative Authority

Legislative authority for 24-hour prohibitions, and reviews of those prohibitions, is set out in the Act.

Section 215 of the Act authorizes police officers to issue 24-hour prohibitions in certain circumstances.

Sections 215.1, 215.2 and 215.3 of the Act set out the driver's right to request a review of the prohibition, and the process and parameters for those reviews. The *Review of 24 Hour Driving Prohibition Regulation* prescribes the time limits and application fees for a review.

### 2.1 Delegation of Authority

Section 117 of the Act provides the Superintendent with the authority to delegate powers, duties or functions to staff of RoadSafetyBC and the Insurance Corporation of British Columbia (ICBC).

The Superintendent has delegated the authority to conduct reviews of 24-hour prohibitions to RoadSafetyBC adjudicators.

The Superintendent has also delegated the following administrative functions to ICBC staff:

- providing review application forms to applicants and accepting the completed application forms and prescribed review fees;
- entering the prohibitions on the driving records.

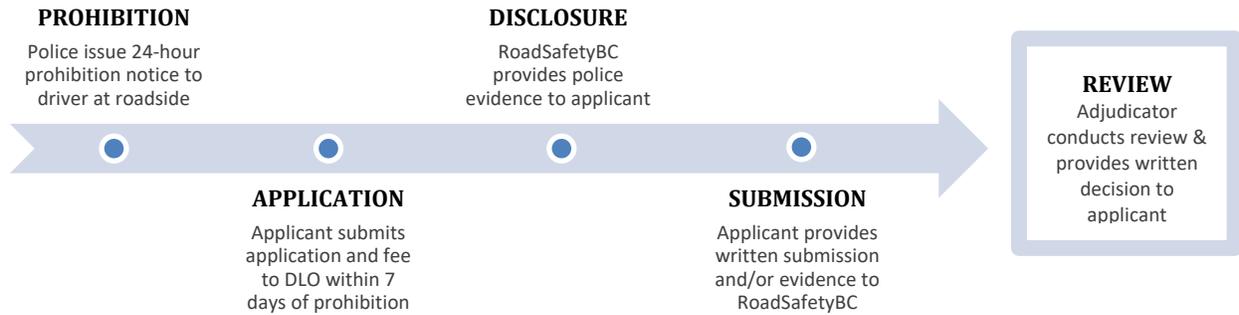
The current Statutes and Regulations of British Columbia are available online at

<http://www.bclaws.ca>

Official print copies of British Columbia Acts and Regulations are available for purchase from Crown Publications Inc. online at <http://www.crownpub.bc.ca/> or by phone at 250-287-6409.

## Section 3: The 24-Hour Prohibition Review Process

Unless otherwise specified, everything in this overview applies to both 24-hour prohibition reviews for alcohol and for drugs.



### 3.0 Application

#### Grounds for Review

An individual may apply to the Superintendent for a review of their 24-hour driving prohibition for one of the following three reasons:

1. In the case of a 24-hour prohibition for **alcohol**, the driver had the right to request, and did request, a blood alcohol test and the police officer failed to administer it
2. In the case of a 24-hour prohibition for **drugs**, the driver had the right to request, and did request to undergo a prescribed physical coordination test and the police officer failed to administer it; or
3. In the case of a 24-hour prohibition for **alcohol or for drugs**, the person served with the prohibition was not a driver.

These are the only grounds an adjudicator can consider on an application for review of a 24-hour prohibition. An adjudicator can only revoke a 24-hour prohibition for one of these reasons.

#### Application Form and Review Fee

Individuals must submit an application form and pay a review fee in order to initiate a 24-hour prohibition review. Application forms (*24-Hour Prohibition Application for Review, MV2648*) are available at all [ICBC Driver Licensing Offices \(DLO\)](#) and [Service BC offices](#).

The fee for a 24-hour prohibition review is \$100. This fee cannot be waived and it will not be refunded to the applicant after a review has been conducted, regardless of the outcome.

### **Timeframe for Receiving Applications**

Applicants are required to submit a completed application form and review fee to a DLO or Service BC office within seven days after being served with the Notice of Driving Prohibition.<sup>4</sup>

This is a legislated timeframe; the Superintendent cannot consider any applications after the seven-day period.

## **3.1 Disclosure**

After issuing the 24-hour driving prohibition, police send to ICBC:

- the Notice of 24-Hour Prohibition and the Officer's Report
  - These describe the incident that resulted in the police officer issuing the Notice,
- Any other relevant information they wish to provide.

ICBC enters the prohibition on the driver's driving record. If a driver applies for a review, RoadSafetyBC sends a disclosure letter along with a copy of the police evidence to the applicant. The purpose of disclosure is to ensure applicants are aware of the case being presented against them to the adjudicator.

The failure of the police officer to send a Report to ICBC does not automatically result in the revocation of the 24-hour prohibition because the onus is on the applicant to establish a ground for revocation as set out in Section 4.1 of this document. The adjudicator will conduct the review based on the information before them.

## **3.2 Applicant Submission**

After applicants have been provided with disclosure (i.e., the police's evidence), they will have an opportunity to provide submissions and evidence in support of their submissions. An applicant's submissions and evidence must be in writing and must be received by RoadSafetyBC by the date specified in the disclosure letter. This date is typically 21 days from the date of disclosure.

Some factors for applicants to consider when preparing their submissions and evidence are outlined in [Section 4](#) of this document.

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<sup>4</sup> The legislated seven-day deadline for filing an application for review did not apply to 24-hour prohibitions issued under s. 215(3) between October 17, 2018 and December 9, 2018.

### **3.3 Review and Decision**

The adjudicator conducts the 24-hour prohibition review once the time period for the applicant to make a submission set out in the disclosure letter has ended.

All 24-hour prohibition reviews are written reviews. Applicants and police each submit their case in writing, and adjudicators provide a written decision. No oral reviews will be conducted.

## Section 4: The Review Hearing

### 4.0 General Considerations in a Review

- The Act only allows an adjudicator to consider the following materials in a review hearing:
  - The police officer's report that is delivered to ICBC with the Notice of 24-Hour Prohibition;
  - Other relevant information provided by the police officer with the report; and
  - Any relevant information provided by the applicant.
- The Superintendent cannot revoke a 24-hour prohibition for any reason other than the three grounds outlined in s. 215.3 of the Act which are set out in [section 3.0](#) of this document.

Factors that are **not relevant** to the legislated grounds for revocation in a 24-hour prohibition review include, but are not limited to:

- Hardship or the applicant's personal circumstances;
- The applicant's driving record;
- For a prohibition served for alcohol-affected driving:
  - Factors that may have impacted the reliability of the result of the BAC test or relate to the actual BAC of the applicant at the time in question; and
- For a prohibition served for drug-affected driving:
  - Factors that may have impacted the reliability of the result of the prescribed physical coordination test or relate to the actual BDC of the applicant at the time in question.

### 4.1 Burden of Proof

The burden of proof for administrative decisions is the civil standard of "on a balance of probabilities", rather than the criminal standard of "beyond a reasonable doubt". When conducting a 24-hour prohibition review, the adjudicator weighs the evidence from both the applicant and the police officer and makes a decision "on the balance of probabilities".

In a 24-hour prohibition review, the burden of proof, or onus, is on the applicant. The applicant must provide evidence or refer to relevant evidence in the police disclosure on the issues to be determined. What this means is if there is no credible and reliable evidence

before the adjudicator on a particular issue (for instance, whether or not the applicant was a driver), the prohibition will not be revoked because the applicant has not met their onus.

#### **4.2 Reason for Review: *Failure to administer BAC test when requested***

Applicants who select this reason for review on their application must establish, on a balance of probabilities, that:

- they had a right to request a blood alcohol test;
- they forthwith requested a test; and
- the officer failed to provide them with an opportunity to undergo the test.

A driver has the right to request and undergo a BAC test if the police officer who serves the Notice of 24-Hour Prohibition for alcohol on the driver did not perform a test of the driver's BAC with an ASD prior to serving the Notice.

Drivers served with a 24-hour prohibition where an ASD has registered a BAC of greater than 50 mg of alcohol per 100 mL of blood do not have right to request a second BAC test or a prescribed physical coordination test.

#### **4.3 Reason for Review: *Failure to administer a prescribed physical coordination test when requested***

Applicants who select this reason for review on their application must establish, on a balance of probabilities, that:

- they had a right to request a prescribed physical coordination test;
- they forthwith requested a test; and
- the officer failed to provide them with an opportunity to undergo the test.

A driver has the right to request or undergo a prescribed physical coordination test if the police officer who serves the Notice of 24-Hour Prohibition for drugs on the driver did not perform this test prior to serving the Notice.

Drivers served with a 24-hour prohibition do not have right to request a second prescribed physical coordination test.

#### **4.4 Reason for Review: *Applicant was not the driver or did not have care or control of the motor vehicle***

Applicants who select this reason for review on their application must establish, on a balance of probabilities, that they:

- were not the driver; or

- did not have care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle was in motion.

Factors that courts have found relevant when determining whether a person was in care or control of a vehicle have included, but have not been limited to:

- The driver's location in the vehicle
- The driver's reason for occupying the vehicle
- The driver's intention to operate the motor vehicle in the future
- Whether there was a realistic risk that the vehicle would be set in motion
- Whether there was a realistic risk the driver's intention to operate the motor vehicle in the future could change

## 4.5 Decision Outcomes

At the conclusion of the 24-hour prohibition review, the 24-hour prohibition is either revoked or not revoked.

The adjudicator prepares a written decision, with reasons, to communicate the outcome to the applicant.

If the 24-hour prohibition is revoked, RoadSafetyBC will notify ICBC to remove the prohibition from the driving record.

## Section 5: After the Review

### 5.0 Remedial Programs

Unless revoked, a 24-hour driving prohibition remains on the driver's driving record. The prohibition may result in additional sanctions such as driving prohibitions under the Driver Improvement Program, or a requirement to participate in the Responsible Driver Program (RDP) and/or the Ignition Interlock Program (IIP). Drivers who acquire the threshold number of RDP or IIP points are required to participate in RDP and/or IIP.

The Superintendent may also refer drivers to these programs under section 25.1 of the Act regardless of the number of points a driver has acquired. For more information on Remedial Programs, refer to [Remedial and Ignition Interlock Programs Policies and Guidelines](#).

### 5.1 Judicial Review

The adjudicator's decision is the final decision. There is no administrative avenue for appealing this decision. The only option available is to apply to the Supreme Court of British Columbia for a judicial review, under the *Judicial Review Procedure Act*. Information about [Judicial Reviews and Supreme Court procedures](#) more generally is made available to the public by the court at this site