

Citation: *R. v. Blanchard*, 2009 YKTC 5

Date: 20090204
Docket: 07-05934A
08-04211
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

R e g i n a

v.

Tracy May Blanchard

Appearances:
Lee Kirkpatrick
Lynn MacDiarmid

Counsel for Crown
Counsel for Defence

DECISION

[1] Tracy May Blanchard is before the Court for sentence, having entered pleas of guilty to two charges contrary to s. 266 of the *Motor Vehicles Act*, R.S.Y. 2002 c. 153, for driving while disqualified.

[2] While such a task might seem straightforward, the path is more winding than might first appear owing to, amongst other things, the drafters of the *Motor Vehicles Act* who seem to have produced a pretty fair approximation of Churchill's "riddle wrapped in a mystery inside an enigma."

[3] On November 3, 1999, Ms. Blanchard was convicted and sentenced on a charge contrary to s. 253(b) of the *Criminal Code*. In addition to being fined, pursuant to s. 259(1) of the *Code*, Ms. Blanchard was prohibited from operating a motor vehicle for a period of one year.

[4] Concurrently, by virtue of what is now s. 255(2)(a) of the *Motor Vehicles Act*, Ms. Blanchard was disqualified from holding an operator's licence under the *Motor Vehicles Act* for a period of one year. The Deputy Registrar of Motor Vehicles sent a letter to Ms. Blanchard notifying her of this disqualification:

... you have been disqualified from holding an operators licence under the Yukon Motor Vehicles Act for a 1 YEAR period. This notice is also to remind you that you are prohibited from operating a motor vehicle anywhere in Canada for a 1 YEAR period effective November 3, 1999.

[5] In the same letter, the Deputy Registrar advised Ms. Blanchard that he was also issuing an order:

... declaring you be disqualified from applying for a licence until such time as you successfully complete the "Yukon Remedial Driving Course"...

Under Section 19 of the *Motor Vehicles Act*, a person who drives a motor vehicle upon a highway in contravention of a registrar's order is guilty of an offence.

Section 19 is now s. 20.

[6] Ms. Blanchard never received the Deputy Registrar's letter. She had changed her address and had failed, contrary to s. 16 the *Motor Vehicles Act*, to notify the Registrar of the change. Nothing however, turns on the failure of the letter to find its way to Ms. Blanchard. As will shortly become apparent, Ms. Blanchard is quite aware that she should not be driving.

[7] In the years since 1999, Ms. Blanchard, who only had a Learner's Licence to begin with, has never taken any steps to get her licence back. She has, however, continued to own motor vehicles and has continued, with no little degree of determination, to drive. I have set out her driver's abstract as Appendix A. Including the matters presently before the Court, she has been caught driving 16 times by my calculation. It should be added that the fines

imposed for most of these infractions have never been paid and now total in excess of \$4000.00. To put the matter succinctly, Ms. Blanchard is a scofflaw.

[8] On most of the many occasions when the police have found Ms. Blanchard behind the wheel, she has been ticketed under s. 5 of the *Motor Vehicles Act* for having no driver's licence or her vehicle has been impounded for 90 days pursuant to s. 235(1). It was not until 2007 that she was charged with contravening s. 266 of the *Motor Vehicles Act* for driving while disqualified. She was subsequently convicted of this offence in 2008. Ms. Blanchard has now entered guilty pleas to two additional charges pursuant to s. 266. These offences occurred December 24, 2007 and April 19, 2008, prior to the s. 266 conviction noted above. The significance of the recent move to charges under s. 266 is that the penalties are much more severe.

[9] It will be recalled that the original disqualification was for a period of one year. There was also the Registrar's s. 20 order disqualifying Ms. Blanchard from applying for a licence until she took the remedial driving course. She is also suspended by virtue of s. 66(5) of the *Motor Vehicles Act* because of her stack of unpaid fines. On top of all that, the Crown contends that Ms. Blanchard's original one-year disqualification continues even now by virtue of s. 21(1) of the *Motor Vehicles Act*. Section 21(1) provides:

Duration of suspension or disqualification

21(1) If by or under this Act or by any order or judgment made under this or any other Act,

- (a) the operator's licence of a person is suspended; or
- (b) a person is disqualified from holding an operator's licence,

then, even though the period of suspension or disqualification has expired, the licence remains suspended or the disqualification remains in effect, as the case may be, until the person satisfies the registrar, by examination or otherwise, of their physical or other competency to drive a motor vehicle without endangering the safety of the general public.

[10] It is a matter of more than academic interest to determine the basis for Ms. Blanchard's disqualification and/or suspension because s. 266 does not apply to all disqualifications.

[11] Section 266 provides that:

Offence and penalty

266(1) Every person who operates a vehicle on a highway at a time when they are disqualified under this Part from holding an operator's licence commits an offence and is liable on summary conviction

(a) to a fine of not less than \$500 and not more than \$2,000, to imprisonment for not more than six months, or both, if the person has not been convicted of such an offence committed anywhere in Canada in the period of five years immediately preceding the date of the offence;

(b) to imprisonment for not less than three months and not more than six months, if the person has been convicted of one such offence committed anywhere in Canada in the period of five years immediately preceding the date of the new offence; and

(c) to imprisonment for not less than six months and not more than two years less one day, if the person has been convicted of more than one such offence committed anywhere in Canada in the period of five years immediately preceding the date of the new offence.

(2) A person who operates a motor vehicle on a highway

(a) while their operator's licence is suspended or disqualified under section 257; or

(b) in contravention of a condition on which a suspension or disqualification was removed under section 262;

(c) in contravention of section 264;

(d) while disqualified under section 18 or 20;

(e) without a valid operator's licence when they are ineligible to obtain an operator's licence because they have not yet completed an assessment or remedial program as required under section 262

is deemed to have operated the motor vehicle on a highway while they are disqualified from holding an operator's licence and commits an offence under subsection (1).

[12] Thus, s. 266 would not appear to apply to drivers who have been refused a licence because of non payment of fines or because they are in default of court-ordered maintenance payments. Nor would it apply to drivers who, under s. 7(2) of the *Motor Vehicles Act*, were ineligible to obtain a Yukon licence owing to suspension of their licence in another jurisdiction. It would not apply to a driver whose licence is lost under s. 73 because of failure to satisfy a judgment. It would not appear to apply to a loss of licence owing to the accumulation of demerit points.

[13] The nice question is whether or not s. 266 applies to someone like Ms. Blanchard, who was disqualified under s. 255 for a period of one year, where the year has expired but the disqualification continues by virtue of s. 21(1). Section 266 refers to a disqualification "under this part". The part of the *Motor Vehicles Act* referred to is Part 17. While s. 255 is contained within Part 17, s. 21(1) is not. It will be noted that s. 266(2) deems certain other circumstances (such as operating a vehicle in defiance of a roadside suspension or in contravention of an interlock order) to amount to driving while disqualified. It does not mention s. 21(1).

[14] Significantly, s. 266(2) deems someone who is driving contrary to a s. 18 or s. 20 prohibition to be committing an offence under s. 266. Section 18 deals with persons who cannot safely operate a motor vehicle due to a medical condition. Section 20, it will be recalled, is the section under which the Registrar purported to act in disqualifying Ms. Blanchard from obtaining a licence until she had taken the required driving course.

[15] There are two puzzling aspects to this. If s. 266 deems someone driving in defiance of a s. 20 prohibition to be committing an offence, why does it not also refer to those persons disqualified by the operation of s. 21(1)? If s. 266(2) deems driving in defiance of a s. 20 disqualification to be an offence under s. 266, why does s. 20(2) also make driving when disqualified under s. 20 an offence, and why does s. 247 (3) legislate a penalty for the s. 20(2) offence?

[16] The second question is particularly curious because the penalties are substantially different – particularly for repeat offenders. A second offence under s. 266 attracts a minimum of three months in gaol. For a subsequent offence, the penalty is not less than six months and may be as long as two years less a day. Any second or subsequent offence under s. 20(2) and s. 247 makes the offender liable to a fine of not more than \$1000 or to imprisonment for up to six months or both fine and imprisonment. There is no minimum penalty.

[17] To make matters more puzzling still, it is to be noted that while s. 20 contains an offence subsection within it, s. 18 (which gets incorporated into s. 266 along with s. 20) does not. Thus, it appears, someone driving when prohibited by the Registrar due to a medical condition must be prosecuted under s. 266, while someone driving contrary to a Registrar's order under s. 20, could be prosecuted under either s. 247(3) or under s. 266(1).

[18] It should be noted that the existence of two different offence sections dealing with substantially the same conduct is not necessarily fatal to the validity of the sections in question. Rather, this court has determined that it allows the Crown to elect under which section to proceed: *R. v. J.M.R.*, 2006 YKTC 2. The situation is similar to that under the *Criminal Code* where an offender stealing a car can be prosecuted for theft or for taking an auto without the owner's consent.

[19] However, in my view, the purported disqualification order issued by the Deputy Registrar in 1999 is invalid if it was issued under what is now s. 20. As

noted, the current s. 20 is identical to the s. 19 under which the Deputy Registrar purported to act. It provides:

Disqualification from holding licence

20(1) If, pursuant to this Act,

- (a) the registrar refuses to issue an operator's licence to a person; or
- (b) a person is convicted of operating a motor vehicle without an operator's licence,

the registrar may at any time thereafter issue an order for any period and subject to any conditions specified in the order declaring that person to be disqualified from obtaining an operator's licence or driving a motor vehicle or any other specified class of vehicle on a highway.

(2) A person in respect of whom an order has been made under subsection (1) who drives a motor vehicle or other vehicle on a highway in contravention of that order is guilty of an offence.

[20] At the time the order was issued, Ms. Blanchard had not been convicted of operating a motor vehicle without a licence. Neither had she been refused a licence as per ss. (1)(a) given that she was disqualified from receiving one and had not made any application that could be refused. In the result, any disqualification could only be by virtue of s. 255 and, subsequently, s. 21(1).

[21] Apart from s. 20, there is no authority that I could find under the *Act* or the Regulations for the Registrar to issue an order requiring Ms. Blanchard to take the remedial driver's course before being issued a new licence. The Registrar does have the authority to refuse to issue a licence to any person:

...unless satisfied by examination or otherwise as to the physical and other competency of the applicant to drive a motor vehicle without endangering the safety of the general public.

[22] This identical wording is contained in sections 10(1) and 21(1) of the *Act*. In neither case is the Registrar authorized to issue an order. What the Registrar is authorized to do is to refuse to issue a licence until satisfied by examination or otherwise of the applicant's competency to drive. This allows the Registrar to

require Ms. Blanchard to take the Remedial Driving Course before issuing her a licence.

[23] In any case, the Crown did not rely on the purported s. 20 disqualification, but urged that the 1999 disqualification under s. 255 (originally for one year) continues indefinitely by virtue of s. 21(1). Moreover, the current Deputy Registrar of Motor Vehicles, Tracy Bendera, deposed in an affidavit sworn in connection with these proceedings that, on the dates these charges arose, Ms. Blanchard was disqualified:

... solely as a result of her failure to complete the remedial driver's course mandated by her impaired driving conviction on November 3, 1999.

[24] It thus becomes necessary to decide whether or not s. 21(1) has the effect of making Ms. Blanchard liable to the penalties provided for a breach of s. 266. I have come to the conclusion that it does not. As already noted, a s. 21(1) disqualification or suspension continuance is not a disqualification under Part 17 of the *Motor Vehicles Act*. Neither is a s. 21(1) disqualification incorporated by reference into s. 266, although many other disqualifications are.

[25] It may be that one can somehow interpret the *Motor Vehicles Act* as including a s. 21(1) disqualification into s. 266, but, given that this is penal legislation and the matter is far from clear, the offender is entitled to the benefit of the doubt.

[26] If disqualifications under s. 255 were intended to be indefinite, it would have been an easy matter to say so.

[27] It would also be logical that notices of disqualification, such as the one sent to Ms. Blanchard, would indicate that the disqualification was indefinite, rather than specifying that the disqualification was for a period of one year.

[28] The courts should not be too quick to fill in what appear to be gaps in legislation. They will do so only when the “absurdity that flows from [it] is too severe to tolerate” (R. Sullivan, *Sullivan and Driedger on the Construction of Statutes*, (4th ed.) (Vancouver: Butterworths Canada Ltd., 2002), at p. 136). In this case, a rational distinction can be drawn between those who drive during the currency of their one-year disqualification and those who drive well after the year has expired as, in the former case, the driving indicates not only a disrespect for licencing requirements but also disregard for a legal sanction. That being so, it cannot be said that subjecting the latter class of drivers to a lesser penalty is an absurdity.

[29] It should also be noted that, in Ms. Blanchard’s case, the Registrar would be at liberty to now impose a disqualification under s. 20, since Ms. Blanchard has been convicted (on numerous occasions) of operating a motor vehicle without a licence. Driving in defiance of such an order *is* deemed to be an offence under s. 266.

[30] I find, therefore, that s. 21(1) does not operate so as to make drivers who are disqualified pursuant (and only pursuant) to that section subject to the provisions of s. 266.

[31] It should be made clear that Ms. Blanchard never claimed that s. 266 did not apply to her: she entered guilty pleas to the charges. Rather, she submitted that the imposition of the mandatory minimum punishment mandated by s. 266 constituted cruel and unusual punishment contrary to s. 12 of the *Canadian Charter of Rights and Freedoms*. The issue of whether s. 266 was applicable only arose during the course of the hearing. Although the answer to this question is ultimately a legal one, it has a factual basis that only emerged during consideration of the affidavit and *viva voce* evidence.

[32] In the result, the charges against Ms. Blanchard should be amended in accordance with the evidence to refer to a breach of s. 5 of the *Motor Vehicles Act*, which make it an offence to operate a motor vehicle without a licence and she should be sentenced accordingly.

Faulkner T.C.J.

Appendix A

2008/09/12 GOVERNMENT OF YUKON - DRIVER RECORDS PAGE 1

DRPB021-3 OPERATOR ABSTRACT - COURTS OFFICE: WH

LICENCE NO: 117832 NAME: BLANCHARD PERIOD: LIFE
TRACY MAY

PHYSICAL DESCRIPTION
SEX BIRTH DATE HEIGHT WEIGHT EYE COLOUR HAIR COLOUR
F 1970/06/11 157 63 BROWN BROWN

CURRENT YUKON LICENCE
ISSUED EXPIRES TYPE TERM OFFICE CLASS RESTRICT/ENDORSE PHOTO DUPS MEDICAL
1995/03/21 1998/06/11 O 3 WH 7 Y 0 N

TOTAL DEMERIT POINTS: 7 CONSENT RECEIVED:

LICENCE STATUS: DISQUALIFIED EFFECTIVE: 1999/11/03 REVIEW/EXPIRY: 9999/12/31
REMEDIAL DRIVING COURSE

ADDRESS DATA
RESIDENT ADDRESS MAILING ADDRESS PREVIOUS ADDRESS
51 HANNA BOX 1115 RR 2

WHITEHORSE
YT YT Y1A5A5 YT

PREVIOUS AND ALIAS NAMES
SURNAME GIVEN NAMES TYPE
***** NO PREVIOUS OR ALIAS NAMES FOUND *****

DRIVING HISTORY
CONVICTION JURISDICTION, ACT OFFENCE DATE DEMERIT SUSPENDED
DATE AND SECTION AND PLACE POINTS UNTIL
2008/08/12 YT MV3 255.00 2007/08/31 0 2009/08/11
DRIVING DISQUALIFICATION WHITEHORSE
07-05349
2008/08/12 YT MV3 266.00 2007/08/31 0
DRIVING WHILE DISQUALIFIED WHITEHORSE
07-05349 01
2008/04/19 YT MV3 257.00 1 C IT 2008/04/19 0 2008/07/17
90 DAY DISQ: DRIVE SUSP/DWHITEHORSE
2008433861
2008/04/19 YT MV3 235.00 1 A 2008/04/19 0
IMPOUND VEHICLE DRIVER MVWHITEHORSE
08-2415
2007/12/24 YT MV3 235.00 1 A 2007/12/24 0
IMPOUND VEHICLE DRIVER MVWHITEHORSE
08-2339

2008/09/12

GOVERNMENT OF YUKON - DRIVER RECORDS

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OPERATOR ABSTRACT - COURTS

OFFICE: WH

LICENCE NO: 117832

NAME: BLANCHARD
TRACY MAY

PERIOD: LIFE

		DRIVING HISTORY		
CONVICTION DATE	JURISDICTION, ACT AND SECTION	OFFENCE DATE AND PLACE	DEMERIT POINTS	SUSPENDED UNTIL
2007/12/24	YT MV3 257.00 1 C IT 90 DAY DISQ: DRIVE SUSP/DWHITEHORSE 2007-1533291	2007/12/24	0	2008/03/22
2007/10/20	YT DPS DEMERIT POINT SUSPENSION WHITEHORSE SENT REG MAIL 071009	2007/10/20	7	2007/11/19
2007/10/02	YT MV3 39.00 OPERATE UNREG VEH/TRAILERWHITEHORSE 07-05145 01	2007/08/31	0	
2007/10/02	YT MV3 87.00 2 OP UNINSURED VEHICLE WHITEHORSE 07-05144 01	2007/08/31	10	
2007/08/31	YT MV3 235.00 1 A IMPOUND VEHICLE DRIVER MVWHITEHORSE 07-2207	2007/08/31	0	
2007/08/31	YT MV3 257.00 1 C IT 90 DAY DISQ: DRIVE SUSP/DWHITEHORSE 2007-1042565	2007/08/31	0	2007/11/28
2006/09/05	YT MV3 5.00 NO OPERATORS LICENCE WHITEHORSE 06-04748 01	2006/06/07	0	
2006/09/05	YT MV3 87.00 2 OP UNINSURED VEHICLE WHITEHORSE 06-04747 01	2006/06/07	10	
2006/06/07	YT MV3 257.00 1 C IT 90 DAY DISQ: DRIVE SUSP/DWHITEHORSE 2006-643709	2006/06/07	0	2006/09/04
2006/06/07	YT MV3 235.00 1 A IMPOUND VEHICLE DRIVER MVWHITEHORSE 06-1849	2006/06/07	0	
2005/06/14	YT MV3 5.00 NO OPERATORS LICENCE WHITEHORSE 05-04193 01	2005/04/08	0	
2005/06/14	YT MV3 39.00 OPERATE UNREG VEH/TRAILERWHITEHORSE 05-04192 01	2005/04/08	0	
2005/04/08	YT MV3 235.00 1 A IMPOUND VEHICLE DRIVER MVWHITEHORSE 05-1521	2005/04/08	0	
2004/08/17	YT MV3 5.00 NO OPERATORS LICENCE WHITEHORSE 04-05002 01	2004/07/02	0	
2004/07/02	YT MV3 235.00 1 A IMPOUND VEHICLE DRIVER MVWHITEHORSE 04-1340	2004/07/02	0	

2008/09/12

GOVERNMENT OF YUKON - DRIVER RECORDS

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OPERATOR ABSTRACT - COURTS

OFFICE: WH

LICENCE NO: 117832

NAME: BLANCHARD
TRACY MAY

PERIOD: LIFE

CONVICTION DATE	JURISDICTION, ACT AND SECTION	DRIVING HISTORY		DEMERIT POINTS	SUSPENDED UNTIL
		OFFENCE DATE AND PLACE			
2001/04/02	YT MVA 222.00 1 1 A IMPOUNDED VEHICLE, DRIVER 01-571	2001/04/02	WHITEHORSE	0	
2000/06/13	YT MVA 83.00 2 NO INSURANCE 99-04790 03	1999/04/11	WHITEHORSE	0	
2000/06/13	YT MVA 38.00 OPERATE UNREG VEH 99-04790 02	1999/04/11	WHITEHORSE	0	
2000/06/13	YT MVA 5.00 1 NO OPERATORS LICENCE 99-04790 01	1999/04/11	WHITEHORSE	0	
2000/06/13	YT MVA 5.00 1 NO OPERATORS LICENCE 99-07427 01	1999/08/19	WHITEHORSE	0	
1999/11/03	YT MVA 231.00 DRIVING DISQUALIFICATION 99-00068 03	1999/04/11	WHITEHORSE	0	2000/11/02
1999/11/03	YT C88 253.00 B .08OPERATE OR CARE AND COW 99-00068 02	1999/04/11	WHITEHORSE	0	2000/11/02
1999/08/19	YT MVA 232.00 1 5 90 DAY DISQ/YT/OUT/JURIS/ 99-4187	1999/08/19	WHITEHORSE	0	1999/11/16
1999/04/11	YT MVA 232.00 1 5 90 DAY DISQ/YT/OUT/JURIS/ 99-1620	1999/04/11	WHITEHORSE	0	1999/07/10
1999/04/11	YT MVA 222.00 1 1 B IMPOUNDED VEHICLE, DRIVER 99-45A	1999/04/11	WHITEHORSE	0	
1999/04/11	YT MVA 222.00 1 1 A IMPOUNDED VEHICLE, DRIVER 99-45	1999/04/11	WHITEHORSE	0	
1999/03/02	YT MVA 83.00 2 NO INSURANCE 98-06905 01	1998/12/10	WHITEHORSE	0	
1999/03/02	YT MVA 5.00 1 NO OPERATORS LICENCE 98-06904 01	1998/12/10	WHITEHORSE	0	
1998/08/25	YT MVA 132.00 1 30 SPEED-15 TO 30 OVER 98-05187 01	1998/07/25	WHITEHORSE	3	
1998/08/25	YT MVA 83.00 2 NO INSURANCE 98-05186 01	1998/07/25	WHITEHORSE	0	

DRPB021-3

OPERATOR ABSTRACT - COURTS

OFFICE: WH

LICENCE NO: 117832 NAME: BLANCHARD
TRACY MAY

PERIOD: LIFE

		DRIVING HISTORY				
CONVICTION DATE	JURISDICTION, ACT AND SECTION	OFFENCE DATE AND PLACE	DEMERIT POINTS	SUSPENDED UNTIL		
1998/08/25	YT MVA 5.00 1 NO OPERATORS LICENCE 98-05185 01	1998/07/25 WHITEHORSE	0			
1997/10/21	YT MVA 133.00 3 15 SCH ZN SPD 0-15 OV 97-06797 01	1997/09/17 WHITEHORSE	2			
1995/05/09	YT MVA 34.00 LEARNER NOT ACCOMPANIED 95-04527 01	1995/04/01 WHITEHORSE	0			



PREVIOUS YUKON LICENCES

ISSUED	EXPIRES	TERM	OFFICE CLASS	RESTRICT/ENDORSE	PHOTO DUPS MEDICAL
***** NO PREVIOUS LICENCE DATA FOUND *****					

CURRENT LICENCE STATUS

STATUS	EFFECTIVE DATE	REVIEW/EXPIRY DATE	DESCRIPTION
SUSPENDED	2008/08/12	9999/12/31	REINSTATEMENT FEE \$100
DISQUALIFIED	2008/08/12	2009/08/11	
DISQUALIFIED	2008/08/12	9999/12/31	REMEDIAL DRIVING COURSE
DISQUALIFIED	2008/04/19	2008/07/17	90 DAY DISQ: DRIVE SUSP/DISQ
DISQUALIFIED	2007/12/24	2008/03/22	90 DAY DISQ: DRIVE SUSP/DISQ
SUSPENDED	2007/11/19	9999/12/31	REINSTATEMENT FEE \$50
SUSPENDED	2007/10/20	2007/11/19	DEMERIT POINT SUSPENSION
DISQUALIFIED	2007/08/31	2007/11/28	90 DAY DISQ: DRIVE SUSP/DISQ
DISQUALIFIED	2006/06/07	2006/09/04	90 DAY DISQ: DRIVE SUSP/DISQ
SUSPENDED	1999/11/03	9999/12/31	REINSTATEMENT FEE \$100
DISQUALIFIED	1999/11/03	2000/11/02	
DISQUALIFIED	1999/11/03	9999/12/31	REMEDIAL DRIVING COURSE
DISQUALIFIED	1999/11/03	2000/11/02	
DISQUALIFIED	1999/08/19	1999/11/16	
DISQUALIFIED	1999/04/11	1999/07/10	
STAY	1998/10/09	9999/12/31	REINSTATEMENT FEE \$30
SUSPENDED	1998/10/09	9999/12/31	SUSPENSION UNPAID FINES
EXPIRED	1998/06/11	9999/12/31	
STAY	1997/11/23	9999/12/31	REFUSAL UNPAID FINES YTG
NORMAL	1995/03/21	9999/12/31	

PREVIOUS OTHER JURISDICTION LICENCES

JUR	ID NUMBER	CLASS	RESTRICT/ENDORSE
***** NO OTHER JURISDICTION LICENCES FOUND *****			

NOTE: SOME OUT OF JURISDICTION CONVICTIONS MAY NOT APPEAR.