Citation: *R. v. Williamson*, 2005 YKTC 26 Date: 20050405
Docket: 03-00497
Registry: Whitehorse

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

R e g i n a

v.

Murray William Williamson

Appearances:
Lee Kirkpatrick Counsel for Crown
Edward Horembala Counsel for Defence

REASONS FOR DECISION

[1] Murray Williamson applied to the court for a declaration that s. 262(4) of the *Motor Vehicles Act,* R.S.Y. 2002 ch. 153 violated s. 15 of the *Canadian Charter of Rights and Freedoms*.

[2] The *Motor Vehicles Act* provided that those persons convicted of an "impaired driving offence" would be disqualified from holding a licence to operate a motor vehicle. The periods of disqualification were one year for a first conviction, three years for a second conviction and indefinitely for third or subsequent convictions. However, the *Act* also provided that a person so disqualified could apply to the driver control board before the period of disqualification had expired for permission to operate a motor vehicle provided the vehicle was equipped with an ignition interlock device.

[3] Section 262(4) provided that first offenders could apply after three months had elapsed from the date of disqualification and that third or subsequent offenders could apply after three years. The *Act* was silent on the right, if any, for a second offender to apply for the interlock program. Mr. Williamson, who has one conviction contrary to s. 253(b) and one conviction contrary to s. 259(4) of the *Criminal Code* is, by virtue of the definition of "impaired driving offence" contained in s. 255(1) of the *Motor Vehicles Act*, considered as a second offender.

[4] As indicated above, the *Act* made no provision for second offenders. Thus, it is unclear whether or not they had any right to apply for the interlock program and, if they did, how long they had to wait before applying. The *Act* did provide, in s. 262(1), that a second offender could apply to the driver control board for removal of his disqualification provided it had been in effect for two years. This provision, however, made no reference to the interlock program.

[5] In these circumstances, Mr. Williamson submitted that the failure of the *Act* to make provision for second offenders to apply for the interlock program was discriminatory. He sought a declaration that s. 262(4) offended the equality rights provisions of s. 15 of the *Charter* and urged the court to read in a provision applying to second offenders. The Crown took the position that s. 262(1) of the *Act* constituted a perfectly valid provision applicable to second offenders. If not, the Crown further contended that discrimination against a certain class of offenders was not an enumerated or analogous ground of discrimination contemplated by s. 15.

[6] Following the hearing of the matter, judgment was reserved. Prior to my decision being rendered, the Commissioner in Council proclaimed into force certain sections of the *Act to Amend the Motor Vehicles Act.* Section 16 of this *Act* provides that a first offender who has been disqualified from holding an operators licence may apply for the interlock program after three months. A

second offender may apply after six months and a third or subsequent offender may apply after one year. The enactment of this provision fills the alleged gap in the former s. 262(4) and provides the applicant with an immediate right to apply for the interlock program since he has already served in excess of six months of his disqualification.

[7] The result is that the amendment has rendered the application moot. The application must, therefore, stand dismissed.

Faulkner T.C.J.