

Citation: *Gehmair (Re)*, 2014 YKTC 1

Date: 20140103
Docket: 13-08562
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Worship Justice of the Peace Morrison-Harvey

IN THE MATTER OF THE *MOTOR VEHICLES ACT*, R.S.Y. 2002, c. 153, as amended and S.259(1) thereof, And in the matter of an application for review of a 90 day driver's operator's licence suspension or disqualification

LEVI C. GEHM AIR

Applicant

Appearances:
Levi Gehmair

Appearing on his own behalf

DECISION OF THE REVIEW OFFICER

[1] Mr. Gehmair was issued a 90 day roadside driver's licence suspension by a peace officer in Whitehorse on December 28, 2013 pursuant to s. 257(1) of the *Motor Vehicles Act*, R.S.Y. 2002, c. 153.

[2] Mr. Gehmair has applied to have the suspension reviewed pursuant to s. 259 and has requested an oral hearing under s. 259(5).

[3] The Registrar was notified of the review and did not attend at the hearing.

[4] The form "Notice of 90 Day Suspension or Disqualification And/Or Impoundment of Motor Vehicle", which I will refer to as the "Peace Officer's Report", has been filed by

Motor Vehicles Branch. Under the subheading “Particulars of Offence” the following unsworn, signed statement from the peace officer reads as follows:

“Pulled over vehicle on Robert Service Way by campground for burnt out headlight. Driver ID via DL. DL EXP. 2013-08-13. Student @ Yukon College. Girlfriend in pax seat has class 7. Driven away by friend. Charged under Sec. 5(1) MVA. Co-operative Vehicle YT plate HAJ47 1992 Toyota Corolla Red”

[5] The Peace Officer’s Report, under the subheading “Notice of 90 Day Driver’s Licence Or Permit Disqualification For Invalid Yukon Or Out of Jurisdiction Licence Holder”, also contains the following information:

I, the Peace Officer, am issuing this Notice of Disqualification to you because of an occurrence on 23-12-28 at or about 21:35 at or near Whitehorse YT

I believe on reasonable grounds that in this occurrence you operated a motor vehicle contrary to the Yukon *Motor Vehicles Act*, because:

- a) an analysis of your breath or blood indicated a concentration of alcohol in your blood that exceeded 80 milligrams of alcohol in 100 millilitres of blood;
- OR
- b) you failed or refused to comply with a demand made to you to supply a sample of your breath or blood following operation of a motor vehicle;
- OR
- c) you drove a motor vehicle while your driver’s licence or permit was suspended or you were disqualified or prohibited from holding a drivers licence or permit;
- OR
- d) you drove and you do not hold a valid driver’s licence.

In this section, the item marked “d” is ticked off with a check mark to indicate the suspension was given as a result of Mr. Gehmair driving without a valid driver’s licence.

[6] Section 257(1) of the *Act* sets out the circumstances in which a peace officer may suspend or disqualify the driver from driving and reads as follows:

257(1) A peace officer may suspend the operator's licence of the driver of a motor vehicle, or disqualify the driver from driving, if

- (a) because of an analysis of the driver's breath or blood, the peace officer believes on reasonable grounds that the driver has consumed alcohol in such a quantity that the concentration of it in their blood exceeds 80 milligrams of alcohol in 100 millilitres of blood;
- (b) the peace officer believes on reasonable grounds that the driver failed or refused to comply with a demand made on them to supply a sample of their breath or blood under section 254 of the Criminal Code (Canada); or
- (c) the peace officer believes on reasonable grounds that the driver is driving a motor vehicle while their operator's licence is suspended or they are disqualified or prohibited from holding an operator's licence.

[7] Section 257(2) to s. 257(7) set out the actions to be taken by a peace officer if the circumstances in subsection (1) are present. Each of these subsections considers the licence status of the driver and sets out a specific response in relation to existing and future licences or permits. For example, as per subsection (2), if the driver has a valid operator's licence, the peace officer shall seize it and issue a temporary permit, or issue a notice of suspension that will take effect in 14 days. If the driver has a temporary permit, subsection (3) says that the peace officer will take possession of the permit and immediately suspend it. Subsection (4) addresses a driver with an out-of-territory licence, and subsection (5) deals with a driver that does not have a valid licence. However, none of these sections comes into play unless the prerequisite conditions of s. 257(1) exist.

[8] As indicated, s. 259 provides the driver with a right of review. Section 259(6) states:

In a review under this section, the review officer must consider

- (a) any relevant sworn or solemnly affirmed statements and any other relevant information;
- (b) the report of the peace officer;
- (c) a copy of any certificate of analysis under section 258 of the Criminal Code (Canada) without proof of the identity and official character of the person appearing to have signed the certificate or that the copy is a true copy; and
- (d) if an oral hearing is held, in addition to matters referred to in paragraphs (a), (b), and (c), any relevant evidence and information given or representations made at the hearing.

[9] The only issue for consideration in a review under s. 259 is set out in s. 259(8):

(8) The only issue before the review officer in a review under this section is whether the peace officer had reasonable grounds to suspend the driver's operator's licence, or to disqualify the driver, under subsection 258(1). That issue is to be determined on the balance of probabilities.

While s. 259(8) refers to s. 258(1), it is clear that the reference should be to s. 257(1).

[10] It is clear from the Peace Officer's Report that pursuant to s. 257(1) no grounds existed to suspend Mr. Gehmair's licence. He was not impaired, he did not refuse a breathalyzer demand, nor was his licence suspended or disqualified. Rather, his licence had simply expired, which is confirmed by the "Driver Record/Abstract of Levi Christopher Gehmair" filed by Motor Vehicles. From August 26, 2003 to August 14, 2013, Mr. Gehmair's licence status was "normal". On August 14, 2013 the licence was expired. Section 257(1) does not set out an expired licence as a grounds for suspension or disqualification.

[11] It is a serious matter to be issued a disqualification or suspension of your driver's licence. The loss of it can have devastating consequences on an individual. In Mr. Gehmair's case, he resides a substantial distance outside the city. He is a full-time student at Yukon College and he works part-time. There is no bus service to where Mr. Gehmair resides. His driver's licence is critical to him; without it he cannot get to school or his job. A suspension may also have an impact on his insurance rates. Mr. Gehmair also attended at Motor Vehicles Branch within two days of receiving this suspension and paid the required \$50.00 reinstatement fee for a 5 year licence renewal and has filed proof of payment by way of a receipt from Department of Community Services, Motor Vehicle Branch.

[12] The police officer's decision to suspend Mr. Gehmair's licence in the absence of any of the grounds set out in s. 257(1) of the *Act* is most likely explained by the form used for the Peace Officer's Report. As noted, under the subheading "Notice of 90 Day Driver's Licence Or Permit Disqualification For Invalid Yukon Or Out of Jurisdiction Licence", the form provides option "d", which reads "you drove and you do not hold a valid driver's licence". However, s. 257(1) does not set out the absence of a valid driver's licence or expired driver's licence as grounds for a 90 day suspension or disqualification, and this option should be removed from the Police Officer's Report form.

[13] The peace officer did not have reasonable grounds to suspend the driver's operator's licence, or to disqualify the driver from holding an operator's licence, under subsection 257(1) and that suspension or disqualification is revoked. I direct that any licence or permit surrendered as a result of the suspension or disqualification be

returned to the driver; and I direct that the fees paid for this review be refunded to the applicant.

[14] Mr. Gehmair was also issued a ticket under s. 5(1) of the *Motor Vehicles Act*, for driving without a valid licence and subjected to a fine. That would appear to be the appropriate response that the legislation intended, not a 90 day disqualification.

MORRISON-HARVEY J.P.T.C.