

No.
New Westminster Registry

131443

IN THE SUPREME COURT OF BRITISH COLUMBIA

RE: IN THE MATTER OF THE MOTOR VEHICLE ACT, RSBC 1996 CH. 318, AND THE
JUDICIAL REVIEW PROCEDURE ACT, RSBC 1996, CH 241

BETWEEN:

AMAN PREET SIVIA

PETITIONER

SUPERINTENDENT OF MOTOR VEHICLES and
THE ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENTS

PETITION TO THE COURT

This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

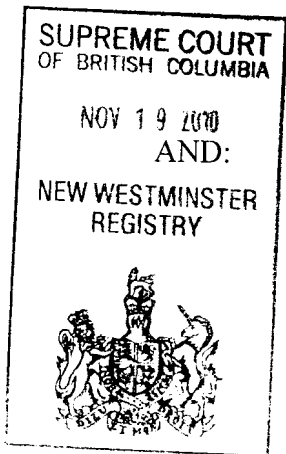
- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the files response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the files petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or



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(d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is: 651 Carnarvon Street, New Westminster, British Columbia
(2) The ADDRESS FOR SERVICE of the petitioner(s) is: Philip A. Riddell Garton & Harris Barristers & Solicitors Ste. 6201 – 2850 Shaughnessy Street Port Coquitlam, B.C. V3C 6K5 Fax number for service (if any) of the petitioner(s): (604) 520-6035
(3) The name and office address of the petitioner's lawyer is: Philip A. Riddell Garton & Harris Barristers & Solicitors Ste. 6201 – 2850 Shaughnessy Street Port Coquitlam, B.C. V3C 6K5

CLAIM OF THE PETITIONER(S)

Part 1: ORDER(S) SOUGHT

1. An order in the nature of certiorari that the decision of the Superintendent of Motor Vehicles confirming the driving prohibition IRP No. 20-198206 issued on October 14, 2010 be set aside, and the be remitted to the Superintendent of Motor Vehicles.
2. An order staying the 90 day driving prohibition imposed by operation of ss. 215.41 and 215.5 of *Motor Vehicle Act*, R.S.B.C. 1996 ch. 318 pronounced October 14, 2010 pending hearing of this Petition.
3. A declaration that statutory scheme as set in ss. 215.41 to 215.51 of the *Motor Vehicle Act*, R.S.B.C. 1996 ch. 318 is not within the legislative competence of the Province of British Columbia under s. 92 of the *Constitution Act, 1867*, and that it infringes on the Federal Government's jurisdiction under s. 91(27) of the *Constitution Act, 1867*, and accordingly is on no force and effect.
4. A declaration that statutory scheme as set in ss. 215.41 to 215.51 of the *Motor Vehicle Act*, R.S.B.C. 1996 ch. 318 infringes the petitioner's rights as guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*.

5. Costs.

Part 2: FACTUAL BASIS

1. On 24th day of September, 2010 the Petitioner was issued with a notice of driving prohibition pursuant to s. 215.41 of the *Motor Vehicle Act*, RSBC 1998, ch. 318 by Constable Harder.
2. The Petitioner applied pursuant to s. 215.48 of the *Motor Vehicle Act*, RSBC 1998, ch. 318 for a review of the driving prohibition on September 29, 2010.
3. On the October 14, 2010 the delegate of the Superintendent of Motor Vehicles dismissed the application for review.

Part 3: LEGAL BASIS

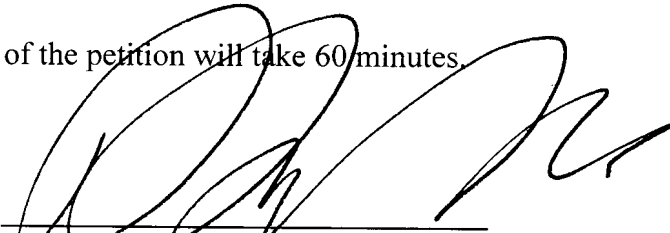
1. The decision of the Superintendent of Motor Vehicles erred in law in making a decision which could not be supported on the facts before him. This decision was not "reasonable".
2. The statutory scheme as set in ss. 215.41 to 215.51 of the *Motor Vehicle Act*, R.S.B.C. 1996 ch. 318 is not within the legislative competence of the Province of British Columbia under s. 92 of the *Constitution Act, 1867*, and that it infringes on the Federal Government's jurisdiction under s. 91(27) of the *Constitution Act, 1867*, and accordingly is on no force and effect. The pith and substance of the legislative scheme is *ultra vires* the Province of British Columbia, because the imposition of the monetary penalties in addition to financial penalties brings the scope of the legislation within the exclusive legislative competence of the Federal Government.
3. The imposition of penalties in addition to license prohibition and vehicle impoundment creates a situation in which the Petitioner's rights as guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms* infringed.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Aman Preet Sivia made November 17, 2010.

The petitioner(s) estimate(s) that the hearing of the petition will take 60 minutes.

Date: November 17, 2010



Signature of Lawyer for petitioner(s)

PHILIP A. RIDDELL

To be completed by the court only:

Order made

___ in the terms requested in paragraphs ___ of Part 1 of this notice of application

___ with the following variations and additional terms:

Date

Signature of ___ Judge ___ Master

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RESPONDENTS

PETITION TO THE COURT

GARTON & HARRIS
Philip A. Riddell
Barrister & Solicitor
Ste. 6201 – 2850 Shaughnessy Street
Port Coquitlam, B.C.
V3C 6K5

Tel.: (604) 520-6033
Fax.: (604) 520-6035