

Jesse David MacNeil (respondent/petitioner) v. The Superintendent of Motor Vehicles and The Attorney General of British Columbia (appellants/respondents)
(CA038609; 2012 BCCA 360)

Indexed As: MacNeil v. Superintendent of Motor Vehicles (B.C.) et al.

British Columbia Court of Appeal
Neilson, Bennett and Harris, JJ.A.
August 29, 2012.

Summary:

MacNeil applied for an extension of the seven-day period for applying for a review of a 24-hour driving prohibition served under s. 215 of the Motor Vehicle Act. A delegate of the Superintendent of Motor Vehicles, an adjudicator, concluded that she had no authority to extend the seven-day period. MacNeil applied for judicial review.

The British Columbia Supreme Court, allowed the application, quashed the adjudicator's decision and remitted the matter to the Superintendent to consider whether an extension should be granted in the circumstances. The Superintendent and the Attorney General of British Columbia appealed.

The British Columbia Court of Appeal allowed the appeal.

Administrative Law - Topic 3202

Judicial review - General - Scope or standard of review - [See **Motor Vehicles - Topic 7225.3**].

Motor Vehicles - Topic 7225.3

Licensing and regulation of drivers - Licence - Suspension of - Administrative or summary suspension (incl. impaired driving incidents) - A driver applied for an extension of the seven-day period for applying for a review of a 24-hour driving prohibition (Motor Vehicle Act, s. 215.1) - The Superintendent of Motor Vehicles' delegate, an adjudicator, concluded that she had no authority to extend the seven-day period - On judicial review, a chambers judge set aside the decision and remitted the matter for reconsideration - The Superintendent appealed - The British Columbia Court of Appeal held that the chambers judge erred in implicitly applying a standard of correctness - Rather, the standard of review was reasonableness - The court held that the adjudicator's decision that the Superintendent had no authority to extend the time was reasonable - The Superintendent's powers were purely statutory and there was no express statutory authority to extend the time.

Motor Vehicles - Topic 7240

Licensing and regulation of drivers - Licence - Suspension of - Appeals and judicial review - [See **Motor Vehicles - Topic 7225.3**].

Cases Noticed:

Alberta Teachers' Association v. Information and Privacy Commissioner (Alta.) et al. (2011), 424 N.R. 70; 519 A.R. 1; 539 W.A.C. 1; 2011 SCC 61, refd to. [para. 7].
Segers et al. v. Superintendent of Motor Vehicles (B.C.) et al. (1999), 7 B.C.T.C. 310, refd to. [para. 17].
Zutter v. Council of Human Rights (B.C.) et al. (1995), 57 B.C.A.C. 241; 94 W.A.C. 241; 122 D.L.R.(4th) 665; 3 B.C.L.R.(3d) 321 (C.A.), refd to. [para. 18].
Hansard Spruce Mills Ltd., Re, [1954] 1 D.L.R. 326; 33 C.B.R. 217 (B.C.S.C.), refd to. [para. 22].
Canada Post Corp. v. Canadian Union of Postal Workers (2011), 414 N.R. 189; 2011 FCA 24; 330 D.L.R.(4th) 729, revsing. (2010), 364 F.T.R. 177; 2010 FC 154, refd to. [para. 30].
New Brunswick (Board of Management) v. Dunsmuir, [2008] 1 S.C.R. 190; 372 N.R. 1; 329 N.B.R.(2d) 1; 844 A.P.R. 1; 2008 SCC 9, refd to. [para. 35].
Rapton v. Superintendent of Motor Vehicles (B.C.) (2011), 311 B.C.A.C. 176; 529 W.A.C. 176; 2011 BCCA 396, refd to. [para. 39].
T.L.M. v. New Brunswick (Minister of Social Development) (2011), 374 N.B.R.(2d) 170; 965 A.P.R. 170, refd to. [para. 42].
LeClair v. Director of Residential Care (Man.) et al. (1999), 138 Man.R.(2d) 10; 202 W.A.C. 10; 33 C.P.C.(4th) 1 (C.A.), refd to. [para. 42].
Houston v. Saskatchewan Teachers' Federation (2009), 331 Sask.R. 157; 460 W.A.C. 157; 2009 SKCA 70, refd to. [para. 42].

Statutes Noticed:

Motor Vehicle Act, R.S.B.C. 1996, c. 318, sect. 215.1 [para. 4].
Motor Vehicle Act Regulations (B.C.), Review of 24 Hour Driving Prohibition Regulation, B.C. Reg. 591/2004, sect. 2 [para. 5].
Review of 24 Hour Driving Prohibition Regulation - see Motor Vehicle Act Regulations (B.C.).

Counsel:

R. Mullett, for the appellants;
L.R. Cruickshank, for the respondent.

This appeal was heard in Vancouver, B.C., on July 18, 2012, before Neilson, Bennett and Harris, J.J.A., of the British Columbia Court of Appeal. The following decision was delivered for the court, on August 29, 2012, by Harris, J.A.

Appeal allowed.

Editor: Elizabeth M.A. Turgeon

Administrative Law - Topic 3202

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