

Citation: *Scarizzi (Re)*, 2020 YKTC 13

Date: 20200327
Docket: 19-08615A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

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

MICHAEL ROBERT SCARIZZI

Applicant

Appearances:
David Tarnow

Counsel for the Applicant

DECISION OF THE REVIEW OFFICER

[1] This is an application by Michael Scarizzi, pursuant to s. 259 of the Yukon *Motor Vehicle Act*, R.S.Y. 2002, c. 153, as amended (the "*Act*"), for the return of his driver's licence, which was suspended under s. 257 of the *Act*.

[2] The circumstances are that on March 14, 2020, Cst. Breton of the RCMP pulled over the vehicle being driven by Mr. Scarizzi for speeding. The traffic stop occurred at 1:40 a.m.

[3] Cst. Breton noted an odour of liquor on Mr. Scarizzi's breath and made a demand that he provide a sample of his breath into an Approved Screening Device ("ASD"). Following a "fail" result, Mr. Scarizzi was arrested for impaired driving. He

subsequently provided breath samples into an approved instrument. The results of these samples were 100 and 90 mg/%. According to the Certificate of Qualified Technician, these two samples were obtained at 2:38 a.m. and 3:12 a.m. respectively.

[4] Cst. Breton then issued Mr. Scarizzi a NOTICE OF 90 DAY SUSPENSION OR DISQUALIFICATION AND/OR IMPOUNDMENT OF MOTOR VEHICLE (the “Notice”) pursuant to s. 257 of the *Act*.

[5] Section 257(1)(a) of the *Act* reads:

(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 police 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.

[6] Section 259(8) of the *Act* sets out the scope of the review officer’s jurisdiction on an application for review of the decision of the peace officer to suspend or disqualify a driver under s. 257(1)(a) as follows:

(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 257(1). That issue is to be determined on the balance of probabilities.

[7] Counsel for Mr. Scarizzi raises two grounds on which he submits the roadside suspension should be rescinded.

[8] First, he submits that s. 259(6)(c) refers to the requirement that a review officer consider:

(c) a copy of any certificate of analysis under s. 258 of the *Criminal Code* (Canada)...

[9] Counsel argues that as s. 258 of the *Code* has been repealed and no longer exists, the Certificate of Qualified technician is not admissible evidence for proof of Mr. Scarizzi's blood alcohol levels, and therefore the Notice is invalid.

[10] However, s. 24(2) of the *Interpretation Act*, RSY 2002, c. 125, reads as follows:

(2) When all or part of a statute of a province or of Canada is repealed and other provisions are substituted by way of amendment, revision, or consolidation, a reference in an enactment of the Yukon to the repealed statute shall, as regards a subsequent transaction, matter or thing, be construed as a reference to the provisions of the substituted statute relating to the same subject matter as the repealed statute.

[11] By virtue of the *Interpretation Act*, therefore, the reference to s. 258 of the *Code* should now be read as a reference to s. 320.31.

[12] As a result, I decline to accede to this argument.

[13] Secondly, counsel submits that Cst. Breton did not have the requisite reasonable grounds to believe Mr. Scarizzi was contravening the *Act* and therefore to issue the Notice.

[14] Within the body of the Notice it is stated, in part, as follows:

I, the peace officer, am issuing this Notice of Suspension or Disqualification because on 2020/03/14 at or about 0140 at or near Whitehorse I believe on reasonable grounds that you operated a motor vehicle contrary to the Yukon Motor Vehicles Act, because:

- Analysis of your breath/blood alcohol indicated an alcohol concentration of greater than 80 milligrams of alcohol in 100 millilitres of blood

[15] Cst. Breton has affixed his signature to this portion of the Notice.

[16] Counsel for Mr. Scarizzi submits that at 1:40 a.m., Cst. Breton did not have the results of the breath samples taken at 2:38 a.m. and 3:12 a.m. Therefore the basis for his belief on reasonable grounds that Mr. Scarizzi operated a motor vehicle contrary to the *Act* was without foundation. In other words, Cst. Breton could not have had the grounds he said he did at 1:40 a.m. because the stated grounds, being the results of the breath samples into the approved instrument, were not available until much later.

[17] This is a somewhat novel argument and, if the portion of the Notice signed by Cst. Breton were to be read as counsel submits it should be, then the argument would be with considerable merit.

[18] However, while perhaps different wording could have been utilized, I am satisfied that the Notice can, without straining, be read in a way that undermines counsel's submission. The crucial interpretive point for consideration is whether:

- (a) Cst. Breton was stating that at 1:40 a.m., and prior to the breath samples being taken, he had formed the belief that Mr. Scarizzi was contravening the *Act* because his breath samples had been analyzed as showing a blood alcohol level in excess of 80 mg%; or
- (b) Cst. Breton is stating that he formed the belief, following the obtaining of the breath sample results, that at 1:40 a.m. Mr. Scarizzi was contravening the *Act*.

[19] In my opinion, the latter is the more logical of the two constructions of this portion of the Notice, and is at least equally consistent with a "plain language" approach to being read and interpreted.

[20] By way of approach, were I to read this portion as though a comma was inserted after “Whitehorse”, the latter interpretation is entirely logical. Regardless, the absence of a comma does not detract from the latter nonetheless being the more logical interpretation.

[21] The interpretation counsel submits I should accept would be able to be acceded to more easily if the word “believe” was in fact “believed”, thus imparting a past tense to it.

[22] In sum, I am satisfied that, read plainly and logically, Cst. Breton was stating in the Notice that he had reasonable grounds to believe that Mr. Scarizzi was operating a motor vehicle contrary to the *Act* at 1:40 a.m., and that his reasonable belief was based upon the subsequent analysis of Mr. Scarizzi’s breath samples indicating that he had blood alcohol levels of 100 mg% and 90 mg%.

[23] Therefore, being satisfied that Cst. Breton had reasonable grounds to issue the Notice to Mr. Scarizzi, I have no choice but to deny the application and to uphold the suspension and/or disqualification as set out in the Notice.

COZENS T.C.J.