

Citation: *Tizya (Re)*, 2014 YKTC 10

Date: 20140313
Docket: 13-08538
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

IN THE MATTER OF DRIVER CONTROL BOARD FILE NO. 110139, And in the matter of an application to a Judge pursuant to Section 28(4) of the *MOTOR VEHICLES ACT*, R.S.Y. 2002, c. 153, for an Order that the Court set aside the decision of the Driver Control Board

MIKE TIZYA

Applicant

Appearances:
Mark E. Wallace
Mike Tizya

Counsel for Driver Control Board
Appearing on own behalf

REASONS FOR JUDGMENT

[1] Mike Tizya brings this application pursuant to s. 28(4) of the *Motor Vehicles Act*, R.S.Y. 2002, c. 153 (“the *Act*”), seeking an order that this Court set aside the May 21, 2013 decision of the Driver Control Board (“the Board”), which confirmed the suspension of his licence on the basis that he is a chronic alcoholic.

[2] The Board is opposed to Mr. Tizya’s application. Counsel’s primary argument is about whether this Court has jurisdiction to entertain Mr. Tizya’s application.

BACKGROUND

[3] Mr. Tizya’s current interaction with Motor Vehicles Branch began with a February 2, 2013 letter from the Whitehorse General Hospital Medical Records Department. In

this letter, Dr. Iain Seal indicated to the Motor Vehicles Branch that Mr. Tizya had a “history of chronic alcohol abuse and impaired judgment while impaired”. He stated his belief that Mr. Tizya should not be in possession of a Class 5 driver’s licence.

[4] This letter triggered a meeting of the Yukon Motor Vehicles Medical Review Committee. The notes from this meeting are sparse, and it is unclear when it occurred. Pursuant to this meeting, however, a letter went out to Mr. Tizya from the Deputy Registrar of Motor Vehicles on February 13, 2013. The Deputy Registrar advised Mr. Tizya that he “[did] not meet the CCMTA ‘Canadian Council of Motor Transport Administrators’ Medical Standards for Drivers at this time” and told him that his licence “is cancelled effective immediately pursuant to subsection 18(1) of the *Motor Vehicles Act*”. The letter also advised Mr. Tizya of his right to appeal to the Driver Control Board within 30 days and enclosed a brochure setting out that process. A second letter containing essentially the same information was issued on February 21, 2013.

[5] Mr. Tizya appealed the decision of the Registrar, and a Driver Control Board hearing was set for April 15, 2013. Mr. Tizya failed to show up, and the hearing was rescheduled to May 21, 2013. Mr. Tizya was also absent on the second date. The Board issued a two-page document, dated May 21, 2013, entitled “Reasons for Decision”. Under the heading “Conclusion” this document reads:

Mr. Tizya’s appeal is denied.

Mr. Tizya’s licence will remain suspended until he has completed an alcohol treatment program, and has been abstinent from alcohol for one year. This treatment and abstinence must be verified by Alcohol and Drug Services and/or Mr. Tizya’s physician.

[6] It is this decision that Mr. Tizya is appealing to the Territorial Court. He filed his Notice of Application on October 4, 2013, and the matter was heard on October 31, 2013.

[7] No medical documentation beyond Dr. Seal's originating letter was provided to the Court as part of the administrative record, although various parking tickets and Mr. Tizya's driver abstract were. It reflects two parking violations (2011), a driving without a licence offence (1999) and a seat belt offence (1998), as well as an administrative suspension for unpaid fines (2012).

ISSUES

[8] As indicated, there is a threshold issue of jurisdiction that must be resolved before I can entertain Mr. Tizya's application on the merits.

[9] Counsel for the Board takes the position that an appeal to a judge under s. 28(4) of the *Act* is only available when the Board is acting as a first instance decision-maker and not when it is acting as an appeal body.

[10] However, if I find that the section is not to be so narrowly construed and that the Territorial Court has jurisdiction to hear Mr. Tizya's appeal, counsel says that, in any event, Mr. Tizya has filed out of time and his application should be dismissed on this basis.

[11] In the alternative, counsel for the Board submits that Mr. Tizya has not met his evidentiary burden as he has not provided any additional evidence that would allow this Court to overturn the decision of the Board.

[12] Accordingly, the issues to be resolved are:

- 1) Does the Territorial Court have jurisdiction under s. 28(4) of the *Act* to review a decision made by the Board on an appeal?
- 2) If so, should the application be dismissed on the basis that Mr. Tizya filed his Application outside the 30-day time frame set by s. 28(4)?
- 3) If the application is not dismissed, did the Board err in its decision to maintain the suspension or cancellation¹ of Mr. Tizya's drivers licence?

ANALYSIS

1) Does the Territorial Court have jurisdiction under s. 28(4) of the Act to review a decision made by the Board on appeal?

[13] Section 28 of the *Act* reads:

Review and appeal

28(1) If the board has suspended the operator's licence of a person for an indefinite period or for a period in excess of six months, the person may apply to the board for a review of the suspension and the board shall, within 30 days, give the person an opportunity to be heard.

(2) No person may apply for a review under subsection (1) more often than once every six months.

(3) On a review under subsection (1), the board may confirm, modify or set aside any earlier decision by it.

(4) Any person who considers themselves aggrieved by a decision of the board may, within 30 days after the decision of the board is sent to their latest address as recorded with the board, appeal the decision of the board to a judge. (emphasis added)

(5) The judge may confirm, modify, or set aside the decision of the board.

¹ The Board seems to use these two terms relatively interchangeably. In its Introduction, the Board decision notes that Mr. Tizya is appealing the 'cancellation' of his licence, while the Conclusion notes that his 'licence will remain suspended' until certain conditions are met.

[14] The Board's argument that the Territorial Court can only hear an appeal when the Board decision is one of first-instance, and not when the Board is acting as an appeal body, is based on two decisions of Judge Lilles: ***Yukon (Driver Control Board) v. Peterson***, 2000 YTTC 509 and ***Yukon (Driver Control Board) v. Sutton***, 2000 YTTC 508.

[15] These cases pre-date amendments to Part 17 of the *Act* ("Prosecutions") made in late 2000. Prior to the amendments, the precursor to s. 259 of the current *Act* sent reviews of roadside suspensions to the Driver Control Board, whereas they now go to a review officer. The drivers in these cases appealed these review decisions of the Board to the Territorial Court, relying on the appeal provision now contained in s. 28 of the *Act*. Lilles J. declined jurisdiction, finding that this appeal provision was limited to Board decisions made under Part 1 ("Operators' Licences").

[16] In the case before me, although the Board was exercising jurisdiction under s. 26 ("Appeal from decision of registrar"), which is in Part 1 of the *Act*, the decisions of Lilles J. also arguably have language to the effect that the right of appeal only applies to decisions made under then - s. 24 ("Functions of the Driver Control Board", now s. 25) and not to decisions under s. 26 where the Board is acting in a review capacity.

[17] The relevant paragraphs from ***Peterson*** and ***Sutton*** are as follows (cited to ***Peterson***):

[20] I have come to the conclusion that the right of appeal contemplated by s. 27(4) of the *Motor Vehicles Act* is restricted to decisions of the Driver Control Board made under Part 1 of the *Act*. These decisions are specifically set out in s. 24(1), namely, suspending a person's operating

licence, prescribing remedial education or treatment as a condition of possession of an operator's licence and prescribing terms and conditions for the possession of an operating licence.

[21] This conclusion is based on legal principles, on principles of statutory interpretation and on common sense:

...

4. Part 1 and s. 27 deal with Board-imposed licence suspensions and licence conditions. These are decisions which have been made, in the first instance, by the Board. Good administrative practice would suggest a right of appeal or review, either to another administrative body or to a court. In contrast, the decision to disqualify drivers pursuant to s. 231 was made by the Legislature as a matter of policy. The Legislature has delegated to the Board the responsibility to reconsider this statutory disqualification, under certain conditions. Under s. 236, the Board, in a real sense, is acting not as a decision-maker of first instance but in review of the Legislature's decision.

...

8. There is no right of appeal from a decision of an administrative tribunal unless specifically provided by statute, nor is there a presumption that there should be an appeal. Administrative agencies have been created precisely to keep matters out of the courts. In specialized areas, and I consider the jurisdiction of the Driver Control Board to be such a specialization, expertise is developed over time as a result of dealing with cases. A generalist judge is not in a good position to second guess the Board on matters related to public safety and alcohol addictions. On the other hand, generalist judges are well trained in the areas of law and jurisdiction. This has been the traditional role of the superior courts in exercising their judicial review powers.

...

[22] In conclusion, I find that there is no right of appeal to this court from Driver Control Board decisions made pursuant to s. 235 of the *Motor Vehicles Act*. In particular, s. 27(4) does not authorize a general right of appeal but is

limited to Board decisions made pursuant to Part 1 of the *Act* and, in particular, those made pursuant to s. 24(1). ... (emphasis added)

[18] Counsel for the Driver Control Board as well highlighted para. 15 of **Peterson**, which states that “no appeal exists from an administrative action, including the decision of an administrative tribunal, unless specifically provided for by statute”. I was also provided with **(Re) Dalziel**, [1997] Y.J. No. 93 (T.C.), another decision of Lilles J., in which he characterizes the Board as “[exercising] a specialist function, having both experience and knowledge concerning alcoholism, impaired driving and road safety” (para. 3). Counsel argues that, given the deference that the Board is entitled to, I should be inclined to circumscribe this Court’s appellate jurisdiction.

[19] While I appreciate the Board’s views, I find that s. 28 does expressly provide a statutory right of appeal, and I am not persuaded that it should be read-down as inapplicable in these circumstances.

[20] The dominant principle of statutory construction/interpretation is that “the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament” (Professor Elmer Driedger, cited in **Rizzo & Rizzo Shoes (Re)**, [1998] 1 S.C.R. 27).

[21] In terms of the overall scheme of the *Act*, as noted, the s. 28 appeal provision is included in the broader part of the *Act* dealing with Operators’ Licences. While, as set out in Judge Lilles’ decisions, it clearly makes sense to limit the effect of s. 28 to this

Part, in my view there is nothing in the scheme of the legislation to suggest that its application under Part 1 should itself be limited.

[22] There is nothing in the wording of s. 28 to suggest that the right of appeal only applies to first-instance decisions or to decisions of the Board made under s. 25 of the Act. It refers simply to “a decision of the Board”. The Board itself has titled its review “Reasons for Decision”, and, despite counsel’s position, I am of the view that a decision on an appeal is still a decision. The same logic applies to an argument that it was the registrar and not the Board who suspended Mr. Tizya’s licence in the first place – the effect of the Board’s decision is clearly a licence suspension in excess of six months, regardless of whether it was continued versus imposed.

[23] The Driver Control Board has also framed its argument along the lines of what Lilles J. identified as a presumption against the appellate authority of a court. With respect to this position, I note that there is no privative clause included in Part 1 of the Legislation, and nothing that would otherwise conflict with what appears to be a legislated right of appeal in s. 28.

[24] As well, despite what Lilles J. says about a presumption against court oversight, I do not think that this concept operates in the manner urged by counsel for the Board. While it is true that deference is “both an attitude of the court and a requirement of the law of judicial review” that “imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 48), there is no principle that would require a court to read down a

statutory right of appeal in order to be deferential. Deference is more properly imported into an appellate court's treatment of the tribunal's decision.

[25] Accordingly, I conclude that the Territorial Court does have the statutory jurisdiction to hear an appeal of the Board's s. 26 decision on Mr. Tizya's appeal from the registrar's cancellation of his licence.

2) Should Mr. Tizya's application be dismissed on the basis that he filed his Application outside the 30-day time frame set by s. 28(4)?

[26] Section 28 of the *Act* seems to provide two mechanisms by which an individual can review a licence suspension imposed by the Board. Sections 28(1) and (2) operate to allow Board re-consideration of an existing suspension every six months, while s. 28(4) allows an appeal of a Board decision to a judge within 30 days of that decision. In my view, these provisions are complementary. They function so that an individual has the ability to periodically seek a licence reinstatement based on their current circumstances (ss. (1) and (2)) but also provide for judicial oversight of the Board's decision in the event that the individual believes he or she was not fairly dealt with or that an error was made.

[27] As observed by counsel for the Board, it is clear that Mr. Tizya's appeal period for the May 21, 2013 decision had long lapsed by the time he filed his appeal on October 4, 2013. I agree with counsel that this late filing acts as a bar to Mr. Tizya's proceeding with this appeal. There is no provision within the *Act* for the Court to extend the time for filing an appeal. Any concerns about the fairness of this scheme are alleviated by the alternative statutory mechanism by which Mr. Tizya can seek a licence reinstatement, as he has the ability under ss. (1) to apply for to the Board for a review of

its own May 21 decision. In this case, Mr. Tizya could have exercised that right as early as the end of November.

[28] I conclude that I have no jurisdiction to hear Mr. Tizya's appeal, given that he has filed it outside of the 30 days that the statute provides for. Accordingly, his appeal of the Board's licence suspension must be dismissed on this basis.

3) If the application is not dismissed, did the Board err in its decision to maintain the suspension or cancellation of Mr. Tizya's drivers licence?

[29] Given my finding on Issue 2, I do not need to resolve this question.

COZENS C.J.T.C.