

SUPREME COURT OF NOVA SCOTIA

Citation: Burnell v. Nova Scotia (Registrar of Motor Vehicles), 2009 NSSC 341

Date: 20090716

Docket: Hfx. No. 306296

Registry: Halifax

Between:

Charles Burnell

Applicant

v.

Registrar of Motor Vehicles

Respondent

D E C I S I O N

Judge: The Honourable Justice Suzanne M. Hood

Heard: July 16, 2009 in Halifax, Nova Scotia

Written Decision: November 17, 2009

Counsel: Matthew Moir and Theresa Graham, for the Applicant
Sheldon Choo and Stephen McGrath, for the Respondent

By the Court:

[1] The first issue in this matter of the standard of review is whether it is correctness or reasonableness. Both parties have cited *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9. The applicant submits that correctness is the standard and both parties actually have quoted from paragraph 50 of that decision:

59 'Jurisdiction' is intended in the narrow sense of whether or not the tribunal had the authority to make the inquiry. In other words, true jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter. The tribunal must interpret the grant of authority correctly or its action will be found to be *ultra vires* or to constitute a wrongful decline of jurisdiction.

[2] The question, then, is did the Registrar have the authority to do what she did. I must look at the wording of the provision that the Registrar acted under. In my view, that section sets out what the Registrar can do. Under that section, therefore, there is a question of jurisdiction which leads to the standard of review being the standard of correctness.

[3] So the question then is did the Registrar have the authority to revoke the license pursuant to s. 278 of the *Motor Vehicle Act*, R.S.C. 293?

[4] The letter at Tab 15 of the Record refers to s. 278 generally, but it is clear to me from reading that, that if the Registrar was revoking, as the letter says she was, she must have been acting pursuant to s. 278(1). Therefore, in my view, s. 278(2) is not applicable and the decision that is under review is a decision made under s. 278(1).

[5] So, the question then is, was the Registrar correct in interpreting s. 278(1) as giving her the authority to revoke the license. I refer again to the letter at Tab 15 of the Record which says as well:

... the license issued to Mr. Burnell is now under revocation due to the merge of the driving records.

[6] That paragraph goes on to refer to s. 278. Looking at the wording of s. 278, the authority of the Registrar is to revoke a license “upon receiving a record of conviction.” The convictions were in 1984, 1987 and 1990 and the records were received at that time. But the revocation occurred in 2008, 24, 21, 18 years after those records were received.

[7] It is true that the driver's license was in the name of Charles Burnell and the convictions were in the name of Charles Mason. If s. 278 were the only section the Registrar could use under the circumstances here, I would be concerned about the overall ability of the Registrar to revoke licenses in the name of public safety. That is, of course, a vital role and one with which the Court should be loathe to interfere.

[8] However, there is another section that applies when s. 278 does not, for various reasons, including the sorts of circumstances that occurred here. Section 279 of the *Act* gives the Registrar the power to suspend the license of a person for conviction of a list of offenses set out in s. 278.

[9] This is a section which protects the public safety, but also gives a person like Mr. Burnell an opportunity to have a hearing or offer an explanation. In that case, the Registrar then has discretion. Subsection (1) of s. 279 says the Registrar "may suspend" and subsection (2) says the Registrar has various options after hearing the person or hearing the explanation, including, on "good cause appearing," suspending the license for a further period or revoking the license.

[10] In my view, the correct interpretation of s. 278 did not give the Registrar authority to revoke the license under the circumstances here. The revocation was not done when the conviction records were received and that is what the section requires.

[11] Even if the standard is reasonableness, I would be satisfied that the decision was not reasonable. There is no line of analysis which could support the decision. It is not reasonable to say that the merge of two driving records years after the conviction records were received can lead to an automatic revocation.

[12] It is not an interpretation that is reasonable to make based on the wording of s. 278. In my view, it does not stand up to the somewhat probing examination that is required. I am paraphrasing the wording in the *Ryan v. Law Society (New Brunswick)*, [2003] 1 S.C.R. 247. That is especially the case since s. 279 can catch such a situation in appropriate circumstances and can lead to the revocation of a license.

[13] In my view, this result does not allow Mr. Burnell to escape his actions. If s. 279 had been used instead of s. 278, Mr. Burnell would have had an opportunity to explain and then the Registrar could have exercised her discretion.

[14] Accordingly, the decision of the Registrar is quashed.

Hood, J.