

Regina Ex Rel. Christoffersen v. Minister of Highways

[1959] C.C.S. NO. 489

CCH DRS 1958-1959 P26-473

(1959) 28 W.W.R. 36

Alberta Supreme Court

[1959]

Government -- Drivers' licences -- Whether right or privilege to claim licence -- Alberta resident convicted in Ontario for impaired driving -- Licence suspended in Alberta under s. 152(3) of Vehicles and Highway Traffic Act, R.S.A. 1955, c. 356 -- Driver giving proof of compliance with s. 152(3) entitled to licence.

The Alberta Minister of Highways suspended under s. 152 the applicant's driver's licence for six months because the applicant, an Alberta resident, had been convicted for impaired driving in Ontario. Six weeks later the applicant obtained new insurance through the Alberta assigned risk plan but the Minister refused to remove the suspension of the Alberta licence. The applicant asked for a mandamus order compelling the Minister to restore to the applicant's Alberta driver's licence. The Minister argued, inter alia, that the claim to a driver's licence was a privilege and not a right.

Held: The application was allowed. (1) The claim of an Alberta resident to a driver's licence is a right and not a privilege. Since time immemorial the Queen's subjects have been free to move along the Queen's highway provided only they kept the Queen's peace. While the requirement of technical competence in the operation of a motor vehicle, may, for the public safety, require the subject to prove that competence, as a condition to the issue of a licence to drive - and **the consequent right to drive** - that requirement does not reduce a "right" to a "privilege". This requirement has simply enlarged the subject's duty with regard to the subject's right to drive. (2) Sec. 7 provides that the Minister may cancel or suspend any driver's licence for certain violations of certain statutory provisions or for unfitness or "for any other reason appearing to the Minister to be sufficient". The words do not confer upon the Minister an arbitrary discretion to cancel or suspend a licence. (3) The suspension of the applicant's licence purported to be under s. 152. Under s. 152(3) the Minister's duty to suspend the applicant's licence, upon receiving notice of the Ontario conviction, was mandatory, but this mandatory duty is not to suspend for any fixed period, but for an indefinite period, until the person has given proof of financial responsibility. This proof was furnished by the

applicant and he has been entitled to a cancellation of the suspension of his licence. Sec. 17 which provides for a re-examination before the issue of a licence, does not apply because the applicant is not applying for the issue of a driver's licence - he already has a licence which is merely suspended - he is merely asking that the suspension be lifted because he has complied with the provisions of s. 152(3).

s/niz

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