

**SUPREME COURT OF CANADA**

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| **Citation:** Wilson *v.* British Columbia (Superintendent of Motor Vehicles), 2015 SCC 47, [2015] 3 S.C.R. 300 | **Date:** 20151016**Docket:** 35959 |

Between:

Lee Michael Wilson

Appellant

and

Superintendent of Motor Vehicles and

Attorney General of British Columbia

Respondents

**Coram:** McLachlin C.J. and Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

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| **Reasons for Judgment:**(paras. 1 to 43) | Moldaver J. (McLachlin C.J. and Cromwell, Karakatsanis, Wagner, Gascon and Côté JJ. concurring) |

Wilson *v.* British Columbia (Superintendent of Motor Vehicles), 2015 SCC 47, [2015] 3 S.C.R. 300

Lee Michael Wilson Appellant

v.

Superintendent of Motor Vehicles and

Attorney General of British Columbia Respondents

**Indexed as: Wilson *v.* British Columbia (Superintendent of Motor Vehicles)**

2015 SCC 47

File No.: 35959.

2015: May 19; 2015: October 16.

Present: McLachlin C.J. and Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

on appeal from the court of appeal for british columbia

 *Administrative law — Judicial review — Superintendent of Motor Vehicles — Automatic roadside driving prohibition regulatory regime — Peace officer issued Notice to driver imposing immediate driving prohibition after roadside breath sample obtained — Driver applied to Superintendent for review of driving prohibition — Whether peace officer entitled to rely on results of approved screening device used to collect breath samples to impose driving prohibition or whether other confirmatory evidence required — Whether Superintendent’s interpretation of statutory provision imposing immediate driving prohibition was reasonable — Motor Vehicle Act, R.S.B.C. 1996, c. 318, ss. 215.41(3.1), 215.5.*

 To address the problem of impaired driving, British Columbia has instituted a regime in the *Motor Vehicle Act* (“*MVA*”) known as the automatic roadside driving prohibition scheme (“ARP”). Approved screening devices (“ASD”) are used to collect roadside breath samples. Under s. 215.41(3.1) of the *MVA*, when a driver registers a “Warn” or “Fail” on the ASD, a peace officer must issue a Notice of Driving Prohibition, provided that the officer “has reasonable grounds to believe, as a result of the analysis, that the driver’s ability to drive is affected by alcohol”.

 In 2012, W was stopped at a police road check. He provided two samples of his breath that registered a “Warn” reading. The peace officer served him with a Notice, prohibiting him from driving for a period of three days.

 W applied to the Superintendent of Motor Vehicles for a review, seeking to have the Notice revoked. He argued that the ASD result alone could not provide the officer with the reasonable grounds required by s. 215.41(3.1) and that the officer was also required to point to other confirmatory evidence. The Superintendent rejected this argument. On judicial review, the Notice was set aside. The Court of Appeal concluded that the Superintendent’s interpretation of s. 215.41(3.1) was reasonable and reinstated the Notice.

 *Held*: The appeal should be dismissed.

 W’s case rests on the premise that s. 215.41(3.1) is ambiguous and that *Charter* values must be applied to resolve the ambiguity. This argument suffers from a fatal flaw — s. 215.41(3.1) is not ambiguous. Rather, when read in light of its text, context, and legislative objective, there is only one reasonable interpretation — the one arrived at by the Superintendent. *Charter* values may not be used to create ambiguity where none exists and have no role to play as an interpretive tool in this case.

 The plain meaning of s. 215.41(3.1) explicitly links the officer’s belief to the result of the ASD analysis. The wording could not be clearer. W’s submission that the officer’s belief must be based not only on the ASD result, but also on confirmatory evidence is not supported by the text of the provision. The officer must have an honest belief in the accuracy of the ASD result in order to have reasonable grounds to believe “as a result of the analysis” that the individual’s ability to drive is affected by alcohol. This interpretation gives meaning to the words used in the statute without reading in words that would introduce a new dimension to the provision.

 The context of the statutory scheme also indicates that the Superintendent’s interpretation is reasonable and consistent with the limited grounds for review of a peace officer’s decision. Nothing suggests that the Superintendent may revoke a Notice if a peace officer does not point to other confirmatory evidence. Although the ARP regime is triggered by a roadside demand for a breath sample under s. 254 of the *Criminal Code*, it is an independent regime. It is not subsidiary to the *Code* and does not incorporate its protections. Rather, the ARP regime is regulatory legislation which balances individual liberties against the protection of the public, placing greater weight on the public good.

 The Superintendent’s decision is also consistent with the twin legislative objectives of increasing highway safety and deterring impaired driving. The ARP regime establishes a common standard for removing drivers from the road who pose an elevated risk to others. Allowing the police to rely on ASD test results is critical to the fulfilment of the legislative objectives.

**Cases Cited**

 **Applied:** *R. v. McIntosh*, [1995] 1 S.C.R. 686; *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154; **referred to:** *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, [2015] 3 S.C.R. 250; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559; *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743; *R. v. Clarke*, 2014 SCC 28, [2014] 1 S.C.R. 612; *Charlebois v. Saint John (City)*, 2005 SCC 74, [2005] 3 S.C.R. 563; *Bristol‑Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26, [2005] 1 S.C.R. 533; *R. v. Hinchey*, [1996] 3 S.C.R. 1128; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 S.C.R. 306; *Reference re Securities Act*, 2011 SCC 66, [2011] 3 S.C.R. 837; *R. v. Gordon*, 2002 BCCA 224, 100 B.C.L.R. (3d) 35; *R. v. Bernshaw*, [1995] 1 S.C.R. 254; *Sivia v. British Columbia (Superintendent of Motor Vehicles)*, 2014 BCCA 79, 307 C.C.C. (3d) 77; *Buhlers v. British Columbia (Superintendent of Motor Vehicles)*, 1999 BCCA 114, 170 D.L.R. (4th) 344.

**Statutes and Regulations Cited**

*Canadian Charter of Rights and Freedoms*, ss. 8, 10(*b*).

*Criminal Code*, R.S.C. 1985, c. C‑46, s. 254.

*Motor Vehicle Act*, R.S.B.C. 1996, c. 318, ss. 25.1(1), 215.41(3.1), 215.43(1), (2.1), 215.45, 215.46, 215.5, 253(6), (7).

*Motor‑vehicle Act Amendment Act, 1966*, S.B.C. 1966, c. 30, s. 34.

*Motor Vehicle Act Regulations*, B.C. Reg. 26/58, s. 43.09.

*Motor Vehicle Amendment Act, 2010*, S.B.C. 2010, c. 14, s. 19.

*Motor Vehicle Amendment Act, 2012*, S.B.C. 2012, c. 26.

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British Columbia. Legislative Assembly. *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 16, No. 1, 2nd Sess., 39th Parl., April 27, 2010, p. 4871.

British Columbia. Legislative Assembly. *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 36, No. 7, 4th Sess., 39th Parl., May 3, 2012, pp. 11492‑93.

Driedger, Elmer A. *Construction of Statutes*, 2nd ed. Toronto: Butterworths, 1983.

 APPEAL from a judgment of the British Columbia Court of Appeal (Saunders, Levine and Harris JJ.A.), 2014 BCCA 202, 60 B.C.L.R. (5th) 371, 311 C.C.C. (3d) 369, 356 B.C.A.C. 133, 610 W.A.C. 133, [2015] 4 W.W.R. 579, 66 M.V.R. (6th) 99, [2014] B.C.J. No. 1055 (QL), 2014 CarswellBC 1453 (WL Can.), setting aside a decision of Dley J., 2013 BCSC 1638, [2013] B.C.J. No. 1960 (QL), 2013 CarswellBC 2696 (WL Can.). Appeal dismissed.

 *Kyla Lee* and *Paul Doroshenko*, for the appellant.

 *Robert Mullett* and *Tyna Mason*, for the respondents.

 The judgment of the Court was delivered by

 Moldaver J. —

1. Overview
2. Impaired driving is a matter of grave public concern in Canada. Over the years, various *Criminal Code* offences have been enacted to deal with this problem. The provinces have also enacted regulatory legislation in an attempt to curb the number of impaired drivers on the road. Despite these measures, the problem of drunk driving persists, resulting as it often does in lives lost and lives shattered.
3. This appeal concerns one of the mechanisms British Columbia has instituted to address the problem: a regime in the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 (“*MVA*”), known as the automatic roadside driving prohibition scheme (“ARP regime” or “ARP scheme”). The ARP regime at issue in this appeal is the successor to the regime at issue in the companion case of *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, [2015] 3 S.C.R. 250. Although the ARP regime is a provincial scheme, it is triggered by a roadside demand for a breath sample under s. 254 of the *Criminal Code*, R.S.C. 1985, c. C-46.Approved screening devices (“ASDs”) are used to collect roadside samples. Under s. 215.41(3.1) of the *MVA*, when a driver registers a “Warn” or “Fail” on the ASD, a peace officer must issue an immediate driving prohibition if the officer “has reasonable grounds to believe, as a result of the analysis, that the driver’s ability to drive is affected by alcohol”.
4. The interpretation of that provision is central to this appeal. The question that arises is this: In assessing whether a peace officer has the requisite grounds to believe that a driver’s ability to drive is affected by alcohol, can the officer rely solely on the ASD result?
5. Mr. Wilson says no. He submits that to meet the “reasonable belief” standard, the ASD result must be backed by other evidence indicating that the driver’s ability to drive is affected by alcohol. This could include evidence of erratic driving, or other indicators commonly associated with impairment, such as slurred speech, glassy and bloodshot eyes, unsteady gait, and so on.
6. The Superintendent of Motor Vehicles rejected this argument and upheld a notice of driving prohibition (“Notice”) served on Mr. Wilson. In his view, the ASD test result was sufficient, on its own, to provide a peace officer with the grounds needed to issue a Notice. On judicial review, the British Columbia Supreme Court set aside the Notice. On appeal from that decision, the British Columbia Court of Appeal reinstated it.
7. Before this Court, Mr. Wilson contends that s. 215.41(3.1) is ambiguous, and that the adjudicator, a delegate of the Superintendent of Motor Vehicles, erred in failing to consider *Canadian Charter of Rights and Freedoms* values to resolve the ambiguity. According to Mr. Wilson, this rendered his decision unreasonable. With respect, I disagree. The provision is not ambiguous, and the adjudicator’s interpretation was the only reasonable one. Accordingly, I would dismiss the appeal.
8. Facts
	1. British Columbia’s Automatic Roadside Prohibition Regime
9. Since the 1960s, British Columbia has sought to address the problem of impaired driving through regulatory legislation enabling peace officers to issue roadside driving prohibitions: see the *Motor-vehicle Act* *Amendment Act, 1966*, S.B.C. 1966, c. 30, s. 34. In 2010, the province expanded the powers of peace officers to issue such driving prohibitions: *Motor Vehicle Amendment Act, 2010*, S.B.C. 2010, c. 14, s. 19. The constitutionality of the 2010 regime is at issue in the companion case of *Goodwin*.The present appeal concerns an amended version of the 2010 regime: *Motor Vehicle Amendment Act, 2012*, S.B.C. 2012, c. 26. It raises no constitutional challenge.
10. The amended ARP scheme is dependent upon, and is only triggered by, a roadside demand for a breath sample made under s. 254 of the *Criminal Code*. Under the ARP scheme, when a driver registers a “Warn” or “Fail” on the ASD, the peace officer must issue a Notice, provided he or she has reasonable grounds to believe, as a result of the analysis, that the driver’s ability to drive is affected by alcohol. A driving prohibition must also be issued to individuals who fail or refuse to comply with a demand for a breath sample without reasonable excuse.
11. Drivers who blow a “Warn” — when the ASD registers a blood alcohol concentration of 50 milligrams of alcohol in 100 millilitres of blood (“50 mg%”) or higher — receive a Notice prohibiting them from driving for 3, 7, or 30 days, depending on their driving history: *MVA*, s. 215.43(1). There is a corresponding fine of $200, $300, or $400, respectively: *Motor Vehicle Act Regulations*, B.C. Reg. 26/58, s. 43.09. Drivers who blow a “Fail” — when the ASD registers a blood alcohol concentration of 80 milligrams of alcohol in 100 millilitres of blood (“80 mg%”) or higher — and drivers who refuse or fail to provide a breath sample receive a Notice prohibiting them from driving for 90 days and a $500 fine: *MVA*, s. 215.43(2.1); *Motor Vehicle Act Regulations*, s. 43.09. Drivers who receive either a 30- or 90-day driving prohibition are subject to a mandatory 30-day vehicle impoundment: *MVA*, ss. 215.46(2) and 253(7). At the peace officer’s discretion, drivers who are served with a 3- or 7-day driving prohibition may also have their vehicle impounded for the duration of their driving prohibition: *MVA*, ss. 215.46(1) and 253(6). Drivers may also be subjected to a variety of other consequences, including enrollment in a remedial program and the imposition of an ignition interlock device: *MVA*, ss. 215.45 and 25.1(1). Drivers are required to bear the costs of these programs, and must pay a fee to have their licence reinstated and their vehicle released if it has been impounded.
12. An individual who has been issued a Notice may apply to the Superintendent of Motor Vehicles for review. However, the review is limited and the Superintendent may only revoke a Notice under certain grounds prescribed in s. 215.5 of the *MVA*. For an individual who has blown a “Warn” or “Fail”, the factors the Superintendent is to consider are:
* Whether the person was a “driver” within the statutory meaning;
* Whether the person was advised of his or her right to a second ASD analysis and provided with a second analysis (if requested);
* Whether the second analysis, if requested, was performed with a different ASD machine;
* Whether the Notice was served on the basis of the lower of the two analysis results;
* Whether the ASD registered a “Warn” as a result of the driver’s blood alcohol concentration being at least 50 mg% or the ASD registered a “Fail” as a result of the driver’s blood alcohol concentration being at least 80 mg%;
* Whether the result of the analysis was reliable; and
* In the case of a 7-day prohibition, whether it was the driver’s second prohibition, and in the case of a 30-day prohibition, whether it was the driver’s third or subsequent prohibition.
	1. Mr. Wilson’s Driving Prohibition and Application for Review
1. On September 19, 2012, at 10:40 p.m., Mr. Wilson was stopped at a police road check near Coombs, British Columbia. The peace officer conducting the road check noticed an odour of alcohol on Mr. Wilson’s breath. Upon being questioned, Mr. Wilson admitted to having consumed four beers hours earlier. Mr. Wilson then provided samples of his breath into two different ASDs — the first at 10:41 p.m. and the second at 10:46 p.m. Both devices registered a “Warn” reading. Consequently, the peace officer served Mr. Wilson with a Notice, prohibiting him from driving for a period of three days, under s. 215.41(3.1) of the *MVA*.
2. Mr. Wilson applied to the Superintendent of Motor Vehicles for a review, seeking to have the Notice revoked. He argued that the officer lacked reasonable grounds to believe that his ability to drive was affected by alcohol. According to Mr. Wilson, the ASD result alone could not provide the officer with the reasonable grounds required by s. 215.41(3.1) of the *MVA*: the officer was also required to point to other confirmatory evidence indicating that his ability to drive was affected by alcohol. The relevant provision of the *MVA* reads:

 **215.41** . . . .

 (3.1) If, at any time or place on a highway or industrial road,

(a) a peace officer makes a demand to a driver under the Criminal Code to provide a sample of breath for analysis by means of an approved screening device and the approved screening device registers a warn or a fail, and

(b) the peace officer has reasonable grounds to believe, as a result of the analysis, that the driver’s ability to drive is affected by alcohol,

 the peace officer, or another peace officer, must,

(c) if the driver holds a valid licence or permit issued under this Act, or a document issued in another jurisdiction that allows the driver to operate a motor vehicle, take possession of the driver’s licence, permit or document if the driver has it in his or her possession, and

(d) subject to section 215.42, serve on the driver a notice of driving prohibition.

1. Adjudicator Hughes rejected Mr. Wilson’s argument and held that the “Warn” result, standing alone, provided the officer with the grounds he needed to issue a Notice. He therefore confirmed Mr. Wilson’s driving prohibition.
2. Judicial History
	1. British Columbia Supreme Court (Dley J.), 2013 BCSC 1638
3. Mr. Wilson applied to the British Columbia Supreme Court for judicial review. The reviewing judge noted that s. 215.41(3.1)(b) of the *MVA* requires a peace officer to *believe*, as a result of the analysis, that the driver’s ability to drive is affected by alcohol (para. 20). In his view, if it was the legislature’s intent that a Notice be issued solely on the basis of an ASD reading, it would not have included this requirement. He therefore held that on a plain reading of the legislation, additional confirmatory evidence was required before a Notice could be issued. It followed that the adjudicator’s interpretation of s. 215.41(3.1) was unreasonable. As there was no confirmatory evidence indicating that Mr. Wilson’s ability to drive was affected by alcohol, the reviewing judge set aside the Notice.
	1. British Columbia Court of Appeal (Saunders, Levine and Harris JJ.A.), 2014 BCCA 202, 60 B.C.L.R. (5th) 371
4. The Superintendent appealed to the British Columbia Court of Appeal. Writing for a unanimous court, Harris J.A. considered the text, context, and purpose of the *MVA*, and concluded that the adjudicator’s interpretation was reasonable. In his view, it better fulfilled the legislative purpose than did Mr. Wilson’s interpretation (para. 33). He therefore reinstated the Notice.
5. Issue
6. The only issue on appeal is whether the adjudicator’s interpretation of s. 215.41(3.1) of the *MVA* was reasonable. That is a matter of statutory interpretation. Mr. Wilson does not challenge the constitutionality of the provision.
7. Analysis
8. An administrative decision maker’s interpretation of his or her home statute is presumptively owed deference: *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895, at para. 21; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 34; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 54. The parties acknowledge, correctly in my view, that reasonableness is the applicable standard of review.
9. When assessing the reasonableness of an administrative decision maker’s interpretation, Driedger’s modern rule of statutory interpretation provides helpful guidance:

 Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

(E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87)

1. These principles must be kept in mind when analyzing the reasonableness of the adjudicator’s interpretation. For convenience, I repeat the relevant portion of s. 215.41(3.1):

(3.1) If, at any time or place on a highway or industrial road,

(a) a peace officer makes a demand to a driver under the Criminal Code to provide a sample of breath for analysis by means of an approved screening device and the approved screening device registers a warn or a fail, and

(b) the peace officer has reasonable grounds to believe, as a result of the analysis, that the driver’s ability to drive is affected by alcohol,

1. Mr. Wilson has the burden of demonstrating that the adjudicator’s interpretation was unreasonable: *McLean*, at para. 41. While he advances various arguments in an attempt to meet this burden, in the end, his case rests on the premise that s. 215.41(3.1) of the *MVA* is ambiguous and that *Charter* values must be applied to resolve the ambiguity: *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 28. And because the adjudicator did not take *Charter* values into account, his decision must, for that reason, be set aside as unreasonable.
2. Before considering the merits of Mr. Wilson’s argument, I feel obliged to point out, in fairness to the adjudicator, that he was not asked to consider *Charter* values as an interpretive tool; nor, indeed, was the reviewing judge. The ambiguity claim was made for the first time in the Court of Appeal — and then, only in passing. This may explain why the Court of Appeal did not explicitly address it in its reasons, although I believe it did so implicitly.
3. It is settled law that a genuine ambiguity only exists when there are “two or more plausible readings, each equally in accordance with the intentions of the statute”: *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, at para. 14; *Bell ExpressVu*, at paras. 29-30. In stating that the adjudicator’s interpretation better fulfilled the legislative purpose than did Mr. Wilson’s interpretation, this could be taken to mean that the Court of Appeal did not consider the provision to be ambiguous (para. 33).
4. Be that as it may, Mr. Wilson maintains that s. 215.41(3.1) is ambiguous and that *Charter* values must be applied to discern the legislature’s true intent. In support of his position, he emphasizes that the *Criminal Code* roadside screening regime passes constitutional muster because it contains various safeguards designed to protect the ss. 8 and 10(*b*) *Charter* rights of drivers — safeguards that do not exist under the ARP regime. In particular, he points to the following features of the *Criminal Code* regime:
* A driver may challenge whether the police had the “reasonable suspicion” necessary to make a demand;
* The test must be conducted forthwith; and
* The ASD results cannot be used as evidence in a criminal trial to prove either impairment or the driver’s blood alcohol level.
1. Mr. Wilson submits that because the ARP scheme is triggered by a roadside demand for a breath sample under the *Criminal Code*,itmust be interpreted in a way that is consistent with the *Code*’sprotections. To that end, he contends that the “reasonable grounds to believe” requirement must be given a robust interpretation — it cannot be satisfied by the ASD result alone. Other confirmatory evidence is required. Mr. Wilson insists that unless his interpretation is adopted, the ARP scheme will be out of sync with *Charter* values because it does not approximate the protections associated with ASD testing under the *Criminal Code*.
2. With respect, Mr. Wilson’s argument must fail. It suffers from a fatal flaw — s. 215.41(3.1) is not ambiguous. As I observed earlier, at para. 22, a genuine ambiguity exists only when there are two or more plausible readings, each equally in accordance with the intentions of the statute. Section 215.41(3.1) does not meet that test. Indeed, in my view, it does not even give rise to two plausible readings, let alone two such readings that are equally in accordance with the intentions of the statute. Rather, as I will explain, when read in light of its text, context, and legislative objective, it admits of only one reasonable interpretation — the one arrived at by the adjudicator. *Charter* values may not be used “to create ambiguity when none exists”: *R. v. Clarke*, 2014 SCC 28, [2014] 1 S.C.R. 612, at para. 1. Consequently, they have no role to play as an interpretive tool in this case: *Charlebois v. Saint John (City)*, 2005 SCC 74, [2005] 3 S.C.R. 563, at paras. 23-24; *Bell ExpressVu*, at para. 62. That being so, in the circumstances, I need not decide whether Mr. Wilson’s argument would necessarily have succeeded had I found s. 215.41(3.1) to be ambiguous.
	1. Text
3. The plain meaning of s. 215.41(3.1) supports the adjudicator’s interpretation. It explicitly links the officer’s belief to the result of the ASD analysis. The provision states that the peace officer must have reasonable grounds to believe, *as a result of the analysis*, that the driver’s ability to drive is affected by alcohol. The wording could not be clearer. The ASD analysis is the yardstick against which to measure the reasonableness of the officer’s belief.
4. Mr. Wilson submits that the officer’s belief must be based not only on the ASD result, but also on confirmatory evidence showing that the driver’s ability to drive is affected by alcohol. I would reject this interpretation. It is not supported by the text of the provision, and it requires the court to read in words that are simply not there. This Court has cautioned against judicial rewriting of legislation under the guise of interpreting it:

 . . . the contextual approach allows the courts to depart from the common grammatical meaning of words where this is required by a particular context, but it does not generally mandate the courts to read words into a statutory provision. It is only when words are “reasonably capable of bearing” a particular meaning that they may be interpreted contextually. . . .

. . .

The Crown is asking this Court to read words into s. 34(2) which are simply not there. In my view, to do so would be tantamount to amending s. 34(2), which is a legislative and not a judicial function. [First emphasis in original; second emphasis added.]

(*R. v. McIntosh*, [1995] 1 S.C.R. 686, at p. 701; cited with approval in *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26, [2005] 1 S.C.R. 533, at para. 174. See also *R. v. Hinchey*, [1996] 3 S.C.R. 1128, at paras. 8-9 and 36; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 S.C.R. 306, at para. 40.)

1. Mr. Wilson further submits that the adjudicator’s interpretation gives no meaning to s. 215.41(3.1)(b). He points out that the provision uses mandatory language requiring peace officers to issue a Notice when there are reasonable grounds to believe an individual’s ability to drive is affected by alcohol. He argues that if a “Warn” or a “Fail” result constitutes reasonable grounds on its own, para. (b) is superfluous: the legislature could have simply stated that the officer must issue a Notice on the basis of a “Warn” or “Fail” result. For that reason, he contends that the wording of the statute must require something more than merely the ASD result.
2. In my view, both the Court of Appeal and the Crown respondent provide a convincing answer to this argument. As they point out, there can be situations in which a driver blows a “Warn” or “Fail”, but the officer has reason to doubt the accuracy of the result. Two examples come to mind:
* The officer has reason to doubt that the ASD device functioned properly.
* The officer has reason to doubt that the sample was taken properly (i.e., in accordance with the procedures for obtaining reliable readings from ASD devices).

The inclusion of the phrase “as a result of the analysis” precludes an officer from issuing a Notice in such situations. The officer must have an honest belief in the accuracy of the ASD result. Only then will he or she have reasonable grounds to believe “as a result of the analysis” that the individual’s ability to drive is affected by alcohol. This interpretation gives meaning to the words used in the statute; it does not read in wording that introduces a new dimension to the provision, as Mr. Wilson would have it.

* 1. Context
1. The context of the statutory scheme also indicates that the adjudicator’s interpretation is reasonable. His interpretation is consistent with the grounds on which the Superintendent may review a peace officer’s decision to issue a Notice: *MVA*,s. 215.5(1). The grounds for review are limited. As described in para. 10, they include whether the driver was advised of his or her right to a second analysis, whether the second analysis was performed on a different machine, whether the ASD accurately registered a “Warn” or “Fail”, and whether the ASD result was reliable. In short, the grounds of review focus primarily on the manner in which the ASD test was administered and the reliability of the results. Nothing suggests that the Superintendent may revoke a Notice if a peace officer does not point to other confirmatory evidence. This indicates that the legislature did not intend to require other confirmatory evidence as a precondition to issuing a Notice, and in turn, supports the reasonableness of the adjudicator’s interpretation.
2. Mr. Wilson makes one final argument about context. He asserts that because the ARP scheme is triggered by a *Criminal Code* demand for a breath sample, it is subsidiary legislation and therefore must incorporate the protections that are present under the *Code*. He insists that by departing from these protections, the adjudicator’s interpretation ignores the link between the two statutes.
3. This argument can be disposed of summarily. The *MVA* and the *Code* are two independent statutes, with two distinct purposes. They were enacted by two different levels of government, neither of which is subordinate to the other: *Reference re Securities Act*, 2011 SCC 66, [2011] 3 S.C.R. 837, at para. 71. Under the *MVA*, the demand for a breath sample triggers a regulatory regime that is wholly independent of the *Criminal Code*. The fact that the *MVA* relies on a *Criminal Code* demand for a breath sample does not render it subsidiary legislation.
4. In addition, it has long been recognized that regulatory legislation, such as the *MVA*, differs from criminal legislation in the way it balances individual liberties against the protection of the public. Under regulatory legislation, the public good often takes on greater weight. In *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154, at p. 219, this Court held that

[r]egulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests. While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care.

1. These comments are particularly apt in the case of regulatory legislation involving roadside driving prohibitions: *R. v. Gordon*, 2002 BCCA 224, 100 B.C.L.R. (3d) 35, at paras. 26-27. Roadside driving prohibitions are a tool to promote public safety. As such, the legislation necessarily places greater weight on this goal. Unlike the criminal law regime, persons who register a “Warn” or “Fail” under the regulatory regime do not end up with a criminal record, nor are they exposed to the more onerous sanctions under the criminal law, including the risk of incarceration. In short, regulatory legislation does not share the same purpose as the criminal law, and it would be a mistake to interpret it as though it did. I therefore reject Mr. Wilson’s contention that the ARP scheme must incorporate the same protections as those provided under the *Criminal Code* regime.
2. In sum, the adjudicator’s interpretation of s. 215.41(3.1) is consistent with the statutory context, and Mr. Wilson’s is not.
	1. Legislative Objective
3. The adjudicator’s decision is also consistent with the legislative objective. Roadside driving prohibitions serve a pressing public safety purpose. As Cory J. said in *R. v. Bernshaw*, [1995] 1 S.C.R. 254, at para. 16:

 Every year, drunk driving leaves a terrible trail of death, injury, heartbreak and destruction. From the point of view of numbers alone, it has a far greater impact on Canadian society than any other crime. In terms of the deaths and serious injuries resulting in hospitalization, drunk driving is clearly the crime which causes the most significant social loss to the country.

1. Roadside driving prohibitions are an important tool for confronting and reducing the devastating effects of impaired driving. Courts have repeatedly held that driving prohibitions serve the twin purposes of increasing highway safety and deterring impaired driving: *Sivia v. British Columbia (Superintendent of Motor Vehicles)*, 2014 BCCA 79, 307 C.C.C. (3d) 77, at para. 104; *Gordon*, at paras. 25-27; *Buhlers v. British Columbia (Superintendent of Motor Vehicles)*, 1999 BCCA 114, 170 D.L.R. (4th) 344, at paras. 28-29.
2. The ARP regime in question is no exception. When its predecessor was introduced in 2010, Minister de Jong confirmed that the objective of the scheme was to improve highway safety and to deter impaired driving:

 Bill 14 [the *Motor Vehicle Amendment Act, 2010*] fulfils a throne speech commitment to introduce significant changes to reduce impaired driving and dangerous driving and improve public safety on our highways.

 The amendments will address impaired driving by focusing on intervention and deterrence. . . .

 Of late we are sadly seeing an escalation in incidents of impaired driving and all of the resulting tragedy that flows from that. The amendments . . . will give police more tools at the roadside to remove impaired and dangerous drivers from the road as a means of reducing the body count on B.C.’s highways. [Emphasis added.]

(British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 16, No. 1, 2nd Sess., 39th Parl., April 27, 2010, at p. 4871)

1. When the amended regime came into force in 2012, Minister Bond emphasized that the legislature had not wavered from these goals:

In September 2010, with the support of this House, we introduced new sanctions for impaired driving. We set a goal to reduce impaired driving fatalities by 35 percent by the end of 2013 . . . .

 After just one year we saw a 40 percent drop in alcohol-related deaths on British Columbia’s highways, and 45 people are alive today because this House was bold in the attempt to change the way we tackle drinking and driving. . . .

. . .

 . . . Our goal is to protect this important law that has shown great success in deterring drinking and driving and in saving lives in our province. [Emphasis added.]

(British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 36, No. 7, 4th Sess., 39th Parl., May 3, 2012, at pp. 11492-93)

1. Allowing the police to rely on ASD test results is critical to the fulfilment of these objectives. ASD testing provides an immediate, efficient tool for assessing whether an individual’s ability to drive is affected by alcohol. As the Court of Appeal noted, at para. 33, scientific evidence shows that at 50 mg% — the level needed to register a “Warn” — driving skills are significantly impaired and the likelihood of being involved in a collision is markedly elevated. Evidence also shows that it is extremely difficult to identify drivers who have been drinking by observation alone: *Sivia*, at para. 100. These are the concerns that the ARP scheme is designed to address. It establishes a common standard for removing drivers from the road who pose an elevated risk to others. It also serves to deter drunk driving.
2. In sum, the adjudicator’s interpretation is consistent with the legislative objectives of the ARP scheme, and Mr. Wilson’s is not.
	1. Conclusion on the Interpretation of Section 215.41(3.1)
3. The adjudicator’s interpretation is consistent with the text, context, and legislative objectives of the ARP scheme. Mr. Wilson’s interpretation is not. The provision is unambiguous. The adjudicator’s interpretation is the only plausible one.
4. Disposition
5. For these reasons, I would dismiss the appeal.

 *Appeal dismissed.*

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