SUPREME COURT OF NOVA SCOTIA

Citation: *Ryan Andrew Clark v. Deputy Registrar of Motor Vehicles et al*, 2023 NSSC 428

Date: 20230921
Docket: 522786
Registry: Halifax

Between:

Ryan Andrew Clark

Applicant

v.

Deputy Registrar of Motor Vehicles and The Attorney General of Nova Scotia, representing his Majesty the King in right of the Province of Nova Scotia

Respondent

Judge:	The Honourable Justice Muise
Heard:	September 19, 2023, in Yarmouth, Nova Scotia
Oral decision:	September 21, 2023
Counsel:	David G. Coles, KC, and Emma Vossen, for the Applicant Alison Campbell and Caitlin Menczel for the Respondent

By the Court:

JUDICIAL REVIEW

BACKGROUND

[1] Ryan Clark's driver's licence was revoked pursuant to s. 278 of the *Motor Vehicle Act* of Nova Scotia ("MVA") in October 2020, by the Department of Transportation and Infrastructure Renewal Road Safety Division.

[2] The revocation was based on an impaired by drug conviction contrary to s. 320.14(1)(a) of the *Criminal Code* entered October 6, 2020. The sentence included a 1-year driving prohibition under s. 320.24.

[3] On July 15, 2021, he was stopped by police and charged with driving while disqualified. On September 4, 2021, he was stopped by military police and charged with operating a conveyance while prohibited. Both charges were under s. 320.18. He entered guilty pleas to both of those charges on February 25, 2022, and sentencing was adjourned to June 10, 2022. The convictions were entered in JEIN.

[4] Two licence revocations emanated from those convictions. Both were communicated to Mr. Clark in letters dated February 25, 2022, received by Mr. Clark on February 27, 2022. The first one was for 3 years, arising from the driving while disqualified conviction. The second one was indefinite based on him having 3 impairment-related convictions within 10 years, ie. the driving while impaired, driving while disqualified and the operation of a conveyance while prohibited, with the prohibition contravened in the last two offences having been imposed because of the driving while impaired conviction.

[5] The letter providing notice of the indefinite revocation informed him he would only be eligible for licence reinstatement after a minimum of 10 years. It also provided a number to call if he had any questions.

[6] The sentence imposed on June 10, 2022, included a further 4 month driving prohibition.

[7] On February 23, 2023, his mother, Linda Clark, on his behalf and with his consent, wrote Kevin Mitchell, Director of Road Safety, Registrar of Motor Vehicles, "hoping to seek another solution to a possible ten-year suspension". In a letter dated March 14, 2023, and received by Ms. Clark on March 15, 2023, Daniel Boudreau, Deputy Registrar of Motor Vehicles, reiterated the indefinite revocation and the minimum 10-year period of ineligibility. He also provided relevant portions of ss. 278 and 67 of the *MVA* and added that those provisions did not provide the Registrar any discretion regarding the length of revocation.

[8] On April 6, 2023, Mr. Clark filed the within Notice for Judicial Review.

[9] This is my decision following hearing of this Judicial Review matter on September 19, 2023. I am rendering it orally. Should it be reduced to writing, I reserve the right to edit it for grammar, structure, organization, completeness of references, and ease of reading, without changing the reasoning or the result.

ISSUES

[10] Mr. Clark takes the following positions:

- It was not until receipt of Mr. Boudreau's letter on March 15, 2023, that Mr. Clark had all the information necessary to make a reasoned decision on whether to apply for judicial review. Therefore, his deadline for filing a judicial review application would have been approximately April 18, 2023. Since he filed April 6, 2023, he is not out of time.
- However, if he is out of time, the court has discretion under Civil Procedure Rule 2.02 to extend the period of time for him to file and should do so.
- S. 67 (5)(ba) of the MVA only provides for a second revocation to be for three years and a third revocation to be indefinite where they were "occasioned by an impairment-related offence". In the case at hand, the second and third offences involved driving or operation while disqualified or prohibited. Therefore, it was a reviewable error to interpret that section as requiring the ultimate indefinite revocation imposed.
- His interpretation is supported by the modern purposive approach to statutory interpretation. The object of the provision is to punish

repeat drunk drivers to discourage multiple instances of impaired driving, thereby protecting public safety.

- Even if s. 67(5)(ba) has been properly interpreted, the Deputy Registrar has erred in concluding that it did not have discretion to reinstate Mr. Clark's driver's licence. Section 67(4) states that the department shall not issue a driver's license until the revocation period has ended or until any prohibition order under section 320.24 of the Criminal Code has expired. The use of the word "or" signals that the Department had discretion to reinstate his driver's license once the prohibition ordered by the court had expired, even if the 10 years associated with the indefinite revocation under the MVA had not expired.
- The reasonableness standard of review applies to each of the alleged errors.
- Mr. Clark seeks an order directing the Deputy Registrar to determine his license has only been revoked once within the 10-year period for an impairment-related offence or, in the alternative, an order directing the Deputy Registrar to reduce the period of revocation to October 9, 2022, which marks the expiry of the court-imposed prohibitions.

[11] The Deputy Registrar takes the following positions:

- The decision was made February 25, 2022, and communicated, at the latest, on February 27, 2022. The letter of Mr. Boudreau was merely a courtesy letter responding to Ms. Clark's inquiry which reiterated the prior decision. He did not engage in any reconsideration. The February 25, 2022 Notice provided all the information Mr. Clark needed to decide whether to launch an application for judicial review. Therefore, under Civil Procedure Rule 7.05, Mr. Clark's deadline for filing a Notice for Judicial Review expired 25 clear days later. Consequently, he filed more than one year late and does not meet the test for extension.
- Even if he did, the revocation decisions were not discretionary. They were automatic operations of the law under the MVA. Therefore, they are not subject to judicial review.

- Even if they were subject to judicial review, no reviewable error was made.
- MVA s. 67(5)(ba) makes it clear that a revocation triggered by a violation of section 320.18 of the Criminal Code is one that will constitute a second and third or subsequent revocation, for the purposes of successive increases in periods of inability to apply for reinstatement, "if the prohibition referred to in section 320.18 … was occasioned by an impairment-related offence". So, the second and third revocations in the case at hand do qualify because the initial driving prohibition was imposed for driving while impaired.
- The portion of MVA s. 67(4) which prevents the Department from issuing a driver's license until "any order of prohibition made by a court pursuant to section 320.24 of the Criminal Code" has expired is to ensure that no license is issued to someone who is still subject to a section 320.24 driving prohibition.
- Mr. Clark's application for judicial review should be dismissed with costs.

[12] The Attorney General did not participate.

EXTENSION OF TIME TO FILE

[13] The time for filing a notice for judicial review may be extended where justice requires it.

[14] The principles applicable to determining the issue were discussed in *Tupper v. Nova Scotia Barristers' Society*, 2013 NSSC 290, and *Yates v. Nova Scotia (Board of Examiners in Psychology)*, 2016 NSSC 152, which relied, at least in part, on preceding decisions of our Court of Appeal.

[15] These two decisions note the following.

[16] The time for filing should not be extended unless there is a "very significant excuse or reason for the delay". However, "the ultimate objective must be to do justice between the parties".

[17] The former three-part test set out by the Court of Appeal in the 2001 decision of *Jollymore Estate v. Jollymore*, has become "more properly

considered as guidelines or factors to consider in determining whether justice requires an extension or not".

[18] Those three factors are:

1. whether the applicant had a *bona fide* intention to seek judicial review prior to the expiration of the timeline;
2. whether the applicant had a reasonable excuse for not filing the notice within the timeline; and,
3. whether there are "compelling or exceptional circumstances present which would warrant an extension of time", including whether the applicant has a "strong case" and there are "real grounds" for interfering with the administrative decision in question.

[19] The greater the merit of the application, the more chance there is that it will override weaknesses in *bona fide* intention to seek review and excuse for delay.

[20] Other relevant factors include:

4. "the length of the delay"; and,
5. "the presence or absence of prejudice".

[21] The list is not closed.

[22] I agree with the Deputy Registrar that the decision sought to be reviewed was made February 25, 2022, and communicated February 27, 2022, through the notice of the 3-year revocation and the notice of the indefinite revocation.

[23] The Deputy Registrar did not reconsider the revocation decision. He simply responded to Ms. Clark's comment that she was hoping there was another solution, by noting that there was no discretion to deviate from the revocation imposed. I disagree with Mr. Clark that the Deputy Registrar responding constituted him accepting to review the matter in the sense of reconsidering it.

[24] This conclusion is clearly supported by the finding to that effect in *Ryan v. Rafuse,* 2014 NSSC 91. That case involved very similar circumstances.

[25] Mr. Clark attempted to distinguish *Ryan v. Rafuse* as being inapplicable for the following reasons:

- The Court in that case did not consider the same wording as in this case.
- Mr. Ryan had three impairment-related convictions on his record. It was only the fourth conviction that was for operation of a motor vehicle while disqualified.

[26] The Court in that case did not consider the same wording as the case at hand because the foundational issue was not whether the fourth conviction should count because it was for driving while disqualified. It was whether that conviction should count because it was entered the same day as the last impaired driving and arose out of the same incident, arguably resulting in double punishment for the same event.

[27] Mr. Ryan had only raised that issue after his request for participation in the Alcohol Ignition Interlock Program was rejected. That application was rejected on the basis that the fourth conviction rendered him ineligible for that AIIP program, as it triggered a permanent revocation of his driver's license.

[28] The judge correctly concluded that the AIIP decision was not discretionary and not reviewable. He added that the challenge to the number of qualifying revocations ought to have been made within 25 days of the notice of revocation. Then he went on to cite a Nova Scotia Court of Appeal decision in which it had already been determined that convictions for impaired operation and refusal, arising from the same incident, were proper and would result in an increased license suspension under the MVA. So, he was satisfied that the two revocations arising from the same incident were properly imposed.

[29] In the case at hand, the three convictions all arise out of separate incidents. Therefore, it is not similarly arguable that some should not be counted. In addition, unlike Mr. Ryan, Mr. Clark has not submitted a subsequent application for something like entry into the AIIP Program. As such, there is at least as much reason in the case at hand to find that the initial revocation notice started the clock running.

[30] Consequently, the deadline for filing a notice of judicial review had expired by more than a year when it was filed.

[31] Mr. Clark deposed that he did not understand the February 25 indefinite suspension letter to be a final decision because he was still awaiting sentencing. However, there is nothing in the letter which indicates that it may be a

provisional revocation. It clearly says that his Drivers License is revoked for an indefinite period beginning February 25 and he is not eligible for reinstatement for 10 years. Therefore, he had no reasonable basis for his purported misunderstanding.

[32] Even if Mr. Clark could reasonably claim confusion based on receiving two notices, and awaiting sentence, it would have been obvious to him that he was ineligible for a license reinstatement for at least 10 years when he attended the Registry of Motor Vehicle's offices to have his license reinstated in October 2022. That was following the expiry of the prohibition order imposed at sentencing to have his license reinstated. They told him again, at that point, that he had to wait 10 years.

[33] A timeline of 25 clear days from October would bring him at best into early December 2022. He did not file his Notice of Judicial Review until about 4 months after that.

[34] There is no evidence that Mr. Clark had a *bona fide* intention to seek judicial review before the timeline expired. He deposed that he only retained Counsel to help him in challenging the decision after receiving the Deputy Registrar's letter.

[35] Essentially, the excuse advanced for not filing sooner is that he did not have the information needed to determine whether or not to seek judicial review and was left in some confusion by the two different revocation notices and by the fact that sentence had not yet been imposed.

[36] There is nothing uncertain or unclear about the notice of indefinite revocation. It clearly lists the three convictions upon which it is based. It clearly states that Mr. Clark will be ineligible for license reinstatement for at least 10 years. It even gives him a number to call if he has any questions.

[37] The letter from the Deputy Registrar does not change anything. It merely includes portions of the relevant MVA provisions and notes that there is no discretion to make any other decision.

[38] He submitted that the Deputy Registrar's Statement that they did not have discretion gave him the information he needed to decide to launch a judicial review. However, if he was of the view that there was discretion to stray from the revocations imposed, one would have expected him to challenge the

decision from the start, or, at the latest, within 25 days of when he attended the Registry in October 2022. One would also have expected that challenge to include assertions of failure to comply with procedural fairness requirements as he had no opportunity to provide any information to any decision-maker or anyone who might pass on the information to a decision-maker. That statement does not reasonably add anything to the information he needed to decide to launch a judicial review.

[39] More likely than not, he was of the correct view that the revocations were automatic and was only hoping the Registry would make an exception for him in his circumstances.

[40] It is only after his mother's failed attempt to find an alternative solution that there is any indication of intention to seek judicial review.

[41] Even that attempt was made after the expiry of the 25-day period following both February 25 and October of 2022, and after the expiry of 6 months from the making of the decision, which, according to Civil Procedure Rule 7.05, is the applicable deadline even if the decision had not been communicated to Mr. Clark. So, Mr. Clark has not even shown an intention to inquire into alternative options within the deadline, let alone an intention to launch a judicial review.

[42] The delay is extremely lengthy, over one year. Even if one were to take October 2022 as the date on which it ought to have been perfectly clear to him that he had to wait 10 years, it is still a delay of approximately five months. If one uses the deadline of six months from the decision, it is a delay of about 8 months. As noted by the Deputy Registrar, granting an extension after such delay would be "an unprecedented procedural allowance", making the length of delay a strong factor in refusing the request to extend.

[43] For reasons which I will outline later, there is neither a strong case, nor real grounds, for interfering with the decision.

[44] As submitted by the Deputy Registrar, allowing the extension would prejudicially impact its interests in the finality and stability of the decision. I agree with its submission that Civil Procedure Rule 7.05, by imposing a six-month filing deadline, even where the decision is not communicated, emphasizes the importance of finality and stability.

[45] Withholding of the filing extension would only provide real prejudice to Mr. Clark if his application had some merit. His submission on the merits were still considered. They were considered in assessing the strength of the case. If there is no extension, ultimately there can be no real hearing on the merits. That is a potential prejudice, though the Court can provide its assessment of those merits irrespective of the outcome of the extension request.

[46] Considering and balancing these factors, justice does not require extending the deadline.

[47] As such, he is not entitled to have his review heard.

[48] I will, nevertheless, go on to comment on other points in dispute.

WHETHER SUBJECT TO REVIEW

[49] Civil Procedure Rule 7.01, dealing with judicial reviews, only applies to discretionary decisions, as noted in *Antigonish/Guysborough Federation of Agriculture v. Antigonish (County)*, 2012 NSSC 352, para 6. That case used, as an example of a purely administrative function carried out by operation of law, a situation where the Registry of Motor Vehicles receives information regarding conviction for an offence which requires it to take certain administrative measures. The Court of Appeal upheld the decision to dismiss the judicial review because there was no reviewable decision: 2013 NSCA 71. That example is precisely the situation we have in the case at hand.

[50] MVA Section 278 provides that the "privilege of obtaining a driver's license is revoked upon the person's conviction". Therefore, it is an automatic operation of law, not a discretionary decision.

[51] That was confirmed in *Ryan v Rafuse*, which I have already cited.

[52] Section 67 also uses the mandatory "shall" language in directing the duration of those license revocations. Therefore, there is no discretion regarding the duration of the revocations either.

[53] The revocations and their duration become automatic upon the conviction information being entered by the court into JEIN and making its way into the Registry of Motor Vehicles' system.

[54] Mr. Clark submitted that the Deputy Registrar had discretion to set the duration of revocation at two years, using the directives in MVA s. 67(5)(e)(ii). However, that provision clearly does not apply in the case at hand. It only applies where the violation of s. 320.18 of the *Criminal Code* involves contravening a prohibition that "was in relation to an offence other than an impairment-related offence".

[55] The prohibition which was twice contravened by Mr. Clark was in relation to an offence under s. 320.14 of the *Criminal Code*. That is an offence expressly and specifically stated in MVA s. 67(12) as being included in the definition of "impairment-related offence".

[56] That was known to the Registry of Motor Vehicles when the automatic revocations were made as the Client Record Abstract clearly shows that the prohibition which was contravened was in relation to an offence under s. 320.14 of the *Criminal Code*.

[57] Therefore, it would have been clear to the Registry of Motor Vehicles that it had to set the durations of revocation based on MVA s. 67(5)(ba)(ii), not s. 67(5)(e)(ii).

[58] Consequently, the three-year revocation and the indefinite revocation in the case at hand are not discretionary and cannot be reviewed.

[59] Mr. Clark may have been able to challenge the validity of the legislation requiring such a non-discretionary decision or result. However, that was not done.

[60] Despite my conclusion, I will still go on to comment on the interpretive errors alleged.

[61] I agree that, based on *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the standard of review is reasonableness, and that it does not equate to rubber-stamping.

WHETHER ERROR OF LAW IN INTERPRETATION OF S. 67(5) OF MVA

[62] MVA section 67(5)(ba), among other things, states:

> No application for restoration of driver's license or the privilege of obtaining a driver's license shall be made until there has expired from the date of the revocation a period of
>
> ….
>
> (ba) one year in the case of a first revocation, three years in the case of a second revocation and indefinitely in the case of a third or subsequent revocation where
>
> > ….
> >
> > (ii) the revocation was for violation of subsection (1) or (4) of section 320.14, subsection (1) of section 320.15 or section 320.18 of the Criminal Code (Canada), if the prohibition referred to in section 320.18 of that Act was occasioned by an impairment-related offence and the offence involves the operation of a motor vehicle;

[63] The definition of impairment-related offence, for the purposes of s. 67, under s. 67(12), includes an offence under section 320.14 of the *Criminal Code*. In the case at hand, the prohibition that was contravened, and led to the two convictions under section 320.18, was occasioned by an offence under section 320.14.

[64] All three revocations occurred within the previous 10 years, thus satisfying s. 67(5)(6A).

[65] In addition, section 67(5)(22A) clearly states that "where a driver's license is revoked indefinitely, no application may be made pursuant to this Section for the restoration of the driver's license until 10 years has elapsed from the date of the revocation".

[66] Consequently, there clearly was no error in the interpretation of MVA s. 67(5). It clearly required the three-year revocation for the driving while disqualified offence, and the indefinite revocation for the subsequent offence of operating a conveyance while prohibited. It also clearly makes it such that Mr. Clark is ineligible for license reinstatement for a minimum of 10 years.

[67] This interpretation is consistent with general purpose of the MVA, which is to promote safe use of highways with a view to protecting the public. The revocation provisions and provisions related to eligibility to apply for reinstatement further that objective. I will use the circumstances of the case at hand as an example.

[68] Even though the second and third revocations were based on driving or operation while disqualified or prohibited, as opposed to impaired, over 80 or refusal offences, they were both committed within the period of prohibition. That shows a repetitive disregard of an order put in place to protect the public from people having been convicted of impaired driving, by prohibiting them from driving. The disregard of such a court order creates a risk to public safety. The level of risk is heightened by the fact the prohibition was imposed for an impaired driving offence and by the fact that there have been repetitive contraventions of the prohibition.

[69] Mr. Clark attempted to narrow the purpose of s. 67(5) to that of punishing persons repeatedly convicted of drinking and driving offences, so as to discourage commission of such offences. In support, he referred to Explanatory Notes of Bill No. 83, legislative discussions, and news coverage of the legislative changes. However, I agree with the Respondent that one must look at the plain meaning of the legislative language used and, if it is unambiguous, such interpretive aids are of little or no use or assistance. An exception might be where the plain meaning is clearly contrary to the purpose of the legislation. However, that is not the situation we have here.

[70] The Legislature, more likely than not, intended, as part of the MVA's object of promoting safe use of highways, to discourage anything that would or could compromise highway safety. It was not limited to discouraging repeat drinking and driving. It included discouraging driving and repeated driving while prohibited from doing so as a result of an impairment-related driving offence. That is clear in the plain meaning of the words used.

[71] The scheme of the MVA also includes voluminous regulatory provisions geared at ensuring highway safety, including through rules regarding driving and equipment.

[72] S. 278 fits within the portion of the MVA that has "revocation of license" in its heading. That portion is in Part VII of the MVA which deals with procedures and penalties related to various offences. S. 67 fits within Part IV of the MVA, which deals with Drivers' Licences.

[73] The interpretation of MVA sections 278 and 67(5) which resulted in the revocations imposed, was reflective of their clear and plain meaning, and in harmony with the scheme and object of the Act, as well as the intention of the Legislature.

[74] Therefore, it is consistent with the modern purposive approach to statutory interpretation which the Supreme Court of Canada approved in *Rizzo & Rizzo Shoes Ltd*., [1998] 1 S.C.R. 27, at paragraph 21, and, specifically in the judicial review context, in *Vavilov, supra*, at paragraph 117.

[75] For these reasons, the interpretation of section 67(5) was not just reasonable, in that it was transparent, intelligible, and justified, it was also correct.

WHETHER ERROR OF LAW IN CONCLUDING THERE WAS NO DISCRETION TO ISSUE A DRIVER'S LICENCE UNTIL AFTER 10 YEARS

[76] Mr. Clark argues that, even if the indefinite revocation is mandatory under section 67(5), the Department still maintains discretion under section 67(4), to issue a driver's license once the driving prohibition imposed by the court pursuant to section 320.24 of the *Criminal Code* has expired.

[77] That argument is based on s. 67(4) stating that the "Department shall not issue a driver's license to any person whose driver's license has been revoked under Section 278 … until the period of revocation set forth in subsection (5) has elapsed or [with emphasis on the word "or"] until any order of prohibition made by the court pursuant to section 320.24 of the *Criminal Code* (Canada) has expired".

[78] This argument ignores the fact that, because of the application of section 67(5), the Department will not be put in a position to decide, whether it should issue a driver's license to a person whose driver's license has been revoked under section 278, until the period of ineligibility to apply, as determined under section 67(5), has expired. That is because the offender will not be able to even make an application to have his driver's license restored.

[79] Therefore, the Department could never issue a driver's license earlier than the time that the period of revocation set forth in subsection (5) has elapsed, even if the driving prohibition made by the court pursuant to section 320.24 had already expired.

[80] At the same time, section 320.24(2) of the *Criminal Code* provides for prohibition periods that are not exactly the same as the periods of revocation provided for in MVA s. 67(5).

[81] The potential periods of prohibition under section 320.24(2) are:

- for a first offence, 1 to 3 years;
- for a second offence, 2 to 10 years; and,
- for each subsequent offence, not less than three years with no maximum.

[82] Periods of imprisonment are also added to those periods.

[83] Under MVA section 67(5)(ba), the durations of revocation are as follows: "one year in the case of a first revocation, three years in the case of a second revocation and indefinitely in the case of a third or subsequent revocation".

[84] Those revocations could all arise from impaired operation or refusal convictions (ie. offences under ss. 320.14 and 320.15 of the *Criminal Code*).

[85] Therefore, there could easily be situations where the prohibition period imposed by the court would exceed the duration of revocation under the MVA. For instance, for a second offence, the driving prohibition could be four years when the duration of revocation would only be three years. Similarly, for a third or subsequent offence, the court-imposed prohibition could be for 11 years, while the period of ineligibility attached to an indefinite revocation would only be for 10 years.

[86] Consequently, I agree with the Deputy Registrar, that the portion of s. 67(4) which adds "or until any order of prohibition made by a court pursuant to section 320.24 of the *Criminal Code* has expired" is there to ensure that a person whose driver's license has been revoked under section 278 is not issued a driver's license while still subject to a driving prohibition imposed by a court pursuant to section 320.24 of the *Criminal Code*.

[87] To do so would be contrary to public policy; and, refraining from doing so is in keeping with the public safety objectives of these license revocation-related provisions in the MVA.

[88] Prohibiting it ensures that the MVA complements, rather that contradicts, the *Criminal Code*. It also respects the fact that, as stated by our Court of Appeal, in *R. v. Penney* (1995), 142 NSR(2d) 76, at paragraph 16, "any prohibition order under the Code while in force supersedes any order under the *Motor Vehicle Act*".

[89] Therefore, the interpretation of s. 67(4) as not providing any discretion to stray from the result in the case at hand is also reasonable and correct.

CONCLUSION

[90] Based on the foregoing, I conclude that:

- This application for judicial review was filed out of time, does not meet the test for extension of time and ought not be heard; and,
- Even if it could be heard, I find that it is clearly without merit.

[91] Therefore, Mr. Clark's request for judicial review is dismissed.

COSTS

[92] The Respondent, Deputy Registrar, seeks $3,000 in costs under Tariff C based on the amount of effort involved.

[93] Mr. Clark submits that $750 in costs is more reasonable and appropriate given that this was a chambers matter lasting less than one-half day with no witnesses.

[94] The basic range under Tariff C is $750 to $1,000.

[95] However, since the outcome is determinative of the entire matter at issue, I may multiply that range by 2, 3 or 4 times depending on the complexity of the matter, the importance of the matter to the parties, and the amount of effort involved in preparing for and conducting the application.

[96] Alternatively, under Civil Procedure Rule 77.08, I may award a lump sum amount instead of Tariff costs.

[97] This matter, at its core, was not complex. It was clear that the only way that the Court could accept Mr. Clark's arguments was to ignore:

- the portion of MVA s. 67(5)(ba) which requires that revocations for violations of s. 320.18 of the Criminal Code be counted if they were "occasioned by an impairment-related offence"; and,
- the obvious meaning, intent, and purpose of MVA s. 67(4).

[98] However, as this was a judicial review application brought well outside the deadline, it complicated the matter by multiplying the issues to address to include:

- extension of time to file;
- whether there was a reviewable decision;
- the standard and process of review; and,
- application of statutory interpretation principles.

[99] The matter was of obvious importance to Mr. Clark as he finds himself ineligible to apply for a driver's license for 10 years.

[100] The matter was also important to the Registry of Motor Vehicles as granting the judicial review requested would have created significant instability and uncertainty for it going forward. It would be put in a position where it would have to delve deeply into the background behind certain convictions when dealing with license applications, rather than rely on the Client Record Abstract. That would strain resources. Granting the review, or even only the extension, would also have opened the floodgates to late and potentially frivolous challenges to license revocations.

[101] It is clear from the materials presented and submissions made by the Respondent that they expended a lot of time and effort in preparing for the application. It is reflective of the importance of the matter to the Deputy Registrar. It includes preparing a comprehensive record, as well as a thorough and focussed, 40-page brief, relying on 19 cases, one text, two Acts and the applicable Civil Procedure Rule.

[102] More likely than not, the costs requested would not exceed a substantial contribution towards the value of the work performed.

[103] However, the Deputy Registrar was represented by lawyers from the Nova Scotia Department of Justice. Part of their function is to defend administrative decisions and provincial legislation. Challenges to such decisions or legislation are often brought by individuals with much fewer resources than the Department of Justice. If costs awards are too high, it would dissuade individuals with legitimate claims from bringing forward challenges. That would remove an important avenue for maintaining checks and balance on

government actions and legislation, and risk undermining our democratic system.

[104] Though it ought to have been obvious to Mr. Clark that his s. 67(5) argument was without merit, it is conceivable that he would have seen some flicker of hope in his alternative argument regarding residual discretion under s. 67(4).

[105] He says he cannot afford taxis. However, he is in receipt of a pension from the military. Therefore, if given time, he ought to be able to afford an amount of costs that is at least twice the upper end of the Tariff C range.

[106] For these reasons, I will limit costs to $2,000 and give him 6 months to pay.

[107] This will do justice between the parties.

[108] He shall be required to pay, to the Deputy Registrar of Motor Vehicles, $2,000 in costs, on or before March 21, 2024.

ORDER

[109] I ask counsel for the Respondent to prepare the Order.

Muise, J.