

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF MONCTON

Jislin Sammy Mallet v. Registrar of Motor Vehicles
2025 NBKB 044

MM/3/2025

BETWEEN:

JISLIN SAMMY MALLET,

– and –

REGISTRAR OF MOTOR VEHICLES

DECISION

BEFORE: Justice Robert M. Dysart

AT: Moncton, New Brunswick

DATE OF HEARING: January 24, 2025 and February 6, 2025

DATE OF DECISION: February 18, 2025

APPEARANCES: Guillaume LeBlanc, for Mr. Mallet

Richard Williams, K.C., for the Registrar of Motor Vehicles

DYSART, J.

SYNOPSIS

[1] Jislin Sammy Mallet is seeking the reinstatement of his driving privileges following the issuance of a mandatory 1-year suspension by the Registrar of Motor Vehicles, running from July 29, 2024 to July 29, 2025.

[2] This case raises two distinct issues: First, is the Applicant eligible to request the rescission of his suspension? And second, if so, has he met the test by demonstrating that he is likely to suffer a loss of his livelihood if his driving privileges are not reinstated?

[3] For the reasons set out below, the answer to the first question is yes, he is eligible to apply to rescind his suspension. The answer to the second question is no, he has not demonstrated that he is likely to suffer a loss of livelihood.

[4] As a result, the Application is dismissed.

PRELIMINARY ISSUES - ELIGIBILITY

[5] The Applicant brings the application under s. 313 of the **Motor Vehicle Act**, which permits a party, in limited circumstances, to apply to this Court for an order rescinding a suspension of their driving privileges. In order to

be eligible, the applicant must show that his suspension falls within one of the scenarios described in s. 313(2) of the **Act**, which gives this Court jurisdiction.

- [6] Here, the Applicant's driving abstract is before the Court as one of the records submitted by the Registrar. It shows that the Applicant lost all of the points on his license due to several convictions for speeding, failing to display a valid inspection certificate, failing to signal a turn when changing lanes, and for squealing his tires. His license was suspended due to that loss of points from November 24, 2022 to December 23, 2022.
- [7] Then, his license was suspended indefinitely on December 15, 2022 for failure to pay a fine related to the last of those convictions.
- [8] On December 16, 2022, while his license was suspended both for the loss of his points and due to his failure to pay a fine, he was stopped and charged with driving while suspended, pursuant to s. 345 of the **Motor Vehicle Act**.
- [9] According to the Registrar's file, which includes the endorsements from the Provincial Court, Mr. Mallet instead entered a guilty plea to a charge of driving without a valid license, under s. 78 of the **Motor Vehicle Act**. He was fined \$292.50.

[10] According to counsel for Mr. Mallet, who was his counsel before the Provincial Court, the decision to plead to s. 78 was done in accordance with s. 25 of the **Provincial Offences Procedure Act**, which reads:

25 Where the defendant pleads not guilty to the offence charged but admits being guilty of another offence, whether or not it is an included offence, the judge shall, with the consent of the prosecutor,

- (a) permit the information, notice of prosecution or violation ticket to be amended so as to substitute the offence to which the defendant has admitted guilt,
- (b) accept the defendant's admission as a plea of guilty to that offence, and
- (c) proceed in accordance with section 23.

[11] Counsel explained that this was done in order to avoid the automatic license suspension that follows a conviction under s. 345. That is, it was a tactical decision, since a conviction under s. 78 does not automatically give rise to a suspension.

[12] Unfortunately, the tactic failed. Because Mr. Mallet had had his driving privileges suspended just a month earlier due to the loss of all 10 points, by virtue of s. 302(3)(a) of the **Motor Vehicle Act**, the combination of a suspension for the loss of his points (s. 300(1)) and a conviction under s. 78 (driving without a valid license) yielded the same result – a suspension of his driving privileges for one year.

[13] As indicated, he brings this application under s. 313(2)(d) of the **Motor Vehicle Act**, which provides that:

313(2) An application may be made under subsection (1) in the following cases:

[...]

(d) where the revocation and suspension, or suspension, was effected because the applicant was convicted of an offence for driving a motor vehicle while the applicant's driving privilege was suspended if the conviction was the first conviction for that offence with respect to the applicant in the three years preceding the revocation and suspension, or suspension, [...]

[14] Section 314 of the **Act** states that no application shall be made or considered with respect to the revocation or suspension of a person's licence or driving privilege except in those cases referred to in subsections 311(2) and 313(2) – and subsection 311(2) has no application.

[15] So, the preliminary question is: Does this Court have jurisdiction to consider the Applicant's request, given that he was convicted of an offence under s. 78 of the **Act** for driving without a valid license, rather than the offence with which he was charged, i.e. driving while his license was suspended, contrary to s. 345?

[16] The Applicant argues that the **Act** does not specifically mention s. 345, but rather refers to a conviction for "an offence" related to the underlying conduct – driving while his license was suspended. The Applicant argues that it would be nonsensical if he were prevented from requesting the rescission of his suspension merely because he pleaded to a different

offence arising from the very acts which are identified in s. 313(2)(d). He argues that a broad and purposive approach should be adopted.

[17] Counsel for the Registrar, who appeared and objected to the Application, acknowledged that this was a case of first impression for the Courts in this province, at least to his knowledge. The Registrar, at least, had never encountered it before. He argued that, while it may appear to be a gap in the legislation, the wording of s. 313(2)(d) clearly refers to “an offence **for** driving a motor vehicle while the applicant’s driving privilege was suspended” – indicating that only an offence under s. 345 is included. While the underlying **conduct** in this case was driving while suspended, **the offence** with which the applicant was convicted was not. The Registrar acknowledges that the result is arbitrary and may seem nonsensical but takes the position that the Court’s jurisdiction is limited to the strict wording of the **Act**.

[18] The principles of statutory interpretation were established by the Supreme Court of Canada in **Rizzo & Rizzo Shoes Ltd. (Re) (1998)** 1998 CanLII 837, where Justice Iacobucci, writing for the Court, adopted the approach proposed by Elmer Driedger in his text, **Construction of Statutes** (2nd ed. 1983):

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.

[19] Here, the wording of s. 313(2)(d) leaves some ambiguity as to whether the remedy of rescission is available to someone convicted of an offence other than under s. 345, where the underlying conduct is driving while her or his license is suspended. Thus, the text alone does not resolve the question, since it makes no reference to s. 345, or to any specific section, for that matter.

[20] But when the Court turns to the object of the **Act** and the intention of the Legislative Assembly in enacting s. 313(2)(d), it would seem that the object of that provision, in the whole context of the **Act**, is to allow someone who engaged in the offending **behaviour** – driving while suspended – to seek the reinstatement of their driving privileges.

[21] The offences for which rescission of the suspension is available is telling:

- Suspension where points are assessed against the driver for offences under the **Motor Vehicle Act**, specific sections of the **Transportation of Dangerous Goods Act**, or local by-laws [s. 313(2)(b) and s. 313(2)(e)];
- Suspension where 10 points are assessed against the driver for a conviction under the **Criminal Code** [s. 313(2)(c)]; and
- Suspension for displaying a cancelled, revoked or fraudulent licence [s. 313(2)(d.1)];
- Suspension for driving in contravention of a restriction imposed by the Registrar [s. 313(2)(f)].

[22] Without minimizing the seriousness of these offences, it seems clear that the Legislative Assembly saw fit to target what might be described as minor, quasi-regulatory offences under the **Act**.

[23] Here, the evidence is clear: Mr. Mallet was driving while his privileges were suspended. That is what he did wrong. And it is also clear that this is his first offence for driving while his privileges were suspended in the three years preceding his current suspension.

[24] In light of the object of s. 313(2) and its place within the whole of the **Motor Vehicle Act**, I am persuaded that the present circumstances fall within the parameters of s. 313(2)(d), and that Mr. Mallet was indeed “convicted of an offence for driving a motor vehicle while the applicant’s driving privilege was suspended.” To hold otherwise would lead to an absurd result, and the Legislative Assembly cannot have intended that.

[25] For those reasons, I am satisfied that Mr. Mallet is eligible to bring this application, i.e. the Court has jurisdiction to rescind the suspension.

HAS THE APPLICANT ESTABLISHED LOSS OF LIVELIHOOD?

[26] In **LeBlanc v. New Brunswick (Registrar of Motor Vehicles)**, [1990] N.B.J. No. 713, this Court set out the burden which an applicant seeking to rescind her or his suspension must discharge:

12. For the applicant to succeed on the merits of this application the court must be satisfied on the evidence before it that the applicant will either lose his livelihood or that other exceptional hardship will result if his license and driving privileges are not reinstated. In addition, once one of these circumstances has been established to the satisfaction of the Court, the judge must also be satisfied that reinstatement is not contrary to public policy.

[27] This approach was more recently adopted by Justice LeBlanc, then sitting as a member of this Court, in *Beaulieu-Gosselin v Registrar of Motor Vehicles for the Province of New Brunswick*, 2020 NBQB 44 (CanLII).

[28] So, has the Applicant discharged that burden? In his Affidavit sworn on January 2, 2025, Mr. Mallet states that he works as a seasonal snowplow operator for a landscaping company, and that he therefore requires his driver's licence as a condition of his employment. He has worked four winters for that company. He states, "Since my suspension, I have been very limited in the work I can complete," and that "It has been increasingly difficult to find drives and to be able to attend all appointments, including work." He states that he "knows" that he will lose his livelihood.

[29] Notwithstanding those statements in his Affidavit, when he appeared before the Court on January 24, 2025, the Court inquired about his statement that he was "limited" in the work he could do as a snowplow operator. He explained that he was restricted to operating the plows in large commercial parking lots but could not drive the plow on any roads or highways, as he normally would. That said, he confirmed that his employer had not told him that he would lose his employment if his license

were not reinstated. In fact, his employer advised him that he would need his licence for next winter season, or he would not have employment. He stated:

“I don’t believe I’m gonna lose that job this winter, no.”

- [30] Recall that the suspension ends in July, 2025.
- [31] When the matter returned to Court on February 6, 2025, Mr. Mallet filed a Supplemental Affidavit which included a letter from his employer, stating that employees must have a valid driver’s licence, “*non-negotiable*.” Of course, this is inconsistent with the fact that Mr. Mallet has continued to be employed with that company this winter season, notwithstanding his suspension. And, given what Mr. Mallet reported to the Court on January 24, 2025, the Court is not satisfied that Mr. Mallet is likely to lose his livelihood if his suspension is not rescinded.
- [32] The Court acknowledges that the suspension of one’s driving privileges can be a significant inconvenience, requiring friends and family members to drive one to work and to appointments. But inconvenience is not the test. One must show that rescission of the suspension is required to avoid the loss of one’s livelihood.

[33] While the Court has no concerns that Mr. Mallet represents a risk to public safety, he has not met the burden upon him. I am not satisfied that he will lose his livelihood.

[34] As a result, the application is dismissed.

[35] In the circumstances, given that the Registrar initially advised that it would not appear at the hearing, and given that there has been partial success on the application, I will not make any order as to costs.

DATED at Moncton, New Brunswick this 18th day of February, 2025.

Robert M. Dysart,
Judge of the Court of King's Bench
of New Brunswick