

# Sober B.C. senior fined for drunk driving

BY IAN MULGREW, VANCOUVER SUN JANUARY 11, 2012 9:32 AM

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An 82-year-old Cranbrook woman with medical problems maintains she was made to stand in the midnight chill for more than two hours while RCMP officers attempted 15 times to obtain a breath sample.

When the stone-cold-sober pensioner with poor lung capacity was unable to blow hard enough to activate the roadside screening device, Margaret MacDonald was cited for failing to blow, her licence was suspended, she was fined \$500 and her car was towed.

Old but no fool, she quickly went to the local hospital where she had her blood tested for alcohol and obtained a medical certificate that said there was none — zero, nada — in her system.

“I know if you don’t have proof, no one will believe you,” MacDonald explained. “That’s what possessed me to go to the hospital. The Mounties weren’t going to get away with saying I was drunk or had been drinking.”

When she complained to the detachment, a corporal tried to help her out and gave her a letter supporting her appeal.

It didn’t matter a whit — the Superintendent of Motor Vehicles adjudicator still found her guilty under the province’s controversial drunk-driving laws.

“I may only have six months, maybe a year; when you’re in your 80s you don’t know how long you have left,” the spunky senior told me Tuesday.

“Why should I have to spend my days fighting this? I’m on a fixed income and it’s already cost me \$6,000. I consider this whole matter to constitute a substantial wrong and a miscarriage of justice that could have been avoided if the officers involved had not jumped to the conclusion that I was impaired, had not completely ignored me, had discussed anything with me and had given me a chance to explain anything. Not one of them even asked if I had had a drink.”

The RCMP haven’t resolved her complaint — she’d like to be reimbursed by the force for her out-of-pocket expenses — and she is seeking a judicial review of the adjudicator’s decision.

On May 21, MacDonald visited a friend in Jaffray, about 50 km southeast of the city.

During dinner to celebrate an engagement, she says she had a sip of champagne in a token toast about 6 o'clock.

A Mountie doing a routine traffic check on Highway 3 stopped her on her way home around 11:45 p.m. He stuck his head in the driver's side window, chatted with her and told her to beware of elk.

About 45 minutes later, in Cranbrook, a few blocks from her house, MacDonald mistakenly turned into the wrong lane and drove around a median. She felt dumb, but got home and parked her car.

She was at her front door when a car pulled up and the driver beckoned to her. She thought the woman was lost.

After pointing out her bad driving, the woman told MacDonald she was an off-duty cop and a patrol car was on the way to give her a breathalyzer test. She left when the cruiser arrived.

The responding RCMP officer and auxiliary asked MacDonald to blow into the roadside screening device.

She was unable to generate sufficient breath but they kept trying, and trying, and trying — 15 times, according to the material filed with the adjudicator.

"One would have thought they might have considered that due to health and age I was unable to complete the test," she nevertheless feisty MacDonald said.

"At the age of 82, I have developed various health problems. Five years ago, I had pneumonia and was told by my doctor that I have scarring on one of my lungs; I have from time to time mild to mildly severe lung congestion."

The Mounties kept her standing outside wearing only a pair of sandals, a cotton skirt and a light blouse on a night that Environment Canada says the temperature hovered about 11 C. She said she had to "beg" to go to the bathroom.

The elderly woman began to become more stressed, upset and cold as their efforts continued: "It took me two days to warm up afterwards."

MacDonald estimated she was forced to stand for nearly an hour in the middle of the cul-de-sac in the glare of the cruiser's headlights, her neighbours watching from their windows.

"This was very embarrassing," she added. "I was traumatized due to the treatment from the RCMP."

When they realized she wasn't able to give a breath sample, the junior Mounties called a superior. MacDonald thought it took him about half an hour to arrive.

On leaving his car, she maintained he roughly grabbed the roadside screening unit, inserted it in her mouth and sharply ordered her to blow.

"I could not blow at all," she said. "I was traumatized, cold and close to tears. When I could not blow, the senior RCMP banged his fist on the squad car and shouted at me: 'Blow, blow ... Your tongue is in the tube. You are doing this on purpose. You are slurring your words. You are drunk. I can smell alcohol on you.' I said, 'I don't drink.' He barked: 'They all say that!'"

She was cited for failing to provide a breath sample, given a Notice of Driving Prohibition for three months, told to pay a \$500 fine and informed her car would be immediately towed.

"I was crying," MacDonald recalled. "I was humiliated. I cleaned out my car and a tow truck took it away. By this time it was about 2:45 a.m. I was exhausted, freezing cold and still crying."

Too upset to sleep, MacDonald decided if the RCMP were going to claim she smelled of booze, she wasn't going to take it.

"I would get a blood test," she concluded. "I took a cab to the Cranbrook hospital where I was given a blood-alcohol test at about 3:50 a.m. The test showed there was zero-per-cent alcohol in my blood."

It was a long weekend, so on the Tuesday morning she went to the RCMP detachment and complained.

After a cursory investigation, the corporal provided her with a letter saying: "I believe it is only fair that this Driving Prohibition and Vehicle Impound be terminated and removed from your driving record as soon as possible to mitigate any further impact to yourself."

He could not rescind the immediate roadside prohibition but helped her file an appeal. That cost MacDonald another \$200.

"I don't usually drink — the last time I had anything to drink was a half glass of wine at Easter dinner in April," MacDonald confided.

"I was treated as guilty of driving while impaired without anyone even asking me if I had had a drink ... I have had a motor vehicle licence for 63 years without any other incident. Nothing like this has ever happened to me. I was standing in the cold, lungs congested, legs hurting and dry mouth. They did not care."

The oral hearing was held June 1 and her appeal was denied June 9.

A few days later, MacDonald suffered a mild, stress-related heart attack and was in hospital for five days.

Her attempt to seek redress in B.C. Supreme Court was put on hold late last year because the drunk-driving provisions were already under review.

On Dec. 23, Justice Jon Sigurdson gave the province until June 30 to correct flaws in the drunk-driving legislation because parts were unconstitutional — but only insofar as they applied to those who blow a “fail” on the roadside device, which indicates a blood-alcohol level of over .08.

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