

In the Court of Appeal of Alberta

Citation: Seward v Alberta (Director of SafeRoads), 2026 ABCA 264

Date: 20260811

Docket: 2501-0069AC

Registry: Calgary

Between:

Cory Seward

Appellant

- and -

Director of SafeRoads Alberta

Respondent

The Court:

**The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Jolaine Antonio
The Honourable Justice Jane Fagnan**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice G.H. Poelman
Dated the 3rd day of February, 2025
Filed on the 13th day of February, 2025
(Docket: 2306 00930)

Memorandum of Judgment

The Court:

[1] On October 25, 2023, police conducted a traffic stop on the appellant Cory Seward. After registering a “fail” on an approved screening device, the appellant was issued a Notice of Administrative Penalty (NAP) under section 88.1(4)(a) of the *Traffic Safety Act*, RSA 2000, c T-6. The NAP cited two grounds: section 88.1(1)(a), operating a motor vehicle while impaired, and section 88.1(1)(b), having a blood alcohol concentration exceeding 80 milligrams of alcohol per 100 millilitres of blood within two hours of operating a motor vehicle. The appellant elected to proceed with a roadside appeal and registered a second “fail”.

[2] The appellant requested a review of the NAP under section 7(1) of the *Provincial Administrative Penalties Act*, SA 2020, c P-30.8. By reasons dated November 24, 2023, a SafeRoads adjudicator concluded the appellant had not established grounds for canceling the NAP. The appellant applied for judicial review of that decision. By oral reasons delivered February 3, 2025, the chambers judge dismissed that application. The appellant appeals that dismissal.

[3] Our task on appeal is to determine whether the chambers judge correctly identified and applied the standard of review: *Lausen v Alberta (Director of SafeRoads)*, 2023 ABCA 176 at para 27 [*Lausen*]. There is no disagreement the chambers judge correctly identified reasonableness as the applicable standard of review: *Lausen* at paras 32-37; *Provincial Administrative Penalties Act*, s 24(3). Therefore, the question for us to decide is whether the chambers judge correctly applied that standard – *i.e.*, whether the decision made by the adjudicator was reasonable.

[4] Before the adjudicator, the appellant argued the NAP should be cancelled on the basis of two statutory grounds. He argued he was not properly served with a NAP, and he was not properly advised of his right to a roadside appeal. He argues the adjudicator’s rejection of each of these grounds was unreasonable.

Served with a notice of administrative penalty

[5] One ground for cancelling a NAP is “that a notice of administrative penalty was not served on the recipient”: *SafeRoads Alberta Regulation*, Alta Reg 224/2020, ss 4(e)(ii), 4(f)(ii). The appellant relied on this ground in two ways.

[6] First, he argued he was not served a NAP because the NAP he was given identified “SafeRoads.com” as the SafeRoads Alberta website whereas the correct address was actually “www.alberta.ca/saferoads-alberta”. The adjudicator accepted that section 10(a)(v) of the *SafeRoads Alberta Regulation* and section 3(1)(d) of the *Provincial Administrative Penalties Regulation*, Alta Reg 217/2020 required that the NAP include the website address “where

[specified] information is available to the recipient”. The adjudicator found that requirement was met as “SafeRoads.com” redirected to the longer web address and either address could be used to access the requisite details of the NAP. The chambers judge correctly held the adjudicator’s conclusion was reasonable. As the chambers judge noted, the website listed on the NAP “brought him directly to the site required by the regulations and brought all the information to his hand required by the regulations”.

[7] The appellant also argued a NAP was not served on him because the NAP he was given listed both sections 88.1(1)(a) and (b), whereas a NAP may only validly be issued for one contravention of the *Traffic Safety Act*. The appellant relied on multiple aspects of the statutory regime, including singular references to “a contravention” and section 88.1(1) which states a NAP may be issued if “any” of the listed grounds are present. In the latter regard, the appellant emphasized that section 88.1(1) does not say “any one or more”.

[8] The adjudicator rejected this argument, holding the NAP was issued for a single contravention that had two grounds. According to the adjudicator, on a proper interpretation, the list set out in section 88.1(1) “represents the list of grounds which may form the basis or bases of” a single contravention. The chambers judge correctly held this analysis “was at least reasonable”. He noted the word “any”, as used in section 88.1(1), can include more than one. It would not be uncommon to have more than one of the section 88.1(1) grounds present at the same time. For example, a person who has a high blood alcohol concentration as contemplated by section 88.1(1)(b) will often also be impaired within the meaning of section 88.1(1)(a). As the chambers judge observed, if the officer was required to issue a separate NAP for each of the applicable grounds, the appellant in this case should have been issued two NAPs and should have been subject to two administrative penalties for the same conduct. That is not likely to have been what the legislators intended. We agree the adjudicator’s interpretation of the provision was reasonable.

Advised of the right to a voluntary roadside appeal

[9] Another ground for cancelling a NAP is “that the officer did not advise the recipient in writing of the right to a roadside appeal under section 88.11 of the Act and the recipient was unaware of that right”: *SafeRoads Alberta Regulation*, ss 4(e)(v), 4(f)(viii). The appellant relied on this ground in three ways.

[10] First, he argues the NAP inaccurately informed him of the nature of the roadside appeal, because it described it as a right to appeal his blood alcohol concentration. Section 88.11(2) of the *Traffic Safety Act* contemplates an “appeal of [the] notice of administrative penalty”, not the blood alcohol test. The adjudicator rejected this argument, noting the blood alcohol concentration was the reason the NAP was issued and, in any event, the roadside appeal form stated, among other things, “If the results of your roadside appeal is less than any prohibited drug/alcohol concentration, your contravention will be CANCELLED”. The adjudicator concluded the

appellant was provided sufficient written information to appreciate he was being offered an appeal of the NAP. We perceive no reviewable error in this conclusion.

[11] Secondly, the appellant argued he was not properly advised in writing of his right to a roadside appeal because he was not told the second test would be conducted on a different approved screening device. The adjudicator noted that while section 88.11(2)(a) of the *Traffic Safety Act* requires the appeal be conducted on “a different approved screening device”, there is no express statutory requirement to advise the recipient that a different device will be used. The appellant did not indicate how knowing the second test would be on a different device would have impacted his decision, which was to proceed with the appeal. The adjudicator concluded that information was not a requirement in the circumstances. The chambers judge held the adjudicator’s assessment was reasonable. He reiterated that the words of the statutory scheme do not require notice that a different device will be used. He also noted the caselaw interpreting the statutory scheme does not impose that requirement.

[12] In *Clarke v Alberta (Director of SafeRoads)*, 2023 ABKB 237 at paras 21-22 [*Clarke*], the court noted “[t]he different device requirement is a significant aspect of the right to appeal” and found the decision under review was unreasonable because the adjudicator did not address whether the applicant should have been told of that aspect. However, the Court of King’s Bench has subsequently upheld decisions as reasonable where the adjudicator has addressed the issue and determined that no notice that a different device would be used was required: *Yake v Alberta (Director of Saferoads)*, 2025 ABKB 639 at paras 18-23 [*Yake KB*]; *Rediron v Alberta (Director of SafeRoads)*, 2025 ABKB 434 at paras 40-43; *Reimer v Alberta (Director of SafeRoads)*, 2025 ABKB 395 at paras 60-65; *McManus v Alberta (Director of SafeRoads)*, 2025 ABKB 254 at para 48. A single justice of this Court granted an application to extend time to appeal the decision in *Yake KB*, holding that the reasoning in *Clarke* demonstrated it was at least “arguable” the adjudicator’s determination was unreasonable: *Yake v Alberta (Director of SafeRoads)*, 2026 ABKA 126 at paras 20-28 [*Yake CA*]. That appeal was recently struck for failure to file an appeal record on time.

[13] On the facts before us, we are not satisfied the chambers judge improperly applied the standard of review. The appellant relies on this Court’s decision in *Lausen* to argue that a driver must understand that a different device will be used for the appeal test. *Lausen* determined that the intention of the legislative scheme is for drivers to have “the information necessary to decide whether to request a roadside appeal” prior to making that decision: *Lausen* at paras 46, 54. However, it was not unreasonable for the adjudicator to conclude that the information necessary to make that decision in this case did not include information that a different screening device would be used. The legislation requires notification of “the driver’s right to voluntarily undergo the applicable test, analysis or evaluation” (*Traffic Safety Act*, s 88.1(5)) and “the right of the

recipient to a roadside appeal” (*SafeRoads Alberta Regulation*, s 10(a)(i)). It does not specify that the details of the device used for the appeal must be disclosed.

[14] Finally, the appellant argued the roadside appeal form suggested the right to a roadside appeal was contingent on his agreement that the results of the appeal test could be used in “any” subsequent proceeding, including a criminal proceeding. He argued the legislation imposes no such requirement, and therefore he was not properly advised of his right to a roadside appeal.

[15] The appellant attested he was required to sign the roadside appeal form before the appeal test would be administered. That form read in part:

EFFECTIVE IMMEDIATELY:

...

- You may be subject to further administrative and criminal sanctions and penalties.

...

ROADSIDE APPEAL:

The choice to request a roadside appeal is completely voluntary. If you choose to have a roadside appeal, you may be required to immediately accompany the peace officer for that purpose.

...

YOU MUST IMMEDIATELY INDICATE TO THE PEACE OFFICER YOUR CHOICE TO HAVE A ROADSIDE APPEAL.

I, _____, am requesting and do voluntarily consent to the taking of a sample that will be used to confirm the concentration of alcohol and drugs (if any) in my blood. I will accompany the peace officer for that purpose and **I understand that the result of this test *will be* used to prove my blood alcohol and drug concentration (if any) at the time of driving *in any proceeding* arising from this event.**

[Underlining emphasis in original; Bold and italic emphasis added]

The form had a signature and date line at the bottom, which the appellant completed.

[16] The appellant argued the form went too far in requiring his consent to use of the result of the second test “in any proceeding” – including potentially a proceeding outside the SafeRoads regime – before he could access his legislated right to a roadside appeal.

[17] The appellant is correct the legislation does not impose this type of precondition. The operative provision is section 88.11(2)(a) of the *Traffic Safety Act*. The only preconditions it identifies are that the driver requests an appeal, voluntarily attends immediately at a place designated by the peace officer, accompanies the peace officer to that place, and immediately provides a sample:

Notwithstanding that a notice of administrative penalty has been issued to a driver... where a driver requests an appeal of that notice of administrative penalty and voluntarily attends immediately at a place designated by the peace officer and accompanies the peace officer to that place, if necessary, the driver shall immediately

(a) where the basis for issuing the notice of administrative penalty was an initial test performed on an approved screening device, provide a sample of breath that in the opinion of the peace officer is suitable for analysis on a different approved screening device, or on an approved instrument, at the discretion of the peace officer, ...

[18] The legislation requires that the officer advise the driver of the right as set out in the foregoing provision. Section 88.1(5) of the *Traffic Safety Act* states the officer “shall advise the driver of the driver’s right to voluntarily undergo the applicable test, analysis or evaluation referred to in section 88.11(2)”. Similarly, section 10(a)(i) of the *SafeRoads Alberta Regulation* requires the NAP to include “a statement of the right of the recipient to a roadside appeal of the notice under section 88.11 of the Act”. There is no further legislative guidance on the information required to be given.

[19] At issue before the adjudicator was (i) whether the appellant had been advised in writing of the right to a roadside appeal and (ii) whether he was aware of that right: *SafeRoads Alberta Regulation*, ss 4(e)(v), 4(f)(viii); *Lawrence v Alberta (Director of SafeRoads)*, 2024 ABCA 361 at para 16. On the first question, the appellant argued he was not properly advised in writing, because the roadside appeal form suggested a precondition that did not exist in the statute. On the second question, the appellant attested that at the time he decided to proceed with the appeal he was not aware he “was not required to consent to the result of the second test being used against [him] in any future proceedings, including criminal charges”.

[20] Regarding whether the appellant had been advised in writing of the right to a roadside appeal in the circumstances, the adjudicator highlighted the portions of the form indicating that the roadside appeal was voluntary and that the Recipient may be subject to further administrative and criminal sanctions and penalties based on the first test. The appellant had chosen to avail himself of the roadside appeal. The adjudicator concluded the appellant had not shown how the roadside appeal form “undermined or obscured [his] right to the roadside appeal.” Citing *Lausen*

at para 54, the adjudicator adverted to the question of whether the written advice was sufficient for the legislative purpose of affording voluntary access to meaningful safeguards for ensuring the reliability of the initial test. The adjudicator found the information on the form was “sufficient to provide the [appellant] with an accurate explanation as to the purpose and outcomes of the roadside appeal test”. The adjudicator appears to have conflated the purpose of the legislative provisions with the purpose of the test, evading the *Lausen* analysis.

[21] Regarding whether the appellant was aware of the right to a roadside appeal, the adjudicator again referred to the language on the form indicating that the appeal was “completely voluntary”. The adjudicator found the appellant was given “enough written information to appreciate that completing a second test was his right to appeal the NAP by voluntarily performing the roadside appeal”. The adjudicator concluded the appellant was aware of the right to appeal.

[22] The adjudicator’s analysis was conclusory. Factually, the adjudicator failed to engage with the appellant’s argument that the language in the “will be used” portion of the form suggested a precondition that did not exist in the statute and how that language affected his awareness of the right to a roadside appeal. Legally, the adjudicator failed to engage with the purpose of the statutory promise of a voluntary right to a roadside appeal, and whether that purpose was undermined.

[23] The statement that the result of the second appeal test “will be used” to prove blood alcohol concentration “in any proceeding arising from this event” is problematic in two ways. If it is read as a statement of fact, it is inaccurate and overbroad. It is easy to imagine circumstances (such as a criminal trial engaging *Charter* rights) where a test result obtained in this manner would not be admissible. While advising the recipient of potential consequences is prudent, the unqualified assertion that the result “will be used” in other proceedings is simply wrong. If the statement is read as a mandatory consent to unrestricted future use, it imposes a precondition that is not contemplated in the legislation. On either interpretation, the wording undermines the statutory requirement of advising the driver of the right to a voluntary roadside appeal.

[24] The problematic language regarding the roadside appeal test could conceivably deter a recipient from proceeding with a roadside appeal they would otherwise have chosen, either from an unwarranted fear of widespread consequences or because they do not want to give their consent to unrestricted future use. The statement might lead a recipient to believe that use of the first test result is confined to the consequences stated at the beginning of the roadside appeal form, while use of the appeal test result is both unlimited and unavoidable. In *Rose v Alberta (Director of SafeRoads)*, 2022 ABQB 297 at para 72, Justice Whitling commented that the same wording “would seem to serve no other purpose than to discourage drivers like the Applicant from exercising their right to a roadside appeal”. This is a version of the scenario foreseen in *Lausen* at para 56: “if a driver is asked to undergo a second test without first understanding what is being offered, he may decline it where he otherwise would not”.

[25] Here, inclusion of the language did not deter the appellant from proceeding with the roadside appeal. Nevertheless, the record shows he had a flawed understanding of his right. He attested he was not aware he did not need to consent to the use of the appeal test in other proceedings. To the contrary, the officer told him he had to sign the form, with the problematic wording, before he could undergo the roadside appeal. This is a version of the second scenario foreseen in *Lausen* at para 56: “if the driver chooses to participate in a second test without understanding his right to a roadside appeal, the legislative intent that the appeal be voluntary may be defeated”.

[26] The adjudicator’s reasons, even when read holistically and contextually, fail to meaningfully engage with the argument raised by the appellant on this issue, including on whether the legislative intent behind the grounds for cancellation, as described in *Lausen* at paras 46 and 54, was fulfilled in this case. The principles of justification and transparency require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 127-128 [*Vavilov*]. That did not happen here. As a result, the decision of the adjudicator on this point is not “transparent, intelligible and justified”, and is unreasonable: *Vavilov* at para 15.

[27] Having found the adjudicator’s treatment of the issue pertaining to the “will be used” language was unreasonable, we turn to the choice of remedy.

[28] Procedures under the SafeRoads regime are designed to be simple, proportionate to the regulatory nature of the offences, and expedient: *Provincial Administrative Penalties Act*, s 2. In the circumstances of this case, we find remitting the matter to an adjudicator would not be consistent with the nature of the SafeRoads regime nor with the legislative intent behind it: *Vavilov* at para 142.

[29] On this record, the remaining issues turn on the wording of the roadside appeal form and are not particularly fact-sensitive. The traffic stop took place in 2023. The parties have participated in three hearings. At this point, remitting the matter to an adjudicator would consume a disproportionate measure of time and resources for both parties. Further, there is a broader need to reach a resolution because, to our knowledge, the problematic form remains in use. Therefore, based on the factors outlined at paragraph 142 of *Vavilov*, we conclude it is appropriate in this particular case to address the issues the adjudicator left unanswered.

[30] The legislative intent is clear: any roadside appeal must be voluntary: *Traffic Safety Act*, s 88.11(2). An officer must advise of the “right to voluntarily undergo” the roadside appeal test: *Traffic Safety Act*, s 88.1(5). A ground to cancel the NAP exists where the officer did not advise the recipient in writing of the right as defined in section 88.11 and the recipient was unaware of that right: *SafeRoads Alberta Regulation*, ss 4(e)(v), 4(f)(viii). As explained above, the wording of

the roadside appeal form is incompatible with the legislative intent that the roadside appeal be voluntary. The appellant has established that the NAP should be cancelled.

[31] The appeal is allowed and the NAP is cancelled.

Appeal heard on May 12, 2026

Memorandum filed at Calgary, Alberta
this 11th day of August, 2026

Strekaf J.A.

Antonio J.A.

Fagnan J.A.

Appearances:

K. Beyak
for the Appellant

A. Groenewegen
for the Respondent