In the Court of Appeal of Alberta

Citation: Hays v Alberta (Director of SafeRoads), 2026 ABCA 383

Date: 20261126
Docket: 2501-0126AC
Registry: Calgary

Between:

Rowdy Hays

Appellant
(Applicant)

- and -

Director of SafeRoads Alberta

Respondent
(Respondent)

The Court:

The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Kevin Feehan
The Honourable Justice Bernette Ho

Memorandum of Judgment

Appeal from the Judgment by
The Honourable Justice S.A. Moore
Dated the 10th day of April, 2025
Filed on the 22nd day of April, 2025
(2025 ABKB 224, Docket: 2406 00102)

Memorandum of Judgment

The Court:

Overview

[1] The appellant, Mr. Hays, was issued a Notice of Administrative Penalty (NAP) for impaired operation of a motor vehicle and having a blood alcohol concentration (BAC) exceeding 80 milligrams of alcohol in 100 millilitres of blood (80 mg%). He appeals the dismissal of his application for judicial review of an adjudicator's decision to confirm the NAP.

[2] The appellant contends it was unreasonable for the adjudicator to find that the Director of SafeRoads Alberta had complied with its statutory disclosure obligations, that the appellant had been served with the NAP and that he was not entitled to a roadside appeal in the circumstances. He submits that the judicial review judge erred in finding otherwise.

[3] The appeal is dismissed for the reasons that follow.

Background

[4] On September 3, 2023, the appellant was involved in a single-vehicle car crash that occurred late at night near Pincher Creek, Alberta. When the police arrived, following an iPhone crash notification, they found the appellant unconscious and hanging halfway outside the front passenger window of the vehicle. The appellant was extracted from the vehicle and he regained consciousness while waiting for EMS to arrive. Constable Feran noted a strong smell of alcohol in the appellant's vicinity and numerous beer cans in and around the vehicle. The appellant advised that he had been driving and had lots to drink that night. He was transported by ambulance to the hospital where he underwent emergency surgery.

[5] Constable Feran accompanied the appellant in the ambulance. Upon arrival at the hospital, a doctor advised Constable Feran that the appellant would not understand the meaning or consequences of a blood demand. Constable Feran observed blood being drawn from the appellant, entered into the hospital system and stored. He was subsequently advised by a doctor that the hospital lab results indicated the appellant was intoxicated.

[6] On September 6, 2023, Constable Feran applied for a search warrant for the vials of the appellant's blood that were stored at the hospital. The warrant was initially rejected because it was missing a paragraph stating that it was obtained by telecommunication. Constable Feran amended and resubmitted the application and the warrant was granted. On September 11, 2023, Constable Feran instructed the dayshift officers to execute the warrant and send the appellant's blood for

testing. On December 20, 2023, Constable Feran received the toxicology report, which showed the appellant's BAC was more than three times the legal limit at 289 mg%. On December 26, 2023, Constable Feran issued a NAP to the appellant for contravention of sections 88.1(1)(a) (impaired operation) and 88.1(1)(b) (BAC over 80 mg%) of the *Traffic Safety Act*, RSA 2000, c T-6 [*TSA*].

[7] The appellant sought an oral review of the NAP under section 7(1) of the *Provincial Administrative Penalties Act*, SA 2020, c P-30.8 [*PAPA*]. The review was conducted on January 16, 2024. The record before the adjudicator included the NAP and police narrative, Constable Feran's handwritten notes, the Forensic Science and Identification Services Lab Report (the toxicology report) and the appellant's written and oral submissions.

[8] The appellant submitted to the adjudicator that the NAP should be cancelled because: (1) the Director failed to provide complete records as required under section 12 of the *PAPA*; (2) the NAP had not been properly served on the appellant; (3) the appellant was not advised in writing of the right to a roadside appeal and was unaware of that right; and, (4) the appellant's right to fairness was breached. The adjudicator confirmed the NAP, finding that the appellant had failed to meet his onus to establish any of the grounds advanced.

[9] The appellant applied for judicial review of the adjudicator's decision pursuant to section 24 of the *PAPA*. The judicial review judge determined that the adjudicator's decision was reasonable and dismissed the application: *Hays v Alberta (Director of SafeRoads)*, 2025 ABKB 224 [Judicial Review decision].

Grounds of Appeal

[10] The appellant appeals to this Court alleging that the judicial review judge erred in concluding that:

1) the adjudicator reasonably determined that all necessary records had been provided by the Director to the appellant and the appellant's right to fairness was not breached by the Director's failure to provide additional records;

2) the adjudicator reasonably determined that the NAP had been served on the appellant at the relevant time; and

3) the adjudicator reasonably determined that the appellant was not entitled to an immediate roadside appeal by virtue of section 88.11(8)(d) of the *TSA*.

Standard of Review

[11] Under section 24(3) of the *PAPA*, the standard of review of an adjudicator's decision is reasonableness. On appeal from a judicial review decision, the issues before this Court are whether the judicial review judge identified the correct standard of review, and whether the standard was

applied correctly. No deference is afforded to the lower court in either of these regards. The appellate court "steps into the shoes" of the lower court and performs a *de novo* review of the administrative decision: *Lausen v Alberta (Director of SafeRoads)*, 2023 ABCA 176 at para 27, citing *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 10 and *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 45-47.

Analysis

The SafeRoads Regime

[12] The SafeRoads regime is a provincial administrative law regime to address impaired driving established under the *TSA* and the *PAPA*. The *TSA* regulates driving in Alberta and the *PAPA* authorizes administrative penalties for the contravention of prescribed provincial enactments.

[13] Under sections 88.1(1)(a) and 88.1(1)(b) of the *TSA*, a peace officer issues a NAP where they have reasonable grounds to believe that a driver operated a motor vehicle while their ability to do so was impaired by alcohol, a drug or by a combination of alcohol and a drug or where a driver has a BAC that is equal to or exceeds 80 mg% within two hours after ceasing to operate a motor vehicle.

[14] The recipient of a NAP may dispute the NAP by making a request to the Director for review by an adjudicator. The request for review must be filed within seven days after the NAP is issued: *PAPA*, s 7(1). The grounds for an adjudicator to cancel a NAP are set out in section 4 of the *SafeRoads Alberta Regulation*, Alta Reg 224/2020 [*SAR*] and depend upon the provision of the *TSA* that was contravened. The grounds for cancellation of a NAP issued under sections 88.1(1)(a) and 88.1(1)(b) of the *TSA* are set out in sections 4(e) and 4(f) of the *SAR*, respectively. The relevant subsections for this appeal are:

> (a) subsections 4(e)(iii) and 4(f)(iii), which apply where the Director did not provide complete records to the recipient as required by section 12 of the *PAPA*;
>
> (b) subsections 4(e)(ii) and 4(f)(ii), which apply where a NAP was not served on the recipient; and
>
> (c) subsections 4(e)(v) and 4(f)(viii), which apply where the peace officer did not advise the recipient in writing of the right to a roadside appeal of the NAP under section 88.11 of the *TSA* and the recipient was unaware of that right.

[15] Following receipt of a request for review, the Director must provide the recipient with the records prescribed by regulation: *PAPA*, s 12. The recipient, who is the sole party at the review, can provide evidence and present argument to the adjudicator: *PAPA*, ss 16, 18.

[16] The burden of proof at a SafeRoads review is on the person requesting the review: *PAPA*, s 18(1). If the recipient establishes grounds for cancelling the NAP to the adjudicator's satisfaction, the adjudicator must cancel the NAP and, if not, the adjudicator must confirm the NAP: *PAPA*, ss 18, 21(1).

Disclosure of Records

[17] The appellant submits it was unreasonable for the adjudicator to conclude that the Director provided all required records and to find that grounds for cancellation had not been made out under sections 4(e)(iii) and 4(f)(iii) of the *SAR*.

[18] Pursuant to section 12 of the *PAPA*, the Director must provide the NAP recipient with "relevant records as prescribed in the regulations or the regulations under a prescribed enactment": *PAPA*, s 12(1). The Director is "not required to provide a recipient with any records, representations or arguments in respect of an alleged contravention beyond the records referred to in subsection (1)," unless required by the regulations: *PAPA*, s 12(2). If the Director is "unable to provide relevant records in accordance with subsection (1)," the Director may cancel the NAP: *PAPA*, s 12(3).

[19] The records that must be provided to a NAP recipient are specified in section 2 of the *SAR*. The applicable subsections (as they were at the relevant time) are reproduced below:

> 2 Subject to section 2.1, the Director shall provide the following to a recipient on receipt of an application for review:
>
> (a) a copy of the [NAP];
>
> (b) the report of the officer who issued the [NAP];
>
> ...
>
> (g) if the recipient's blood was analysed, a copy of the results of the analysis of the recipient's blood;
>
> (h) any other relevant records and representations of the officer who issued the [NAP] or any other officer, including peace officers' reports that have not been certified, sworn or solemnly affirmed, that are in the opinion of the Director relevant and necessary to determine the basis for issuing the [NAP].

[20] The Director provided the appellant with the items in sections 2(a), (b) and (g) and the handwritten notes of Constable Feran who issued the NAP. The appellant contends that the Director should have provided a number of additional records under section 2(h) because

Constable Feran obtained a search warrant to seize blood samples taken from the appellant while at hospital to support the NAP. He makes this argument on the basis of procedural fairness.

[21] The Director's disclosure obligations were recently addressed by this Court in *Leeuwenburgh v Alberta (Director of SafeRoads)*, 2026 ABCA 143, released after the judicial review judge's decision and before oral argument in this appeal. In that case, all members of the panel confirmed that the SafeRoads regime is not a criminal regime, but "a regulatory one [that] must be interpreted on its own terms": *Leeuwenburgh* at para 38, per Antonio and Kirker JJA. As Hawkes JA noted at paragraph 17 of *Leeuwenburgh*:

> First, SafeRoads is an administrative licence suspension regime, not a penal or criminal regime. The Supreme Court of Canada and this Court have been clear that such a regime engages administrative law. Resort to criminal law principles and precedents to interpret and apply this administrative scheme are unhelpful as they obscure that critical distinction. Second, the content of any duty of procedural fairness is determined by the particular legislative and administrative context in which it arises. Common law presumptions about procedural fairness "yield to clear statutory language or necessary implication to the contrary" [...] the interlocking statutory and regulatory provisions that create the SafeRoads administrative response to impaired driving provide clear statutory direction regarding disclosure. [footnotes omitted]

[22] On appeal, the appellant initially claimed that the following records should have been provided:

(a) notes of all officers involved;

(b) notes or statements from EMS;

(c) notes or statements from any medical or lab personnel;

(d) any information about the execution of the search warrant;

(e) the application(s) for the search warrant;

(f) the search warrant or report to justice; and

(g) any information regarding continuity of the blood samples, particularly to ensure the integrity of the samples and/or that the analyzed samples were the same vial of blood drawn from the appellant on September 3, 2023.

[23] At the oral hearing, the appellant conceded that his argument for disclosure of items (b) and (c) may have been addressed by *Leeuwenburgh*. However, he maintains that, as a matter of

procedural fairness, the Director was required to disclose some or all of items (a) and (d)-(g) under section 2(h) of the *SAR*, and that failure to do so was a breach of section 12(1) of the *PAPA*. We disagree.

[24] Per Antonio and Kirker JJA at paragraph 33 of *Leeuwenburgh*:

> Procedural fairness is informed by the statutory regime. Comparisons to the *Criminal Code*, RSC 1985, c C46 are not apt. The SafeRoads regime provides clear statutory language regarding the documents that must be disclosed to a NAP recipient in preparation for a review. There was no failure of disclosure in this case that would invalidate the NAP under s. 4(i)(ii) of the [*SAR*], which directs an adjudicator to cancel a NAP if the adjudicator is satisfied that the Director did not provide complete records to the recipient as required by s. 12 of the [*PAPA*]. Section 12 of *PAPA* in turn requires the Director to provide relevant records as prescribed in *SAR*.

[25] For the same reasons that procedural fairness concerns did not arise in relation to disclosure in *Leeuwenburgh*, they also do not arise in this case.

[26] The adjudicator found that some of the records identified by the appellant might be "relevant," but none were "necessary to determine the basis for issuing the [NAP]" and so did not fall within the scope of section 2(h) of the *SAR*. Therefore, the adjudicator found no breach of section 12(1) of the *PAPA* which would warrant cancellation of the NAP under sections 4(e)(iii) and 4(f)(iii).

[27] The judicial review judge found the adjudicator's conclusions were reasonable and noted that the appellant "did not prove, on a balance of probabilities, that the reports or notes of other officers or medical personnel were necessary to establish the reasonable grounds to issue the NAP": Judicial Review decision at para 73.

[28] We are satisfied that both the adjudicator and judicial review judge reasonably concluded that the Director's failure to provide the records identified by the appellant did not amount to grounds for cancellation of the NAP. We are also satisfied that there was no breach of procedural fairness arising from non-disclosure of the identified records.

Service of the NAP

[29] The appellant submits that it was unreasonable for the adjudicator to find that the NAP had been served on him and to decline to cancel the NAP pursuant to sections 4(e)(ii) and 4(f)(ii) of the *SAR*. He states there was an absence of evidence of service before the adjudicator.

[30] The adjudicator acknowledged that the police evidence before him was silent on service of the NAP. However, he pointed out that the burden was on the appellant to establish on a balance

of probabilities that he did not receive the NAP at the relevant time. The appellant provided no evidence or explanation of how he knew to respond to the NAP within seven days or how he knew how to apply for a review. The adjudicator concluded:

> Considering the silence of the [appellant], and no information provided to the alternative, I find the [appellant] has not met the burden placed on him in establishing, on a balance of probabilities, the NAP was not served. As such, I find the [appellant] was served with a copy of the NAP.

[31] The judicial review judge noted that, based on the evidence before the adjudicator, "the only logical and reasonable conclusion" was that the appellant had been served with the NAP: Judicial Review decision at para 63.

[32] The appellant had the burden of proof to show that the NAP should be cancelled: *PAPA*, s 18(1). He adduced no evidence to indicate that he was not served with the NAP. In such circumstances, the inference drawn by the adjudicator that the appellant had been served with the NAP was reasonable and one the adjudicator was entitled to draw.

The Right to an Immediate Roadside Appeal

[33] The appellant submits the adjudicator unreasonably found that Constable Feran was excused from informing the appellant of his right to an immediate roadside appeal by virtue of section 88.11(8)(d) of the *TSA*. It states in part:

> (8) No person may seek a roadside appeal under this section of a [NAP]
>
> ...
>
> (d) issued based on reasonable grounds that were formed after the time of the contravention and where in the opinion of the peace officer a roadside appeal could no longer provide any evidence of the blood alcohol or blood drug concentration of the recipient at the time of driving.

[34] The information available to the adjudicator indicated that the appellant was unconscious and hanging out the window of his vehicle when Constable Feran arrived at the scene of the accident. Although the appellant regained consciousness before being transported to the hospital, EMS advised Constable Feran that the appellant had injuries to his head and neck/shoulder, potential broken ribs, bruising and potential other injuries. Constable Feran was subsequently advised by a doctor at the hospital that, in his medical opinion, the appellant would not understand a blood demand. The appellant also suffered internal bleeding and required emergency surgery.

[35] The adjudicator's findings that the appellant was "incapacitated at the relevant time", that "there was no opportunity for [Constable] Feran to provide advice or awareness of the roadside appeal to the [appellant]", that section 88.11(8)(d) of the *TSA* applied and that the appellant was not entitled to a roadside appeal were reasonable, having regard to the information before them.

[36] The appellant suggests that there was a delay in the issuance of the NAP that deprived him of his right to an immediate roadside appeal. There is no merit to this submission in the circumstances described above. Moreover, the suggestion that a NAP must always be immediately served the instant a peace officer has reasonable and probable grounds to believe that the grounds to issue a NAP have arisen is not consistent with the text, context or purpose of the legislation. In this case, as is not uncommon, there were two grounds for the issuance of the NAP: impaired operation, pursuant to section 88.1(1)(a) of the *TSA* and BAC over 80 mg%, pursuant to section 88.1(1)(b) of the *TSA*. The investigation was ongoing and information about the appellant's BAC was not available to Constable Feran until he received the toxicology report in December.

Conclusion

[37] The appeal is dismissed.

Appeal heard on October 15, 2026

Memorandum filed at Calgary, Alberta
this 26th day of November, 2026

Strekaf J.A.

Feehan J.A.

Ho J.A.

Appearances:

K. Beyak
for the Appellant

S.A. Meenai
for the Respondent