

# Court of King’s Bench of Alberta

**Citation: King v Alberta (Director of Saferoads), 2025 ABKB 338**

**Date:** 05062025  
**Docket:** 2303 12759  
**Registry:** Edmonton

Between:

**Donald Bruce King**

Applicant

- and -

**Director of Saferoads Alberta**

Respondent

**Corrected judgment:** A corrigendum was issued on June 5, 2025; the corrections have been made to the text and the corrigendum is appended to this judgment.

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**Reasons for Judgment  
of the  
Honourable Justice A.K. Akgungor**

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## Introduction

[1] Mr. King seeks judicial review of an adjudicator’s decision dated June 14, 2023 (the “Decision”) to uphold a Notice of Administrative Penalty (“NAP”) issued pursuant to section 88.1(1)(b) of the *Traffic Safety Act*, R.S.A. 2000, c. T-6 (“TSA”). The Director of SafeRoads (the “Director”) opposes the application and asks that the application be dismissed.

## Background

[2] On May 22, 2023, RCMP received a phone call from a witness who observed a truck hit multiple parked cars around 10:26 p.m. The witness followed the truck as the driver drove to and parked in a driveway at a residence, later identified as Mr. King's residence. The truck was later identified as belonging to the female who resides at Mr. King's residence and who shares the same last name as Mr. King. The witness observed that the driver of the truck was a male.

[3] Police arrived at the residence around 11:05 p.m. and knocked on the door. A female answered. Constable Rusk asked if a male was in the house and, if so, to go get him. Mr. King came to the door and police observed that he was uneasy on his feet and the smell of alcohol was on his breath. When asked when he had his last drink, Mr. King indicated "a couple of hours ago."

[4] Constable Rusk demanded a sample of Mr. King's breath around 11:05 p.m. Mr. King initially had trouble providing the breath sample, first blowing in instead of blowing out. At 11:07 p.m., Mr. King provided a breath sample which recorded a result of "FAIL."

[5] At 11:32 p.m. Mr. King provided a second breath sample which also recorded a result of FAIL. At 11:47 p.m., Mr. King provided a third sample as the second sample was taken by the same Approved Screening Device ("ASD") as the first sample. The third sample likewise provided a result of FAIL.

[6] Constable Rusk then issued a NAP to Mr. King dated May 22, 2023, which cited the following contravention of the *TSA*:

Section 88.1(1)(b) 80mg Over – The driver did operate a motor vehicle with a blood alcohol concentration equal to or exceeding 80mg% within 2 hours of operation ("BAC-Over").

[7] On May 29, 2023, Mr. King sought a review of the NAP. Mr. King argued that there was insufficient evidence to establish that he operated the truck observed by the witness.

[8] On June 14, 2023, the Adjudicator issued written reasons for decision confirming the NAP (the "Decision"): *King (Re)*, 2023 ABSRA 1030.

[9] On July 14, 2023, Mr. King sought judicial review of the Decision and requested to have the NAP quashed or set aside.

[10] For the reasons set out below, the Decision is upheld and the application for judicial review is dismissed.

## Legal Framework

[11] The *TSA*, *PAPA*, the *Provincial Administrative Penalties Regulation*, Alta Reg 217/2020), and the SAR together create the SafeRoads regime as a civil administrative licence suspension regime, not a penal or criminal regime: *Lausen v Alberta (Director of SafeRoads)*, 2023 ABCA 176 at para 36; *Isley v Alberta (Director of SafeRoads)*, 2022 ABQB 249 at para 2; *Wildman v Alberta (Director of SafeRoads)*, 2022 ABKB 756 at para 20.

[12] The SafeRoads regime is an administrative regime enacted to deal with impaired drivers, and is intended to provide a simplified, consistent, proportionate, and expedient mechanism to

evaluate the validity of an NAP: *Kelleher v Alberta (Director of SafeRoads)*, 2021 ABQB 517 at para 1.

[13] Section 4 of the SAR sets out the grounds for cancelling a NAP. The burden of establishing the grounds to cancel a NAP is on the recipient: *PAPA*, s 18(1). As the review takes place in an administrative rather than criminal law context, the burden of proof is on the balance of probabilities.

[14] The relevant portions of the SAR for the purposes of this matter are as follows:

- 4 The grounds for an adjudicator to cancel a notice of administrative penalty
  - (f) issued for a contravention of section 88.1(1)(b) of the Act are
    - (i) that the recipient did not operate the motor vehicle.

### **Adjudicator's Decision**

[15] In support of his argument that there was insufficient evidence to conclude that he was the operator of the truck, Mr. King argued as follows before the Adjudicator:

- The truck was not registered to Mr. King;
- The narrative uploaded to the SafeRoads portal by Constable Rusk did not include any descriptive features of the driver, other than the driver was male;
- While at Mr. King's residence, Constable Rusk failed to make any inquiries as to who was operating the motor vehicle and Mr. King did not admit at any point to operating the motor vehicle that evening or at all;
- Constable Rusk did not make any further or additional inquiries as to whether there were other males present in the residence at the time of police attendance or during the 39 minutes between receiving the call from the witness and attending at the residence;
- Another person who could have been the operator of the truck could have left the residence in the 39 minutes prior to Constable Rusk's arrival at the residence;
- There were no notes regarding the witness' ability to maintain continuity of the driver of the truck in the 39 minutes between when the call was placed and when police arrived at Mr. King's residence;
- Constable Rusk did not address in her narrative how she determined that Mr. King was the operator of the truck;
- As Mr. King was not the registered owner of the truck and he was not located in close proximity to the vehicle while it was being operated, there was nothing directly tying him to the operation of the vehicle and no positive obligation on him to offer an alternative explanation; and
- The registered owner of the truck was not questioned about who was operating her truck that evening.

[16] At the outset of the Decision, the Adjudicator noted that pursuant to s. 18(1) of the *Provincial Administrative Penalties Act* (“PAPA”), Mr. King bears the burden of proving, on a balance of probabilities, the grounds necessary to cancel the NAP.

[17] The Adjudicator noted that the vehicle in question was not registered to Mr. King. However, the vehicle was registered to a female with the same last name as Mr. King, who was two years his junior and who had the same address as Mr. King. The Adjudicator acknowledged that she had no information about who the registered owner was but was not convinced that Mr. King was not the operator of the vehicle solely because he was not the registered owner. Even if the vehicle had been registered to someone with less ties to Mr. King, the Adjudicator still would not have been convinced that Mr. King was not the operator of the vehicle simply because he was not the registered owner.

[18] The Adjudicator went on to state that what she found lacking was the outright denial of driving on Mr. King’s part. The Adjudicator found that, at a bare minimum, Mr. King should be required to deny being the person who drove the vehicle at the relevant time. The Adjudicator found that Mr. King’s submissions were an attempt to reverse the onus to prove that he was not the operator of the truck.

[19] The Adjudicator further found that the 39-minute period was not a concern given that Mr. King had not put forward any alternative explanation as to who had driven the vehicle or why Constable Rusk was not correct in her conclusion that Mr. King was the driver. Similarly, while the owner of the truck was not questioned, no explanation was offered as to who else was driving the truck.

[20] The Adjudicator concluded that Mr. King’s argument relied on supposition and holes in the police evidence which he had not filled with facts for the Adjudicator to evaluate. Mr. King did not establish that he was not actually the operator of the truck and the NAP was accordingly confirmed.

### **Standard of Review**

[21] The standard of review of the Adjudicator’s Decision is reasonableness: *PAPA*, s 24(3). The parties agree that the standard of review is reasonableness.

[22] The reasonableness standard of review is deferential. As noted by Harris J. in *Crossey v Alberta (Director of SafeRoads)*, 2023 ABKB 420 at para 29, my role is to review the Adjudicator’s decision to determine whether it was reasonable. I do not undertake a de novo analysis but instead examine the Adjudicator’s decision as a whole paying respectful attention to the reasons provided: *Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 (“*Vavilov*”) at paras 84, 116. I am to begin by examining how the Adjudicator arrived at their interpretation, and then determine whether it was defensible in light of the interpretative constraints imposed by law: *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 41.

[23] I must refrain from reweighing and reassessing the evidence before the Adjudicator: Crossley at para. 31. Before I conclude that the Adjudicator’s decision is unreasonable, I must be satisfied there are “sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”: *Vavilov* at para 100. Flaws or shortcomings must be more than superficial or peripheral to the merits and caution must

be exercised to ensure respect for the decision maker's assessment and evaluation of the evidence: *Gezehegn v Alberta (Appeals Commission of the Workers' Compensation Board)*, 2021 ABCA 93 at para 13.

[24] Reasonableness review asks whether a decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Vavilov* at para. 86.

[25] Administrative decision makers' reasons must not be assessed against a standard of perfection and there is no need for a decision to include all the arguments, statutory provisions, jurisprudence, or other details that a reviewing judge would have preferred: *Vavilov* at para. 91. Reasons must be read holistically and contextually: *Vavilov* at para. 97.

[26] Although decision makers are not expected to respond to every argument or to make explicit findings on each constituent element leading to their final determination, decision makers are nonetheless required to meaningfully grapple with the key issues and central arguments raised by the parties.

### **Positions of the Parties**

#### **(i) Mr. King**

[27] Mr. King argues that this is a circumstantial case. In that event, the Adjudicator had the obligation to consider the evidentiary record in light of it being a circumstantial case. In particular, the Adjudicator had an obligation to consider the lack of police evidence as to who was operating the vehicle. However, in Mr. King's submission, the Adjudicator failed to do so entirely.

[28] Rather, after addressing why she was not persuaded by the fact that Mr. King was not the registered owner of the vehicle, she jumped right to a conclusion that Mr. King was required to provide positive evidence that he was not the operator of the vehicle. In doing so, the Adjudicator failed to consider the lack of corroborating police evidence as to whether Mr. King was the driver and the fact that the police had made no meaningful inquiries of the registered owner or of Mr. King as to who was driving the vehicle that night.

[29] Mr. King submits that the Adjudicator conflated the obligation of an applicant to meet their burden to prove the grounds necessary to cancel the NAP with an obligation on the applicant to provide positive evidence. In other words, the Adjudicator failed to open her mind to the possibility that Mr. King could meet his burden of proof solely on the basis of the lack of police evidence supporting a conclusion that he was the operator of the vehicle. This led to the Adjudicator making an unreasonable decision.

[30] Mr. King asserts that the Decision creates a scenario where police can detain anyone and issue a NAP without clear and cogent evidence and then the NAP recipient will be put in a position of positively disproving that they were not the operator of the vehicle. The Adjudicator did not turn her mind to this issue.

[31] In particular, Mr. King submits that the record demonstrates that there was no evidence available to Constable Rusk to identify him as the individual who operated the motor vehicle on May 23, 2023. The Adjudicator failed to consider the lack of evidence on this point and instead simply accepted that Mr. King was the operator of the vehicle and that the police were justified in reaching this conclusion. Further, Mr. King submits that the Adjudicator failed to consider the

39-minute delay between the last observation by the witness and the time the police arrived at Mr. King's residence.

(ii) The Director

[32] The Director asserts that the Decision must be considered in its totality and through the lens of reasonableness review. When this is done, it is clear that the Adjudicator systematically addressed each of Mr. King's arguments. In particular, the Adjudicator considered that Mr. King was not the registered owner of the vehicle, although a female two years younger than him with the same last name living at the same address was. This factor did not persuade her that Mr. King was not the operator of the vehicle.

[33] The Adjudicator considered the argument that there were potential alternate operators of the vehicle but was not persuaded by this argument as Mr. King did not provide evidence of any other males being in the residence at the relevant time or point to anyone else who could have been the operator of the vehicle that evening. Similarly, the Adjudicator considered the argument that 39 minutes had passed between the witness observing the male and the police attending at Mr. King's residence. This was again not persuasive to the Adjudicator given the lack of any other explanation as to who could have been driving the vehicle.

[34] Finally, the Adjudicator considered the fact that Mr. King had not denied driving the vehicle. This was a fact used to distinguish *Greaves (Re)*, 2021 ABSRA 63, a case relied on by Mr. King before the Adjudicator. In *Greaves*, the applicant had denied driving the vehicle, and this was a factor that could be considered in the overall factual matrix of that case. The same denial was not present before the Adjudicator.

[35] The Adjudicator reasonably considered all the circumstantial evidence including whether or not Mr. King adduced any evidence and whether there was a lack of corroboration or explanation.

[36] It is Mr. King's burden to prove the grounds to cancel the NAP. The Adjudicator's comments on Mr. King's lack of denial and his attempts to reverse the onus were a recognition that where Mr. King alleges alternate theories with respect to another possible driver, he bears the strategic burden of proving that the alternate theories have some basis in the evidence. The Adjudicator was reasonable in concluding that Mr. King failed to meet his burden to cancel the NAP.

**Issue**

[37] The overarching issue before the Court is whether the Adjudicator's Decision was reasonable in confirming the NAP. This issue, in turn, requires a determination of whether the Adjudicator failed to consider that Mr. King could meet his burden of proof solely on the basis of the lack of police evidence.

**Analysis**

[38] Mr. King asserts that the Adjudicator simply concluded that there was a positive obligation on him to adduce evidence that he was not the operator of the vehicle without going on to consider whether he could discharge his burden of proof solely on the basis of the lack of police evidence.

[39] As part of this argument, Mr. King argues that the Adjudicator made no express finding that he operated the vehicle and submits that the Adjudicator appears to have summarily dismissed the issue. I agree that the Adjudicator made no express finding that Mr. King was the driver. However, I do not accept that the Adjudicator summarily dismissed the issue.

[40] During oral argument, counsel for Mr. King acknowledged that the Adjudicator could have construed the lack of an outright denial by Mr. King and the fact that he cooperated with the ASD demand as adverse inferences to be drawn against Mr. King. Counsel for Mr. King argued that the Adjudicator even perhaps should have done that, but emphasized that the Adjudicator did not, in fact, draw such an adverse inference.

[41] Counsel for Mr. King pointed to the “verbiage” in the Decision. He stated that the “verbiage” is that Mr. King was required to offer an outright denial and failed to do so. The Adjudicator did not expressly draw any adverse inferences as a result of the lack of the denial. Mr. King asserts that the requirement on him to offer positive evidence is the foundation of the Decision and the reasonableness of the Decision must be assessed on this basis alone.

[42] In my view, having regard to only the express language used by the Adjudicator invites too superficial of a reading of the Decision. An argument similar to the one being made by Mr. King in this case was advanced by the applicant in *Hastings v Alberta (Director of SafeRoads)*, 2023 ABKB 400. Mr. Hastings argued that the police did not demand a breath sample and without a demand, the NAP was not valid. Mr. Hastings asserted that the adjudicator in his case did not consider or assess his claim that the evidence, and specifically the police narrative showed that no demand had been made. Woolley J. (as she then was) agreed that nowhere in the adjudicator’s decision did she explicitly state that she found that the officer had made a demand.

[43] Rather, the adjudicator focused on what Mr. Hastings knew and understood. The adjudicator concluded, based on Mr. Hastings’ interactions with the police officer, that Mr. Hastings knew that a demand had been made. Woolley J noted that this was not precisely the same as a finding that a demand had been made but that she was mindful of not finding the adjudicator’s decision to be unreasonable simply because the words she chose were imprecise from a lawyerly point of view: *Hastings* at para. 55. Woolley J found at para. 58 that the evidence at the review was sufficient for the adjudicator to reasonably conclude that Mr. Hastings had not satisfied his burden of establishing that a demand was not made.

[44] During the course of the review, Mr. Hastings chose not to provide any information about what the police officer had said to him or what his knowledge or understanding was about whether the breath sample was demanded or voluntary. On this point, Woolley J found as follows at para. 63:

A SafeRoads review is a civil matter and Mr. Hastings had the burden of proof; Adjudicator Hak would have been entitled to draw an adverse inference from Mr. Hastings’ silence in this respect...Indeed Adjudicator Hak may be interpreted as having done so when she said, “at no time did the Recipient comment that he believed the breath sample was part of a voluntary process”.

[45] The findings in *Hastings* support that reasonableness does not require an adjudicator to expressly use the words “I am drawing an adverse inference that...” Rather, a holistic and contextual review of an adjudicator’s reasons may reveal that an adverse inference has

effectively or necessarily been drawn despite the adjudicator not expressly trumpeting their intent to draw such an adverse inference.

[46] In the present case, as in *Hastings*, the Adjudicator would have been entitled to draw an adverse inference from Mr. King’s silence on:

- Whether he was in fact driving the vehicle in question on May 22, 2023;
- Whether there was another possible operator of the vehicle at the time in question on May 22, 2023;
- Whether there were other males at his residence at 11:05 p.m. on May 22, 2023; and
- Providing evidence from the registered owner as to who was operating her motor vehicle that evening.

[47] As in *Hastings*, the Adjudicator may be interpreted as having drawn an adverse inference against Mr. King when she concluded at para. 13 of the Decision: “I find the Recipient should, at a bare minimum, be required to deny the being the person who drove the vehicle at the relevant time”.

[48] *Bettenson-Miller v Alberta (Director of SafeRoads)*, 2022 ABKB 693 offers further guidance. In *Bettenson-Miller*, a vehicle fled the scene after a hit-and-run collision. The vehicle was located and followed by an Edmonton Police Service “Air 1” helicopter. The Air 1 officers observed the driver and passenger switch seats. The vehicle was stopped and an ASD demand was issued to the individual in the passenger seat. The result was a “FAIL” reading and a NAP was issued.

[49] The applicant in that case argued that she was not the driver of the vehicle. However, she did not tender any evidence that she was not operating the vehicle. The adjudicator concluded that the applicant did not meet her burden of proof to demonstrate that she was not the operator of the vehicle. On judicial review, Kubik J at para. 12 noted that in the absence of evidence from the applicant that she was not operating the vehicle, the adjudicator could only consider the evidence considered in the officer’s report and draw inferences from it. See also *Gaca v Alberta (Director of SafeRoads)*, 2023 ABKB 546 at para. 80.

[50] Similarly, in the present case, in the absence of any evidence at all from Mr. King, the Adjudicator could only consider the police evidence. While the Adjudicator did not expressly state that she considered whether Mr. King could meet his burden relying on the police evidence (or lack thereof) alone, she did state at para. 13 that “there is not enough information submitted to dissuade me on a balance of probabilities that in this case he was not [the driver].” In the other words, where the police evidence was left undisturbed by Mr. King, the Adjudicator was unable to conclude that Mr. King was not the driver. Implicit in this proposition is that Mr. King did not meet his burden by relying on the lack of police evidence.

[51] I accept, as advanced by the Director, that where an applicant advances alternate theories such as the possibility of another male being driver, this engages a strategic or evidentiary burden on the applicant to prove that the alternate theory has some basis in the evidence. Otherwise, it remains a mere theory or speculation. Having failed to adduce any contrary evidence or any evidence at all, Mr. King did not discharge this burden here.

[52] In *Collins v Alberta (Director of Saferoads)*, unreported, 2414-00400, dated May 2, 2025 (McGuire J.), the applicant argued, as did Mr. King here, that it was unreasonable for the adjudicator to draw a factual inference from his failure to deny that he was the driver and that it was unreasonable for the adjudicator to fail to consider whether he had satisfied his onus without making a statement. In rejecting these arguments, McGuire J. found as follows:

It is reasonable in the context of the SafeRoads legislative onus to consider the absence of denial in the face of accusation. Similarly, it was reasonable for the adjudicator to note the absence of any protest at the time of the ASD demand.

The applicant on this review says that evidence of silence is not necessarily conclusive of anything. That is true, but it is also true that evidence of silence in the face of accusation does not assist the applicant in any way in satisfying his onus to prove that he was not the driver.

The way an onus works is if the applicant does not prove that he was not the driver, then that is the end of the matter. His review application fails. An adjudicator does not have to go on to consider whether someone could have proven on a balance of probabilities that he is the driver.

[53] The conclusions reached in *Collins* apply equally to the present case. The Adjudicator, faced with only silence on Mr. King's part, was satisfied that he had not discharged his burden to demonstrate that he was not the driver. This conclusion was not unreasonable.

[54] In *Brandics v Alberta (Director of SafeRoads)*, 2025 ABKB 226 and *Hays v Alberta (Director of SafeRoads)*, 2025 ABKB 224, Hartigan J. and Moore J., respectively concluded that it was reasonable for the adjudicator to find that the applicants had failed to discharge their burdens on review where they had not provided any evidence to establish that they had not been served with a NAP.

[55] A similar issue was before Lew J. in *Babyn v Alberta (Director of SafeRoads)*, 2025 ABKB 284. Mr. Babyn argued that the Director must provide positive proof of service of the NAP. The Director argued that Mr. Babyn bore the onus of proof and that in the absence of any evidence on the record, there was no basis for the adjudicator to find that the NAP was not served. In rejecting Mr. Babyn's argument, Lew J. stated as follows at paras. 34-36:

[34] Both parties are equally positioned to prove (or disprove) service of the NAP. Mr. Babyn is in at least as good a position to know and submit proof of whether he was served with the NAP. The evidentiary burden is equally applicable to both parties. Therefore, an absence of evidence is in effect an evidentiary tie. The tiebreaker is the burden of proof, which rests with Mr. Babyn.

[35] As the Adjudicator noted at para 8 of the review decision, Mr. Babyn could have submitted an affidavit or provided oral evidence stating that he was not served. Had he done that, the evidentiary burden would likely have shifted to the Director.

[36] In other words, silence on the issue of service does not operate in Mr. Babyn's favor. He has at least an equal capacity as the Director to prove service or the lack.

[56] In the present case, silence on the issue of whether or not he was driving the vehicle does not operate in Mr. King's favour. The Adjudicator reasonably concluded that "there is not enough information submitted to dissuade me on a balance of probabilities that in this case he was not [the driver]."

[57] Ultimately, the police evidence before the Adjudicator on review demonstrated that:

- Around 10:26 p.m., a witness called in a complaint of a male driver hitting parked cars.
- The witness followed the vehicle to Mr. King's residence where the vehicle was parked in the driveway.
- The vehicle was registered to a female with the same last name and same address as Mr. King.
- Around 11:05 p.m. the police arrived at Mr. King's residence. A female answered the door and was asked if a male was in the house and to go get him.
- Mr. King appeared. He was uneasy on his feet and had a smell of alcohol on his breath. He stated that his last drink was a couple of hours ago.
- An ASD demand was made and Mr. King cooperated with three ASD tests. Each test resulted in a "FAIL."

[58] When the police evidence is combined with the lack of any denial by Mr. King and the lack of any other evidence from Mr. King as to who else might have been driving the vehicle at the relevant time, I am satisfied that the evidence was sufficient for the Adjudicator to reasonably conclude that Mr. King had not satisfied his burden of establishing that he was not the operator of the vehicle.

[59] Returning to the standard of review, reasonableness is not a measure of perfection nor does it require the Adjudicator to provide an exacting and precise articulation of her reasons for decision. Rather, applying a holistic and contextual approach and for the reasons set out above, I am satisfied that the determination that Mr. King had not demonstrated that he was not the operator of the vehicle was both rational and logical in light of the record before the Adjudicator.

### **Conclusion**

[60] The Adjudicator's Decision is reasonable.

[61] The application for judicial review is dismissed and the NAP is confirmed.

[62] No costs are awarded to either party.

[63] *Collins, Brandics, Hays, and Babyn* were all decided subsequent to the close of the hearing in this matter and were provided to me for consideration by the Director after the close of the hearing. Both parties were provided with an opportunity to comment on the cases prior to the issuance of these reasons for decision.

Heard on the 15<sup>th</sup> day of November, 2024.

**Dated** at the City of Edmonton, Alberta this 5<sup>th</sup> day of June, 2025.

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**A.K. Akgungor**  
**J.C.K.B.A.**

**Appearances:**

Tyler Raymond, Raymond Group  
for the Applicant

Eden Maher, Legal Services Division, Department of Justice  
for the Respondent

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**Corrigendum of the Reasons for  
of  
The Honourable Justice A.K. Akgungor**

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A Corrigendum was issued to correct the spelling of counsel's name.