

# Court of King's Bench of Alberta

Citation: Vatter v Alberta (Director of Saferoads), 2025 ABKB 339

Date: 20250605  
Docket: 2203 02278  
Registry: Edmonton

Between:

**Cheryl Lee Vatter**

Applicant

- and -

**Director of Saferoads Alberta**

Respondent

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**Endorsement  
of the  
Honourable Justice Peter Michalyshyn**

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[1] This is a costs decision coming after judicial review of an Adjudicator's decision upholding a Notice of Administrative Penalty against Cheryl Lee Vatter. The judicial review succeeded. Ms Vatter thereafter sought costs. For reasons which follow the application for costs is dismissed.

[2] The Director of SafeRoads Alberta opposes her liability for costs, arguing principally the doctrine of tribunal immunity: *Sihota v Edmonton (City)*, 2013 ABCA 125 at paras 4-6; also *Lang v BC (Superintendent of Motor Vehicles)*, 2005 BCCA 244 at paras 44-48; *18320 Holdings Inc v Thibeau*, 2014 BCCA 494 at paras 55-69.

[3] These authorities support the conclusion that absent evidence of misconduct or improper argument on the merits, no costs should be awarded against a quasi-judicial tribunal that is

involved in proceedings to review its decisions. The Director relies in particular on *Sihota* at paragraph 6 that speaks to a qualification of the neutrality limits in cases where it is necessary to provide the reviewing court with the proper adversarial context:

[6] The involvement of the tribunal in a review of its own decisions is limited in order to maintain the neutrality of the tribunal. A qualification to the rule has developed where it is necessary to provide the reviewing court with the proper adversarial context. As noted in *Leon's Furniture*, [2011 ABCA 94] at para. 23:

23 On many judicial review applications it is quite obvious to the chambers judge that if the tribunal does not make submissions in support of the decision under review, no submissions will be made. The applicant's arguments and authorities on the merits will essentially be unanswered. Some tribunals will justify their appearances on the basis that otherwise "no one shows up": *Skyline Roofing Ltd. v. Alberta (Workers' Compensation Board)*, 2001 ABQB 624, 95 Alta. L.R. (3d) 126, 292 A.R. 86 at para. 29. The adversarial system requires the presentation and consideration of competing arguments and ideas on the reasonableness or correctness of the decision under review. Rather than essentially proceeding to decide the application *ex parte*, many judicial review judges will receive submissions from the tribunal for "forensic" reasons: *Beier v. Vermilion River (County)*, 2009 ABCA 151, 457 A.R. 191 at para. 8.

Where there is no other party speaking to the issues, the tribunal is allowed to expand the scope of its submissions, although it should still ensure that the tone of its submissions is consistent with its role.

[4] For her part, Ms Vatter argues the Director did indeed step outside the role of an objective or neutral third party. She argues the Director "took a position on the outcome of the [judicial review], and ultimately argued that the Applicant had not discharged the burden of proving that the adjudicator's decision was unreasonable..."

[5] I am unable to agree with Ms Vatter's characterization of the Director's submissions on the judicial review, both in writing and in oral argument. I find the Director's involvement in the judicial review was both necessary and appropriate. Her submissions fit squarely within the qualification articulated in *Sihota*, noted above.

[6] Ms Vatter cites comments in *Covenant Health v Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562. *Covenant Health* expressly followed *Sihota*. The comments relied upon by Ms Vatter from *Covenant Health* are of a general, cautionary nature and are clearly *obiter*. They do not inform the costs issue on the facts of this case.

[7] Neither of the parties referred to any decisions in Alberta which address the Director's liability for costs, in any detailed way, squarely in the SafeRoads context. Nor have any such decisions come to my attention.

[8] There are a great many SafeRoads decisions in which the court directs, without much if anything in the way of reasons, that the parties will bear their own costs.

[9] There are equally many decisions in which the court invites further submissions with regard to costs. The outcome of any such further submissions is not apparent from a review of the reported cases.

[10] The Director has referred to the unreported endorsement in *Shaw v Alberta (Director of SafeRoads)*, 2024 ABKB (court file #2203 02278). The issue in *Shaw* was the expense of an ignition interlock device rather than legal costs on any measure (eg, whether under Schedule C of the *Rules of Court*, enhanced Schedule C costs, or solicitor-client costs). Indeed, I am advised that in *Shaw* the question of what is described as ‘legal costs’ was abandoned by Mr. Shaw at his costs hearing. With regard to the remaining issue of the ignition interlock device expense, the court in *Shaw* concluded it was not a recoverable disbursement as understood in the law of costs. Further, the court declined to exercise its discretion under the broad scope of Rule 10.31(1)(b) of the *Alberta Rules of Court* to order the ignition interlock expense to be recovered. The court concluded it was precluded from awarding costs under that Rule in circumstances where the Director asserted it was immune from costs, and that immunity appeared to be conceded by Mr. Shaw. The Court thus “agree[d] with the Director’s submissions that the Director is immune from costs in these proceedings”.

[11] The decision in *Shaw* with regard to the expense of an ignition interlock device is binding on me by virtue of *R v Sullivan*, 2022 SCC 19. However, I do not consider *Shaw* to be authority in favour of the Director’s position in Ms. Vatter’s case that no other costs should be payable.

[12] I have reviewed the following interesting but equally indeterminate authorities (except perhaps for *Brine*, which appears summarily to adopt the rule state in *Sihota*):

- *Mierke v Alberta (Director of SafeRoads)*, 2021 ABQB 1003, in which the court noted at para 75 that the Applicant did not request costs yet “this is not a case where costs against the tribunal would be warranted”. No reasons are given for that finding. In any event it is an *obiter* comment given the matter of costs did not appear to be in dispute.
- *Adams v Alberta (Director of SafeRoads)*, 2024 ABKB 275, in which the court noted at para 70 that the applicant motorist “paid a lawyer to represent him before the SafeRoads Adjudicator and in this judicial review proceeding. Those legal costs are not recoverable.” No reasons for that finding are provided.
- *Brine v Alberta (Director of SafeRoads)*, 2022 ABQB 552, in which the court noted, at para 46, that “As a matter of law, impropriety in the defence of its own decisions in court can justify an adverse costs award against an administrative decision-maker” [citations omitted]. No impropriety was found on the fact of the case, and the parties were directed to bear their own costs.
- *Brandics v Alberta (Director of SafeRoads)*, 2025 ABKB 226, in which the Director was successful and was awarded costs without having asked for

them; as noted by counsel for the Director, her client – in keeping with her usual costs-neutral position – declined to enforce the costs award.

[13] I sought the submissions of the parties regarding the case of *Demars v Alberta (Director of SafeRoads)*, 2024 ABCA 188. Only the Director replied.

[14] *Demars* is a case in which the Court of Appeal ordered costs payable by the Director in favour of the motorist. I agree with the submissions of the Director that *Demars* is distinguishable. It was a case in which the Director was the instigating party in the appeal to the Court of Appeal rather than – as was the case at the judicial review stage – a compelled party. While costs were awarded on the appeal, they were not at judicial review. The Director correctly says the usual rule of tribunal immunity did not apply in the appeal proceedings.

[15] In sum, the application for costs is dismissed.

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

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**Peter Michalyshyn**  
**J.C.K.B.A.**

**Appearances:**

Lisa M. Trach  
for the Applicant

Eden C. Maher  
for the Respondent