

Court of King's Bench of Alberta

Citation: *Renneberg v Alberta (Director of SafeRoads)*, 2025 ABKB 386

Date: 20250625
Docket: 2403 09373
Registry: Edmonton

Between:

Olga Renneberg

Applicant

- and -

Director of SafeRoads Alberta

Respondent

**Reasons for Decision
of the
Honourable Justice S. Leonard**

I. Introduction

[1] Olga Renneberg (Applicant) was issued a Notice of Administrative Penalty (NAP) under the *Traffic Safety Act*, RSA 2000, c T-6 for impaired driving. She appealed to a SafeRoads Alberta Adjudicator (Adjudicator) who confirmed the NAP: *Renneberg (Re)*, 2024 ABCA 739 [*Renneberg*]. She now applies for judicial review of the Adjudicator's decision.

II. Circumstances

[2] On March 17, 2024, the RCMP received a 911 call for a report of a hit and run. Cst. Slauenwhite and Cst. Jeha were dispatched to the scene at 9:01 p.m. Cst. Jeha saw an unoccupied white Oldsmobile had been struck from the rear and moved approximately 25 feet from its starting position. He also saw a Honda logo emblem sitting on the ground.

[3] Cst. Slauenwhite remained at the scene with the Oldsmobile while Cst. Jeha followed the wet tire tracks to a nearby residence. The wet tire marks led into the residence's garage from the street.

[4] Cst. Jeha knocked on the door of the residence. The Applicant answered the door. Cst. Jeha introduced himself and explained he was investigating a hit and run collision. He described the collision scene and explained that he followed vehicle tracks leading to the garage of the residence.

[5] The Applicant spontaneously said, "it was me" that hit the vehicle. Cst. Jeha told the Applicant that she was under arrest for failing to stop after an accident contrary to s 320.16 of the *Criminal Code of Canada*, RSC 1985, c C-46 (*Criminal Code*). The Applicant was handcuffed and placed into Cst. Jeha's police vehicle. While escorting the Applicant to his police vehicle, Cst. Jeha noted the Applicant had a strong odour of liquor on her breath and her pants were unzipped. The Applicant spontaneously admitted to having consumed alcohol at a pub and being on her phone before she struck the Oldsmobile, which was parked.

[6] At 9:29 p.m., Cst. Jeha read the Applicant the Approved Screening Device Demand (ASD Demand) from his force card to which the Applicant replied, "yes." After several unsuccessful attempts at 9:35 p.m., the Applicant provided a breath sample into the Approved Screening Device (ASD) that was suitable for analysis. That breath sample produced a "FAIL" result. Based on that result, Cst. Jeha formed the opinion that within the preceding three hours, the Applicant operated a motor vehicle while her ability to do so was impaired by alcohol.

[7] Other members of the RCMP arrived and obtained permission from the Applicant to open the garage door and examined the vehicle inside. They noted significant front-end damage, a deployed driver's side airbag, and white paint on the hood that matched the paint on the Oldsmobile.

[8] Cst. Jeha received confirmation from Cst. Slauenwhite that he did not wish to proceed with a criminal investigation for failing to stop after an accident. Cst. Jeha "unarrested" the Applicant for the *Criminal Code* violations and advised the Applicant that her driver's license would be suspended with administrative penalties. He completed the Immediate Roadside Sanction (IRS) documents and explained the jeopardy of the IRS to the Applicant by reading the document to her. The Applicant said she understood.

[9] Cst. Jeha told the Applicant of her right to a Roadside Appeal by reading from the Roadside Appeal Notice. The Applicant said she understood and chose to proceed with a Roadside Appeal. At 10:08 p.m., Cst. Jeha obtained a different ASD. He instructed the Applicant on how to give a breath sample, which the Applicant successfully provided. That breath sample produced a "FAIL" result.

[10] Cst. Jeha seized the Applicant's driver's license and called a tow truck. Cst. Slauenwhite served the Applicant with tickets under the *Traffic Safety Act*, RSA 2000, c T-6 for the collision

with the Oldsmobile. Cst. Jeha served the Applicant with documents associated with the NAP. The Applicant was released.

III. Adjudicator's Decision

[11] At the oral review hearing before the Adjudicator, the Applicant argued: 1) the Director failed to provide complete records to the Applicant as required by s 12 of the *Provincial Administrative Penalties Act*, RSA 2000, c P-30.8 (*PAPA*) and, 2) the Applicant's right to procedural fairness had been breached. The Adjudicator declined to cancel the NAP.

[12] The Applicant argued that the Director was required to provide Cst. Slauenwhite's report and notes. The Adjudicator concluded that those documents were not required records pursuant to s 2(h) of the *SafeRoads Alberta Regulation*, Alta Reg 224/2020 (*SAR*). The Adjudicator found there was no evidence Cst. Slauenwhite played a role in the impaired investigation or that his report and notes were required for the Applicant to understand the basis of the NAP.

[13] The Applicant argued Cst. Jeha did not advise her of her right to counsel as guaranteed by s 10(b) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 a (*Charter*). The Adjudicator recognized they were not sitting as a court of competent jurisdiction to decide *Charter* issues but considered this argument under their assessment of the grounds to cancel the NAP and the overarching duty of fairness. The Adjudicator reviewed the circumstances leading to the ASD Demand and concluded the Applicant had not established the circumstances were outstandingly bad, shocking, horrifying, or flagrant to rise to the requisite level of egregiousness.

IV. Issues

[14] These circumstances give rise to the following two issues on judicial review:

- (a) Did the Adjudicator unreasonably find the Director provided all records required under *PAPA* s 12?
- (b) Did the Adjudicator unreasonably find the Applicant had not established a breach of procedural fairness warranting a further remedy?

V. Standard of Review

[15] The standard of review of an Adjudicator's decision is reasonableness: *PAPA* s 24. The parties agree that reasonableness is the standard of review on both issues.

VI. Did the Adjudicator unreasonably find that the Director provided all records required pursuant *PAPA* s 12.

[16] The Applicant argues the Director failed to provide complete records as required by *PAPA* s 12. The Applicant argues that Cst. Slauenwhite's notes and reports were records pursuant to *SAR* s 2(h) and should have been disclosed by the Director. The Respondent argues the Adjudicator reasonably found that the Director provided all records required by *PAPA* s 12. Specifically, the Adjudicator's finding that Cst. Jeha's report provided sufficient information to understand the basis upon which the NAP was issued, was reasonable.

[17] *PAPA* s 12 requires the Director to “provide to the recipient, in accordance with the regulations, relevant records as prescribed in the regulations.” *SAR* s 2 lists information that the Director must provide to a NAP recipient. *SAR* s 2(h) requires the Director to provide:

“any other relevant records and representations of the officer who issued the notice of administrative penalty 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 notice of administrative penalty.”

[18] The Applicant argues the Adjudicator’s finding that the Director was not required to disclose Cst. Slauenwhite’s notes and report was unreasonable. The Applicant submits that Cst. Slauenwhite’s notes and reports must be disclosed pursuant to *SAR* s 2(h) because they are relevant and necessary to determine the basis for issuing the NAP to the Applicant. Specifically, those documents may have provided more information about what the Applicant was told about her *Charter* rights and why there was a decision not to criminally charge the Applicant for failing to stop after an accident. The Applicant notes that Cst. Jeha relied on information he received from Cst. Slauenwhite in deciding not to proceed with a criminal impaired driving investigation. Cst. Jeha’s decision to “unarrest” the Applicant affected the Applicant’s *Charter* s 10(b) rights. As such, information affecting Cst. Jeha’s decision was therefore an important part of the investigation. The Applicant relies on *Gordey v Alberta (Director of SafeRoads)*, 2023 ABKB 228 [*Gordey*] at para 39: “[A]lthough police officers may rely upon another officer’s grounds, that does not establish that the grounds were reasonable. To reach that conclusion one would need to examine the information of the officer who formed those grounds. That would be accomplished, in part, by reviewing that officer’s notes and report.”

[19] The Respondent relies on *Favel v Alberta (Director of SafeRoads)*, 2024 ABKB 346 in which the Court discussed the impact of *Gordey* and clarified the scope of *SAR* s 2(h) at para 43:

[The Applicant] submits that the decision in *Gordey* establishes a rule that the Director must produce all notes and reports of all police officers involved in an investigation during which a NAP is issued in every case. [The Courts] did not read it that way in [*McNalley v Alberta (Director of SafeRoads)*, 2023 ABKB 616] and [*Leeuwenburgh v Alberta (Director of Saferoads)* unreported 2206-00302 (dated November 20, 2023)]. Neither do I. In part this is because the extent of the Director’s obligation to provide material pursuant to s 2(h) of [*SAR*] will vary with the facts of the case. What additional material is “relevant and necessary to determine the basis for issuing the notice of administrative penalty” will depend on the facts, including what has been produced pursuant to the other subsections (2 (a) – (g)) and the offence forming the basis for the NAP. A NAP based on blowing a fail on an ASD may make different things relevant and necessary than a NAP for refusing an MAS demand.

[20] I find that the Adjudicator’s conclusion that Cst. Slauenwhite’s notes and report were not required pursuant to s 2(h) of the *SAR* was reasonable. The Adjudicator considered the decision in *Gordey* and concluded that it was factually different that the circumstances of the Applicant.

[21] In *Gordey*, two police officers conducted a traffic stop of a vehicle operated by Mr. Gordey. The first officer spoke with Mr. Gordey, obtained his license, read to him the Mandatory Alcohol Screening (MAS) demand, and administered the MAS ASD breath test. The second

officer also spoke to Mr. Gordey, learned Mr. Gordey had consumed alcohol a few minutes prior to the traffic stop, explained to Mr. Gordey the Roadside Appeal, administered the Roadside Appeal ASD breath test, and issued the NAP to Mr. Gordey. The first officer conducted most of the investigation underlying the issuance of the NAP, but did not issue the NAP and did not sign any of the paperwork given to Mr. Gordey. The Director did not disclose any of the first officer's notes or report, nor was there any information on the record about whether the first officer prepared any notes or report. The issuing officer's report, which was disclosed by the Director, did not speak to the formation of reasonable grounds for the issuance of the NAP. At the NAP review, the Adjudicator found that while the first officer's notes and report might be relevant, they were not necessary. Mr. Gordey had received a valid NAP with the required particulars and the issuing officer's report that provided particulars of the traffic stop. At the judicial review, the Court found the Director ought to have turned their mind to whether [the first officer], as the officer who formed reasonable grounds to issue the NAP, had prepared notes or a report. If he did, those notes and report should have been disclosed to allow Mr. Gordey to assess the reasonableness of the grounds for issuing the NAP.

[22] In this case, the Adjudicator acknowledged that Cst. Jaha liaised with Cst. Slauenwhite, but only about whether Cst. Slauenwhite wished to proceed with criminal charges for failing to stop after an accident. The Adjudicator agreed it was likely that Cst. Slauenwhite had notes relevant to the investigation at large. However, there was no evidence that Cst. Slauenwhite played a significant role in the impaired investigation such that his notes and reports would be required for the Applicant to understand the basis for the issuance of the NAP. These conclusions were reasonable.

[23] The Applicant's request for Cst. Slauenwhite's notes and report exceeds the Director's disclosure requirements. SAR s 2(h) requires the Director to disclose any other relevant records that are, in the Director's opinion, relevant and necessary to determine the basis for issuing the NAP. The Director did so.

[24] Cst. Jaha was the officer who issued the NAP. He made observations of the Applicant and formed grounds to issue the NAP. Cst. Slauenwhite was not present at the Applicant's residence and did not make any observations of the Applicant. Cst. Jaha's report is therefore a complete record of the observations and interactions with the Applicant.

[25] The Applicant argues Cst. Slauenwhite's notes and reports might provide information about what the Applicant was told about her *Charter* rights and why there was a decision not to criminally charge the Applicant for failing to stop after an accident. I agree that Cst. Slauenwhite's notes or report might provide information about criminal charges arising from his investigation. However, the Director is only required to disclose relevant and necessary records to determine the basis for issuing the NAP. The Applicant did not need to know why Cst. Slauenwhite decided not to pursue criminal charges relating to the collision to assess the basis for issuing the NAP. Cst. Slauenwhite's notes or report would have no information about Cst. Jaha's observations of the Applicant or the grounds Cst. Jaha had for issuing the NAP.

[26] There is no evidence on the record that the Applicant was told anything about her *Charter* rights by Cst. Slauenwhite or anyone else. Cst. Slauenwhite did not place the Applicant under arrest. Cst. Jaha initially arrested the Applicant for failing to stop after an accident before he made observations about alcohol impairment. He had his own grounds for arresting the Applicant for failing to stop after an accident. He did not require or receive any information from

Cst. Slauenwhite to form his grounds to do so. Cst. Jeha was at the scene of the collision, followed tire tracks to the Applicant's residence, and heard the Applicant confess that she caused the collision. However, before Cst. Jeha could "unarrest" the Applicant for that charge, he needed confirmation from Cst. Slauenwhite that Cst. Slauenwhite did not wish to pursue a criminal investigation. That criminal investigation had nothing to do with Cst. Jeha's grounds for issuing the NAP.

VII. Did the Adjudicator unreasonably find that the Applicant did not establish a breach of procedural fairness warranting a further remedy?

[27] The Applicant argues that the Adjudicator failed to provide reasons for why they concluded the Applicant's *Charter* s 10(b) rights were suspended upon arrest. As such, the Adjudicator's decision not to cancel the NAP is unreasonable.

[28] The Applicant submits that Cst. Jeha's failure to perform his informational duty under *Charter* s 10(b) is outstandingly bad, shocking, or flagrant to rise to the level of egregiousness. The Applicant argues that her rights under *Charter* s 10(b) were engaged when she was placed under arrest for failing to stop after an accident and those rights remained until the Applicant was "unarrested." The Applicant acknowledges that her *Charter* s 10(b) rights were suspended when the ASD Demand was made. However, there is nothing in the Adjudicator's reasons that addresses the time between the Applicant's arrest and the ASD Demand.

[29] The Respondent argues that the circumstances support the Adjudicator's conclusion that there was nothing egregious in this investigation to warrant cancellation of the NAP. The Respondent submits that the Adjudicator meaningfully grappled with the Applicant's argument that her *Charter* s 10(b) rights were breached. The Adjudicator noted it was undisputed that the Applicant spontaneously told Cst. Jeha, she consumed three beers at the pub, which shifted Cst. Jeha's focus to screening for impairment. The Adjudicator also noted that *Charter* s 10(b) rights are suspended during roadside screening. As soon as the Applicant's breath sample produced a FAIL result, Cst. Jeha followed up with Cst. Slauenwhite and then unarrested the Applicant.

[30] There is no dispute that Cst. Jeha did not advise the Applicant of her *Charter* s 10(b) rights when he arrested the Applicant on her doorstep or any time after that. I agree with the Applicant that her *Charter* s 10(b) rights were engaged as soon as she was arrested for failing to stop after an accident, which triggered Cst. Jeha's duty to immediately inform the Applicant of her right to retain and instruct counsel: *R v Subaru*, 2009 SCC 33 at para 41. Those rights were suspended once Cst. Jeha made the ASD Demand despite the Applicant being also under arrest for an offence that was not impaired driving. Those rights remained suspended until the Applicant either complied or refused to comply with the ASD Demand: *Kolner v Alberta (Director of SafeRoads)*, 2024 ABKB 456 at para 41.

[31] The Respondent argues that Cst. Jeha was faced with a spontaneous utterance from the Applicant about alcohol consumption before he had an opportunity to "sit the Applicant down and read out s 10(b) rights." I agree with the Respondent that the Adjudicator made a reasonable finding that the admissions about alcohol consumption were made while Cst. Jeha was escorting the Applicant to his police vehicle. However, I do not agree that the Adjudicator found those admissions were made before Cst. Jeha had the opportunity to advise the Applicant of her *Charter* s 10(b) rights.

[32] The Adjudicator recognized that the Applicant's statements were spontaneously uttered after she was placed under arrest. However, there is nothing in the reasons that suggests the Adjudicator found the Applicant made those statements immediately upon being placed under arrest or before Cst. Jeha had the opportunity to inform her of her *Charter s 10(b)* rights. Nor is there anything in the reasons that suggest the Adjudicator found Cst. Jeha had to "sit the Applicant down" to inform her of those rights.

[33] The Adjudicator reasonably found that Cst. Jeha was engaged in parallel criminal and regulatory investigations. However, the Adjudicator did not consider whether Cst. Jeha followed the requirements of both paths: *Ricard v Alberta (Director of SafeRoads)*, 2024 ABKB 470 at para 15, citing *Fish v Alberta (Director of SafeRoads)*, 2024 ABKB 213 at para 49. The Adjudicator made a finding that Cst. Jeha did not inform the Applicant of her *Charter s 10(b)* rights immediately upon arrest. However, they did not consider that the duty to inform the Applicant of that right was a requirement of the criminal investigation.

[34] The Adjudicator reasonably found that the Applicant was not advised of her *Charter 10(b)* rights at any point. However, the Adjudicator did not grapple with the potential impact of not being advised of that right or whether it resulted in egregious unfairness. The Adjudicator did not consider whether Cst. Jeha could have informed the Applicant of her *Charter s 10(b)* rights at any point between the arrest and the ASD Demand. They did not consider whether Cst. Jeha relied on the Applicant's admission to form his grounds for the ASD Demand, or if he did rely on that admission, whether it was unfair for him to have done so. Nor did they consider whether Cst. Jeha's grounds were objectively reasonable without the admission. The Adjudicator's failure to grapple with these issues makes the decision unreasonable.

VIII. Remedy

[35] The Adjudicator's decision to uphold the NAP was unreasonable because it failed to consider the potential impact of the Applicant not being informed of her *Charter s 10(b)* rights upon arrest.

[36] The Applicant submits the Adjudicator's decision should be quashed, and the NAP cancelled. The Applicant argues that this matter does not fall under the exceptions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para. 1412. A re-hearing would proceed on the same evidentiary record and the outcome is inevitable. I disagree. The outcome in this case is not a foregone conclusion.

[37] The Adjudicator did not turn their mind to the impact, if any, of the Applicant not being advised of her *Charter s 10(b)* rights before the ASD Demand. The Adjudicator should be given an opportunity to address that issue. The legislator intends for these matters to be addressed by SafeRoads Adjudicators. It is not appropriate for me to review the evidence and make my own decision on that issue.

IX. Conclusions

[38] The Applicant's judicial review is allowed in part. It was reasonable for the Adjudicator to conclude that the Director was not required to disclose Cst. Slauenwhite's report or notes pursuant to *SAR s 2(h)*. The judicial review on this issue is dismissed. However, it was unreasonable for the Adjudicator to fail to consider the impact, if any, of the Applicant not being

advised of her *Charter* s 10(b) rights. The Adjudicator's decision on this issue is quashed. The appropriate remedy is to remit this issue back to the Adjudicator for reconsideration with the benefit of my reasons.

Heard on the 2nd day of May, 2025.

Dated at the City of Edmonton, Alberta this 25th day of June, 2025.

S. Leonard
J.C.K.B.A.

Appearances:

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Anastasia Yevtushenko
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