

Court of King's Bench of Alberta

Citation: Prue v Alberta (Director of SafeRoads), 2025 ABKB 398

Date: 20250630
Docket: 2303 19962
Registry: Edmonton

Between:

Kelsey Prue

Applicant

- and -

Director of SafeRoads Alberta

Respondent

**Reasons for Judgment
of the
Honourable Justice N. Whiting**

I. Introduction

[1] The Applicant, Kelsey Prue, seeks judicial review of the decision of Adjudicator M. Culo dated October 3, 2023, and reported as *Prue (Re)*, 2023 ABSRA 1830. In that decision, the Adjudicator declined to cancel a Notice of Administrative Penalty (“NAP”) issued to the Applicant on September 3, 2023, pursuant to s. 88.1 of the *Traffic Safety Act* (“TSA”) of Alberta. The Applicant seeks an Order quashing the Adjudicator’s decision and cancelling the NAP, or alternatively, directing a re-hearing before a different Adjudicator.

[2] For the reasons which follow, the Applicant’s application is denied.

II. Facts

[3] At approximately 1:30 p.m., on September 3, 2023, the RCMP received two complaints from members of the public of a suspected impaired driver in the area of Spruce Grove, Alberta. At approximately 1:50 p.m., Cst. Andrew Park approached a white 2018 Chevy Silverado truck which appeared to be the vehicle identified in those complaints. The truck was stopped at a rural intersection with the driver's door open. Cst. Park observed the Applicant sitting in the driver's seat. His eyelids were droopy and his speech was slurred. There were white pills with an "N8" impression scattered around the front of the vehicle, including around the driver's door handle.

[4] Cst. Park told the Applicant that he had received complaints about a suspected impaired driver. In response, the Applicant denied having consumed any alcohol, but also advised that there were always some drugs in his body since he took medication. More specifically, he said that he took sleeping pills, and, in Cst. Park's words, "a version of cocaine which Mr. Prue explained as stronger version of Adderall."

[5] During his initial exchange with Cst. Park, the Applicant fell asleep four times.

[6] Based upon his initial observations, Cst. Park decided to perform a Standard Field Sobriety Test ("SFST"). An SFST demand was made to the Applicant at 1:35 p.m. The Applicant complied with that demand. After the Applicant had failed several aspects of that test, Cst. Park terminated the test before completion out of a concern that the Applicant might fall and injure himself.

[7] Cst. Park's initial intention was to impose an Immediate Roadside Suspension ("IRS") upon the Applicant on the basis of the failed SFST. Cst. Park's General Report contains the following notation respecting that initial decision: "Mr. Prue performed poorly on the SFST and IRS was issued. IRS form including Mr. Prue's right to appeal within 7 days and right to make roadside appeal was clearly explained." Despite this notation, it does not appear that any NAP document was actually prepared or served upon the Applicant at that point in time. If any such document exists, it is not in the record.

[8] A short time later, Cst. Park received erroneous advice from another RCMP officer that a failed SFST was an insufficient basis for issuing a NAP, and that it would be necessary to bring the Applicant before a Drug Recognition Expert ("DRE") for an evaluation. To that end, Cst. Park placed the Applicant under arrest and brought him to the RCMP's Parkland detachment.

[9] Upon his arrest, the Applicant was advised of his right to speak to a lawyer and was asked whether he wished to speak to one. "Yap" he said.

[10] Facilitating the Applicant's right to counsel proved challenging. At approximately 2:30 p.m., the Applicant was placed in an interview room to call a lawyer. A handwritten form prepared by RCMP Cst. Lewald indicates that while in the "lawyer room", the Applicant fell over, was argumentative, and made inconsistent statements about whether he had spoken to a lawyer. Cst. Lewald also observed that while in the lawyer room the Applicant could hardly stand up, yet his body would not stop moving. The Applicant also appeared to have vomited upon himself.

[11] The Applicant made numerous attempts to contact his counsel of choice, and those efforts need not be detailed here. It suffices to say that after the Applicant had advised the police that he had spoken to a lawyer, and after the consequences of a refusal had been explained to him multiple times, the Applicant refused to comply with three separate demands that he submit to a

DRE evaluation. The only stated basis for those refusals was that a lawyer had supposedly advised him to refuse.

[12] Following his refusals, the last of which occurred at 5:28 p.m., the Applicant was held in cells overnight. According to the evidence later submitted by the Applicant to the Adjudicator, he was not released until approximately 5:30 a.m. to 6:00 a.m. the following morning.

[13] At the time of his release, the Applicant was issued a copy of the NAP now under review. Although there is only a single NAP document, the stated grounds for its issuance are twofold: operating a motor vehicle while impaired (s. 88.1(1)(a) *TSA*), and refusal to comply with a lawful demand (88.1(1)(e) *TSA*). The Applicant was not advised of any right to a roadside appeal when the NAP was issued.

[14] As part of his normal duties, Cst. Park subsequently completed an electronic form on the Advanced Projects Information System (“APIS”) portal respecting his interactions with the Applicant. The completed form included the following entries:

Roadside Appeal Information

Was Recipient Presented with Roadside Appeal Information?

No

If No, Explain

driver refused DRE exam

Did Driver Request a Roadside Appeal?

No

[15] The Applicant commenced a review before a SafeRoads Adjudicator. In his submissions to the Adjudicator, the Applicant sought cancellation of the NAP on the following grounds:

- A. The Director did not provide complete records to the recipient as required under section 12 of the *Provincial Administrative Penalties Act* and in section 4(e)(iii) and 4(i)(ii) of the *SafeRoads Alberta Regulation*;
- B. 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 the right due to the process being frustrated by Cst. Park under section 4(e)(v) of the *Safe Roads Regulation*;
- C. Mr. Prue's section 9 *Charter* rights were egregiously breached while he was housed in a cell overnight for 12 hours for an administrative sanction;
- D. The investigation was egregiously unfair to the Recipient by being frustrated by Cst. Park and not in compliance with the law.

[16] The Applicant made a statement in support of his application for review which included the following:

- He was released from police custody between 5:30 a.m. and 6:00 a.m. the following morning where he confirmed the time of release by calling the dispatch center of the taxi service he used;
- Another officer, not Cst. Park or Cst. Lewald, served him the NAP;

- He was never “charged criminally”;
- He was confused as to what was occurring with the investigation whether it was criminal or administrative;
- After being told he was under arrest for impaired operation, he thought it was a criminal investigation which did not make sense as he was previously told about a roadside appeal;
- He thought the DRE was mandatory but was very confused; and
- He did not want to do any tests until he spoke with a lawyer.

[17] With respect to the Applicant’s first ground, the Applicant argued that the Director ought to have provided the Applicant with notes and audio recordings of the civilian complaints that had led Cst. Park to the Applicant, the original NAP that was apparently issued to the Applicant before it was decided that a DRE evaluation would be necessary, and documentation respecting the Applicant’s overnight detention. The Adjudicator dismissed this ground on the basis that the evidence submitted was “sufficient to establish the basis for the NAP” and that the Adjudicator was “not convinced any reports or notes of the [*sic*] any other officers on scene are required”. Regarding the records relating to the Applicant’s detention for the night after the refusals, the Adjudicator found that although no such records were present, the records that were available were “sufficient to determine the legal and factual basis of the NAP”.

[18] With respect to the Applicant’s second ground, the Adjudicator determined that the confusion caused by Cst. Park’s indecision together with the APIS entry that he did not explain the roadside appeal process left the Adjudicator with “serious concerns” as to whether the Applicant was provided with the roadside appeal information. The Adjudicator therefore found this ground to have been established by the Applicant.

[19] With respect to the Applicant’s third ground, the Adjudicator determined that there was no reasonable excuse for the Applicant’s refusals to comply with the DRE demands since compliance was mandatory. Cst. Park was empowered to make the DRE demands pursuant to the *Criminal Code*. The fact that Cst. Park decided to impose an administrative penalty rather than a criminal charge did not convert the DRE evaluation into an optional appeal pursuant to s. 88.11(2)(g) of the *TSA*. Since the Applicant understood the demand, had been advised of his jeopardy, and had been given the opportunity to speak to a lawyer, there had been no reasonable basis for him to refuse to comply with the DRE demands.

[20] With respect to the Applicant’s fourth ground, the Adjudicator determined that “I cannot be certain if the [Applicant] was not held in cells for his own safety”, and that Cst. Park’s confusion as to the issuance of the NAP did not rise “to the level of egregious unfairness that the [Applicant] should escape the sanctions of the NAP”.

[21] Having found that the Applicant had established his second ground of review, but not his other grounds, the Adjudicator decided to cancel the NAP issued on the basis of impaired operation, but not the NAP issued on the basis of the refusals. The net effect of this decision was to leave the penalties imposed by the NAP in place.

III. Grounds of Review

[22] The following four grounds of review may be discerned from the Applicant's submissions:

- (1) The Adjudicator acted unreasonably by failing to cancel the NAP on the basis that the Applicant had not been provided with the records required by s. 2(h) of the *SAR*;
- (2) The Adjudicator acted unreasonably in finding that the Applicant had not established that the DRE demands were invalid and that there was no reasonable excuse for the Applicant's refusals;
- (3) The Adjudicator acted unreasonably in refusing to cancel the NAP on the basis of "egregious unfairness"; and
- (4) Given that the Adjudicator found it necessary to cancel the NAP issued for impaired operation, the Adjudicator acted unreasonably in refusing to cancel the NAP issued for the refusals.

IV. Standard of Review

[23] Section 24(3) of the *Provincial Administrative Penalties Act* states:

24(3) On an application for judicial review under subsection (2), the standard of review is reasonableness.

V. Analysis

A. Did the Adjudicator act unreasonably in finding that the Applicant had not established that the DRE demands were invalid and that there was no reasonable excuse for the Applicant's refusals?

[24] It is analytically convenient to deal with the Applicant's second ground of review first. Under this ground, the Applicant submits that the Adjudicator acted unreasonably in finding that the DRE demands made by Cst. Clark were lawful, and that the Applicant had no reasonable justification or excuse for refusing to comply with those demands.

[25] The Applicant's theory under this ground is that when Cst. Clark decided to impose a NAP at the roadside rather than to lay a criminal charge, he effectively abandoned his investigative powers under *Criminal Code*, and his only remaining authority was that contained in the *TSA*. By operation of s. 88.11(2)(g) of the *TSA*, any subsequent DRE evaluation was not mandatory, but rather an optional roadside appeal that the Applicant was free to decline.

[26] This argument fails to appreciate that highway safety in Canada is regulated by "an interlocking scheme of federal and provincial legislation": *R v Orbanski*, 2005 SCC 37 at para. 27. That interlocking legislation works together harmoniously. It is not one or the other.

[27] Cst. Clark conducted his investigation pursuant to the investigative powers conferred upon him by the *Criminal Code*. He also relied upon the fruits of that investigation as his grounds to issue a penalty pursuant to the *TSA*. His decision to impose a provincial penalty did not negate the availability of his federal authority. Rather, his two sources of authority applied simultaneously. This is the scheme created by Part 4 Division 1 of the *TSA* which refers to the

Criminal Code more than 100 times. The whole idea is that peace officers may impose provincial penalties based upon information gathered in exercise of their federal investigative powers. Reliance upon one source of authority does not automatically negate the applicability of the other.

[28] For these reasons, the Adjudicator did not err or act unreasonably in concluding that the legality of the DRE demands was supported by the *Criminal Code*, and that, consequently, there had been no reasonable basis for the Applicant's refusals. Neither of Cst. Clark's decisions to impose a provincial penalty negated the applicability of the federal statute to the DRE demands.

[29] The Applicant's second ground of review is dismissed.

B. Did the Adjudicator act unreasonably by failing to cancel the NAP on the basis that the Applicant had not been provided with the records required by s. 2(h) of the SAR?

[30] In his first ground for judicial review (which I am addressing second), the Applicant submits that the Adjudicator acted unreasonably by failing to cancel the NAP on the basis of the Director's failure to disclose the "notes and statements of the civilian witnesses" whose complaints led Cst. Park to the Applicant. The Applicant argues that he was entitled to those records since their contents were among the factors considered by Cst. Park when he formed his "opinion of impairment", and since Cst. Park's report indicates that he tasked others with uploading copies of those statements. In support of this argument, the Applicant cites such decisions as *Gordey v Alberta (Director of SafeRoads)*, 2023 ABKB 228 and *Smit v Alberta (Director of SafeRoads)*, 2023 ABKB 435.

[31] The Applicant also submits that he was entitled to the records in the possession of the RCMP respecting his overnight detention in police cells.

[32] The Applicant's first ground of review is governed by s. 2(h) of the *SafeRoads Alberta Regulation* ("SAR") which states:

2 Subject to section 2.1, the Director shall provide the following to a recipient on receipt of an application for review:

[...]

(h) 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.

2.1(1) For greater certainty, notwithstanding section 2(h), the Director is not required to

(a) provide photographs, video or audio recordings, or any transcript created from video or audio recordings, if any, to a recipient, or

(b) confirm whether or not any records exist except those provided by the Director under section 2.

(2) This section expires on August 31, 2025.

[33] With respect to *Gordey*, Dunlop J. discussed the impact of that case and the scope of SAR s 2(h) in *Favel v Alberta (Director of SafeRoads)*, 2024 ABKB 346 at para 43:

[43] Mr. Favel 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. Justices Carruthers and Kubik 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.

[34] With respect to *Smit*, that case also does not recognize a universal right of disclosure in every case. As emphasized in a subsequent application for a stay pending appeal, the finding of unfairness in *Smit* was “fact-specific” and turned upon “such considerations as the significance of the absent evidence to the matters at issue”: *Smit v Alberta (Director of SafeRoads)*, 2023 ABKB 2023 at para. 34.

[35] Applying the approach in *Favel* to the present case, I find that the Adjudicator acted reasonably in concluding that disclosure of the records requested by the Applicant was not required by s. 2(h) of the SAR.

[36] The issue of the legality of Cst. Park’s demand that the Applicant submit to an SFST was governed by s. 320.27(1) of the *Criminal Code*. That provision requires the presence of “reasonable grounds to suspect that a person has alcohol or a drug in their body and that the person has, within the preceding three hours, operated a conveyance”.

[37] There has never been any arguable issue respecting the presence of the requirements of s. 320.27(1). The Applicant was sitting in the driver’s seat when he expressly told Cst. Park that he had drugs in his system. There were also pills scattered around the vehicle’s interior and the Applicant fell asleep four times during their initial exchange. There is no rational basis to believe that the records demanded by the Applicant would have negated the presence of these grounds for an SFST demand.

[38] The Applicant then failed the SFST. In fact, the Applicant could not complete the test because there was a concern that he might fall over and injure himself. The Applicant’s failure of the SFST after being found in the driver’s seat of the truck provided “reasonable grounds to believe that a person has operated a conveyance while the person’s ability to operate it was impaired to any degree by a drug or by a combination of alcohol and a drug” for the purposes of s. 320.28(2) of the *Criminal Code*. Cst. Park was therefore authorized to demand that the Applicant submit to a DRE evaluation pursuant to s. 320.28(2)(a). There is no rational basis to believe that the records demanded by the Applicant could have assisted him in negating the

presence of these statutory requirements or otherwise given rise to a reasonable excuse for his later refusals.

[39] Following his failure of the SFST, Cst. Clark made his initial decision to impose a NAP at the roadside. As stated above, that initial decision did not negate the applicability of the *Criminal Code* to the investigative steps that followed, and the intended DRE evaluation was not an optional appeal pursuant to s. 88.11(2)(g) of the *TSA*.

[40] After Cst. Clark changed his mind and decided that a DRE would be necessary for the issuance of a NAP, the Applicant was given ample opportunity to speak to a lawyer, confirmed that he understood the nature of the demands, and was advised multiple times of the consequences of a refusal. He then made three unequivocal refusals to three DRE demands. The only justification advanced by the Applicant at the time was that a lawyer had supposedly told him to refuse. No other potential excuses or justifications have ever been identified, and there has never been any basis to believe that any might have arisen from the requested records.

[41] With respect to the records relating to the Applicant's overnight detention in police cells, the Adjudicator correctly determined that such records were unnecessary to determine "the basis for issuing the notice of administrative penalty" for the purposes of s. 2(h) of the *SAR*. The bases for issuing the NAP were the Applicant's impaired operation of his truck and his subsequent refusals to submit to a DRE evaluation. Overholding in police cells following the conclusion of an impaired driving investigation is not exploratory of the issues of impairment or refusal: *R v Weaver*, 2005 ABCA 105 at paras. 13-19. Consequently, any records respecting that detention fell outside the scope of s. 2(h).

[42] For these reasons, I find that the Adjudicator's conclusion that the Applicant was not entitled to disclosure of the records at issue was reasonable, and the Applicant's first ground of review is dismissed.

C. Did the Adjudicator act unreasonably in refusing to cancel the NAP on the basis of "egregious unfairness"?

[43] In his third ground of review, the Applicant submits that the Adjudicator acted unreasonably by failing to quash the NAP on the basis that he was treated with "egregious unfairness" due to the combined effects of the confusion created by Cst. Park's two decisions to issue a NAP and the Applicant's overnight detention in police cells.

[44] It bears emphasis that overholding in police cells can constitute a violation of s. 9 of the *Charter* of such seriousness as to warrant a stay of a criminal prosecution pursuant to s. 24(1): *R v Simpson*, [1995] 1 SCR 449. Despite this, the Applicant has elected not to include any request for *Charter* relief in his Originating Application, or any accompanying request for disclosure.

[45] In terms of the Applicant's request to the Adjudicator that the NAP be cancelled for "egregious unfairness", s. 4 of the *SAR* contains an exhaustive list of "[t]he grounds for an adjudicator to cancel a notice of administrative penalty", and that list does not include "egregious unfairness" or any similar ground. Although administrative tribunals "cannot exceed the powers that were granted to them by their enabling statute" and possess only those powers expressly granted to them by statute or by necessary implication (*ATCO Gas and Pipelines Ltd. v Alberta (Energy and Utilities Board)*, 2006 SCC 4 at para. 38), the parties appear to agree that the Adjudicator had the authority to cancel the NAP on the basis of the absent ground of "egregious unfairness".

[46] The Supreme Court of Canada has held that administrative tribunals may exclude evidence on the basis that it was gathered in such an abusive manner that its admission would render the proceedings unfair: *Mooring v Canada (National Parole Board)*, [1996] 1 SCR 75 at para 37. The Court has also held that administrative tribunals may stay their own proceedings for “shocking abuse” rising to the level of an abuse of process: *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44; *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at paras. 38-44. But the Court has yet to find that the commission of “egregious unfairness” or “shocking abuse” can be a basis for expanding the jurisdiction of an administrative tribunal to grant substantive relief like a practice permit, a fishing license, or the cancellation of an administrative penalty.

[47] Nevertheless, the jurisprudence of this Court supports the proposition that, in addition to the grounds specified in the applicable legislation, a SafeRoads Adjudicator may cancel a NAP on the ground that “the circumstances are so egregiously unfair that they outweigh the public interest in traffic and public safety such that the NAP should be cancelled”: *Beniuk v Alberta (Director of SafeRoads)*, 2024 ABKB 567 at para. 41(c). I will therefore proceed on the assumption that the Adjudicator had the jurisdiction to cancel the NAP on this additional ground.

[48] I conclude that the Applicant has not demonstrated that the Adjudicator’s conclusions respecting the commission of “egregious unfairness” were unreasonable. At paragraphs 33-37 of his reasons, the Adjudicator concluded that the Applicant had failed to establish this ground on a balance of probabilities. The confusion created by Cst. Park’s aborted decision to issue a NAP at the roadside was found to be insufficient in and of itself. Regarding the Applicant’s overnight detention, the Applicant’s evidence suffered from credibility problems, and it was at least as likely that the degree of the Applicant’s impairment had necessitated the detention for his own safety. These are conclusions that were available to the Adjudicator on the evidence and they are entitled to deference.

[49] For these reasons, the Applicant’s third ground of review is dismissed.

D. Given that the Adjudicator found it necessary to cancel the NAP issued for impaired operation, did the Adjudicator act unreasonably in refusing to cancel the NAP issued for the refusals?

[50] Finally, the Applicant argues that since the Adjudicator decided to cancel the NAP issued on the basis of impaired driving, the Adjudicator was also required to cancel the NAP issued on the basis of the refusals. This ground has given rise to lengthy and complex arguments by both sides about whether multiple independent NAPs may co-exist within the same NAP or whether every NAP is one and indivisible.

[51] In *McNalley v Alberta (Director of SafeRoads)*, 2025 ABCA 280, the Court concluded its analysis of a similar situation with the following remarks:

20 Finally, and in any event, the appellant received the Notice of Administrative Penalty both because of her refusal to comply with the breath demand and because of her observed impairment. None of the appellant's arguments, even if accepted, would justify cancellation of the Notice of Administrative Penalty issued based on the appellant's impairment.

21 The appeal is dismissed.

[52] Following *McNalley*, I find that the Adjudicator's ground for cancelling the NAP issued for impairment does not justify cancellation of the NAP issued for the refusals. This is so since no offer for a roadside appeal is required where the driver refuses to submit to an initial test: *Singh v Alberta (Director of SafeRoads)*, 2024 ABCA 411 at para. 3.

[53] For these reasons, the Applicant's fourth ground of review is dismissed.

VI. Conclusions and Order Granted

[54] The Applicant's application for judicial review is denied.

Heard on the 7th day of January, 2025.

Dated at the City of Edmonton, Alberta this 30th day of June, 2025.

N. Whiting
J.C.K.B.A.

Appearances:

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