

# Court of King's Bench of Alberta

**Citation: Stuhldreier v Alberta (Director of SafeRoads), 2025 ABKB 490**

**Date:** 20250822  
**Docket:** 2310 00357  
**Registry:** Red Deer

2025 ABKB 490 (CanLII)

Between:

**Joseph Stuhldreier**

Applicant

- and -

**Director of SafeRoads Alberta**

Respondent

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**Reasons for Decision  
of the  
Honourable Justice L.K. Harris**

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## **I. Overview**

[1] At 2:18 am on January 28, 2023, Constable Alipour of the RCMP was driving east on Township Road 490 near Sunnybrook, Alberta, when he observed a truck parked but still running along the opposite side of the road facing the wrong direction. He stopped to investigate. That investigation led to Cst. Alipour arresting Mr. Stuhldreier and then issuing him a Notice of Administrative Penalty (“NAP”) under Alberta’s SafeRoads regime on the basis that Mr. Stuhldreier had “failed or refused, without reasonable excuse” to comply with a demand for a breath sample.

[2] The specific chronology of the police investigation is important.

[3] As Cst. Alipour approached the red truck he had observed in the ditch, he noted a male, later identified as Mr. Stuhldreier, asleep in the driver’s seat. Cst. Alipour knocked on the passenger side window. Mr. Stuhldreier rolled down the window.

[4] Based on Mr. Stuhldreier's reaction, Cst. Alipour suspected that Mr. Stuhldreier had consumed alcohol, and so he walked around to the driver's side of the truck. Cst. Alipour asked Mr. Stuhldreier if he had consumed any alcohol. Mr. Stuhldreier was evasive but Cst. Alipour smelled alcohol on him.

[5] Cst. Alipour felt he had the grounds to request a breath sample and asked Mr. Stuhldreier to sit in the truck while he retrieved the Approved Screening Device ("ASD"). Cst. Alipour then observed two cans of beer in the truck and advised Mr. Stuhldreier that he had reason to believe he was impaired, and asked Mr. Stuhldreier to turn the truck off and give him the keys.

[6] While retrieving the ASD from his police vehicle, Cst. Alipour observed Mr. Stuhldreier walking away. Cst. Alipour caught up to him and the two had a verbal exchange before they both walked back to the police vehicle.

[7] At 2:23 am, Cst. Alipour attempted to read the ASD demand ("First Demand"). Mr. Stuhldreier repeatedly interrupted, saying that he did not understand, he did not do anything and was just walking on the road. At 2:25 am, Cst. Alipour arrested Mr. Stuhldreier for failing to comply with the First Demand.

[8] Cst. Alipour then Chartered Mr. Stuhldreier and at 2:33 am, asked if he understood. Mr. Stuhldreier continued to say he did not understand and asked that his handcuffs be removed. Cst. Alipour cautioned Mr. Stuhldreier who confirmed he wished to speak with counsel.

[9] At 2:37, Cst. Alipour again read the ASD Demand ("Second Demand"), uninterrupted, but when asked if he understood, Mr. Stuhldreier stated, "No, I was walking on the road". Cst. Dzafovic, who had since arrived on scene, attempted to explain the Second Demand to Mr. Stuhldreier.

[10] Cst. Alipour then issued the NAP on the basis that Mr. Stuhldreier had refused to give a breath sample.

[11] Mr. Stuhldreier sought a review of the NAP by a SafeRoads Adjudicator. He swore an Affidavit setting out his version of events. He attested to the fact that the officer asked him for a breath sample, and that he told the officer that he had not been driving and was "just walking around". Mr. Stuhldreier's vehicle was in the ditch and he "did not understand what the issue was". Mr. Stuhldreier said that after he was arrested for failing to comply, he believed he would be charged criminally. He was placed into the police vehicle in handcuffs and advised of his right to speak with a lawyer, which he said he wished to do. Mr. Stuhldreier stated that after more discussions during which the Second Demand was read,

I still did not understand why they were demanding a sample if I was not driving to begin with, so I kept saying that I did not understand that part

[12] Mr. Stuhldreier says that it was not until later that he was told that he was getting an administrative penalty and would be released.

[13] The SafeRoads Adjudicator confirmed the NAP in a decision dated February 27, 2023.

[14] Mr. Stuhldreier has now filed an Application for Judicial Review of the Adjudicator's decision.

## II. Relevant Framework

### a. SafeRoads Legislation

[15] Alberta’s SafeRoads legislation was designed to remove motor vehicle operators from the road when their ability to drive is impaired by alcohol or drugs without engaging the *Criminal Code*: *Lausen v Alberta (Director of SafeRoads)*, 2021 ABQB 896. In Alberta, a police investigation under the SafeRoads legislation may occur concurrently with an investigation under the *Criminal Code*.

[16] The SafeRoads regime does not share the same purpose as the criminal law, and it would be a mistake to interpret it as though it did: *Fish v Alberta (Director of SafeRoads)*, 2024 ABKB 213 at para 41.

[17] In this case, the starting point is s 88.1 of the *Traffic Safety Act*, RSA 2000, ch T-6 (“TSA”). That section requires a peace officer, who has reasonable grounds to believe that a driver’s ability to operate the motor vehicle is impaired to any degree by alcohol or a drug or by a combination of the two, to issue an NAP. An officer may have those grounds if the driver, knowing a demand has been made, fails or refuses to comply with the demand without reasonable excuse. Section 88.1(1)(e) states:

88.1(1) Subject to subsection (3), if a peace officer has reasonable grounds to believe any of the following, the peace officer shall, on behalf of the Registrar, take the actions set out in subsection (2):

...

(e) that a driver, knowing that a demand has been made, failed or refused, without a reasonable excuse, to comply with a demand made on the driver under section 320.27 or 320.28 of *the Criminal Code (Canada)*.

[18] The *Criminal Code* authorizes police officers who have an approved screening device in their possession to demand a breath sample from any person who is operating a motor vehicle. The officer does not have to have reasonable grounds to suspect that the person has consumed alcohol or drugs (s 320.27(2)).

[19] The *Criminal Code* also authorizes police officers to demand a breath sample if the police officer has reasonable grounds to suspect that a person has consumed alcohol or drugs and driven a motor vehicle (s 320.27 (1)) and if the officer has reasonable grounds to believe that a person consumed alcohol or drugs and driven a motor vehicle (s 320.28).

[20] In many SafeRoads decisions, the investigating officer forms a reasonable suspicion and proceeds to make an ASD demand under s 320.27(1). The results of that breath sample (or the refusal to give the sample) usually then gives the officer the reasonable grounds necessary to issue the NAP under s 88.1(2) of the *TSA*.

[21] The NAP recipient may seek a review in front of a SafeRoads Adjudicator. The purpose of the review is to provide a simplified, consistent, proportionate, and expedient mechanism to evaluate the validity of a NAP: *Provincial Administrative Penalties Act*, RSA 2000 ch. P-30.8 s 2.

[22] The Adjudicator may cancel a NAP only on the grounds set out in s 4 of *SafeRoads Alberta Regulation*, S.A 224/2020 (“SAR”) or if the Adjudicator is satisfied that overall, the procedure was unfair or egregiously unfair: *Fish* at para 66. The Adjudicator has no jurisdiction to find a breach of *Charter* rights or to grant *Charter* remedies.

[23] The onus is on a NAP recipient to establish the grounds under s 4 of SAR to cancel on a balance of probabilities: *Provincial Administrative Penalties Act*, RSA 2020 ch P-30.8 (“PAPA”) s 18(1). If the grounds have not been met, the Adjudicator must confirm the NAP: PAPA s 21(1)(a). If the grounds have been met, the Adjudicator must cancel the NAP: PAPA s 21(1)(b).

[24] The process – both during the initial police investigation and the administrative review before an Adjudicator - must be fair. A fair investigation requires that both the police officer and the driver understand what is happening and pursuant to which investigation (criminal or TSA) as the investigation(s) progress: *Woodworth v Alberta (Director of SafeRoads)*, 2023 ABKB 468 at para 25. I acknowledge that there appears to be some tension between this comment in *Woodworth* and a comment made in *Fish v Alberta (Director of SafeRoads)*, 2024 ABKB 213 at para 49:

In Alberta, part of the context to the SafeRoads scheme is that police are not required to make a choice between proceeding with a criminal investigation and the administrative NAP process; they can proceed with one or both streams and may need to follow the requirements of both regimes if they want to avoid later problems with the path pursued: *Hollick v Alberta (Director of Saferoads)*, 2023 ABKB 61 at para 23; *Giroux v Director of SafeRoads Alberta*, 2023 ABKB 450 at para 58; *Norman v Alberta (Director of SafeRoads)*, 2022 ABQB 420 at paras 32-33.

#### b. Standard of Review

[25] The parties agree that the standard of review I am to employ when reviewing the Adjudicator’s decision in this instance is one of reasonableness.

[26] A reasonableness review requires the Court to determine whether the Adjudicator’s decision is based on internally coherent reasoning, is transparent and is justified considering the relevant facts and law that bear on it: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 83 and 85. It is a deferential standard. When reviewing the reasonableness of the Adjudicator’s decision, including the Adjudicator’s interpretation of a statutory provision, this Court must not perform their own independent analysis and come to their own conclusions as they would in cases before them at first instance: see *Korteweg v Alberta (Director of SafeRoads)*, 2022 ABQB 236 at paras 19 - 21.

[27] Judicial review must not consist of a “line-by-line hunt for error”: *Vavilov* at para 102. A decision is unreasonable if there is a failure of rationality internal to the reasoning process, or if the decision is untenable in light of the relevant factual and legal constraints that bear on it: *Vavilov* at para 101. The decision must meaningfully account for the central issues and concerns raised by the parties: *Vavilov* at paras 105 and 127.

### III. Issues

[28] Although Mr. Stuhldreier initially included a claim that his *Charter* rights had been breached during the traffic stop, that claim has been abandoned for the purposes of this judicial review.

[29] While the initial identification of the issues in this matter seems relatively clear, the way the issues are addressed by the parties, and the Adjudicator is somewhat jumbled.

[30] The overarching issue is whether the Adjudicator's decision that Mr. Stuhldreier had failed, without reasonable excuse, to comply with an ASD demand, during a fair investigation, was reasonable.

[31] Whether or not the Adjudicator's decision was reasonable requires an assessment of how the Adjudicator dealt with the following three points.

[32] First, an assessment of the reasonableness of the conclusion that Mr. Stuhldreier failed to comply with an ASD demand knowing that a demand had been made, engaging SAR s 4(i)(iv). This depends on whether Mr. Stuhldreier gave an unequivocal refusal, given his behavior on scene.

[33] Second, whether Mr. Stuhldreier had a reasonable excuse for his refusal, engaging SAR s 4(i)(v). This depends on whether the validity of the First Demand or Second Demand is relevant to the assessment under SAR s 4(i)(v).

[34] Third, whether the Adjudicator adequately addressed the overarching issue of fairness in reaching her decision.

#### **IV. Analysis**

##### **a. SAR s 4(i)(iv): Did Mr. Stuhldreier refuse to comply with an ASD demand knowing a demand had been made?**

[35] It is not explicitly clear whether the Adjudicator's assessment of this issue focusses on the First Demand only or whether the assessment includes the Second Demand.

[36] The Adjudicator did not accept Mr. Stuhldreier's argument that he was confused about the demand, finding that Mr. Stuhldreier "clearly understood the purpose of the demand and the requirement to provide a breath sample but believed, if he was not operating his vehicle, he was not required to comply". The Adjudicator went on to consider whether Mr. Stuhldreier had been given a reasonable opportunity to comply with the First Demand, finding that once one considered the whole interaction, it became clear that Mr. Stuhldreier's actions had frustrated the process and that he had been given reasonable opportunity to comply.

[37] Mr. Stuhldreier argues that he was not given a reasonable opportunity to comply. He points to the fact that after the First Demand was read to him, a mere two minutes passed before he was arrested, handcuffed and placed into the back of the police vehicle. Further, he argues that there was no unequivocal refusal; Mr. Stuhldreier attempted to explain to the officers that he did not understand, and considering the very short amount of time that passed from the First Demand, one cannot conclude that there was a refusal. His confusion continued even after the Second Demand, with Mr. Stuhldreier's attempts to seek clarification ongoing.

[38] While the Adjudicator does review the events surrounding the First Demand and Mr. Stuhldreier's arrest, she does also review Cst. Dzafovic's evidence and confirms in her decision that she considered "the totality of the evidence". From this, I infer that she did include the Second Demand in her assessment of whether Mr. Stuhldreier refused to comply.

[39] In this case, the Administrator turned her mind to the issues of whether Mr. Stuhldreier knew a demand had been made, whether he had been given a reasonable opportunity to comply and whether he refused to do so. After considering the evidence regarding Mr. Stuhldreier's responses to the First Demand, becoming argumentative, and asking why he needed to give a sample when he "wasn't doing anything" or was only walking on the road, or was not driving, the Administrator found that Mr. Stuhldreier clearly understood the purpose of the Demand and the requirement to provide a breath sample. Despite his understanding, he did not comply. Mr. Stuhldreier's belief that if he was not operating his vehicle, he was not required to comply is irrelevant. The Administrator found that it was Mr. Stuhldreier's own actions which frustrated the process, which led to the issuance of the NAP for Failure/Refusal.

[40] Additionally, the Adjudicator based her conclusion that Mr. Stuhldreier was given a reasonable opportunity to comply on a review of the circumstances.

[41] In the context of the administrative investigation, and specifically with respect to s 88.1(e) of the *TSA*, the question is whether the NAP recipient knew a demand has been made and refused or failed to comply, and whether the circumstances show that a demand recipient has objectively failed or refused to comply: *Mierke v Alberta (Director of SafeRoads)*, 2021 ABQB 1003 at paras 68-72; *McWilliam v Alberta (Director of SafeRoads)*, 2024 ABKB 559 at para 53, *Fish v Alberta (Director of SafeRoads)*, 2024 ABKB 213 at paras 97-104. Further, a recipient may not frustrate the purposes of the SafeRoads regime by obstructing, delaying, or imposing their own conditions on their compliance: *Fish* at para 103.

[42] The Administrator's conclusions are factual findings. They are based upon the evidence before her and were reasonable. Therefore, this ground for judicial review fails.

**b. SAR s 4(i)(v): Did Mr. Stuhldreier have a reasonable excuse for his refusal?**

[43] SAR s 4(i)(v) provides that a ground for cancellation of a NAP is that the NAP recipient had a reasonable excuse for failing or refusing to comply with the demand. Mr. Stuhldreier's argues that the First and Second Demands were invalid, and that their invalidity gave him a reasonable excuse for his refusal.

[44] Mr. Stuhldreier argues that s 88.1(2) mandates a peace officer to issue a NAP immediately upon forming the requisite reasonable grounds. In this case, he says that Cst. Alipour formed reasonable grounds to believe that Mr. Stuhldreier was impaired before making the First Demand, and that his First Demand was nothing more than an effort to confirm what he already believed. Case authorities are clear that once the investigating officer has formed reasonable grounds then an ASD demand is invalid. If Cst. Alipour had issued the NAP when he formed reasonable grounds, then Mr. Stuhldreier would have been aware that the investigation was administrative, not criminal. As far as he was aware, it was a criminal investigation and, in that context, there is no obligation to comply with an invalid ASD Demand.

[45] The Adjudicator concluded that the criminal authorities relied upon by Mr. Stuhldreier were distinguishable as they were criminal authorities and did not consider the issue in the context of an administrative scheme. In the context of a *TSA* investigation, there was no barrier to an ASD demand even if the officer had already formed reasonable grounds to believe impairment.

[46] This issue is fully answered by two decisions issued by Justice Marion: *Fish v Alberta (Director of SafeRoads)*, 2024 ABKB 213 and *McWilliam v Alberta (Director of SafeRoads)*,

2024 ABKB 559, and a decision issued by Justice Sidnell: *Morin v Alberta (Director of SafeRoads)*, 2023 ABKB 200.

[47] In these decisions, the NAP recipients argued that for an ASD demand to be legal, it must be authorized in law; if it is not authorized, the NAP is invalid and therefore there is no obligation to comply. In each of these decisions the Court concludes that under s 4 of *SAR*, the validity of the ASD demand is not a ground to cancel the NAP.

[48] In *Morin*, the Court states at para 46:

I...do not agree that a review of a contravention under s 88.1(1)(e) of the *TSA* requires an analysis of the underlying legal validity of the ASD demand under either s 320.27 or 320.28 of the *Criminal Code*.

[49] *Fish* confirms that it is reasonable for adjudicators to interpret the SafeRoads scheme to mean that alleged demand invalidity or unlawfulness, whether it be due to a failure to identify the type of demand, lack of authorizing conditions required for the demand under s 320.27 and 320.28 of the *Criminal Code*, or lack of an immediacy to the demand, do not form a specific statutory cancellation ground under *SAR* s 4(i)(iii) to (v), but that those arguments or underlying facts may be considered as matters of fairness or egregious unfairness.

[50] None of the text of *SAR* s 4(i)(iv) or 4(i)(v) expressly provides that a NAP issued under *TSA* s 88.1(1)(e) can be cancelled because the demand is invalid, unlawful, unauthorized, illegal, improper, or impermissible. It would have been a simple matter for the legislature to have provided these as a ground for cancellation, but instead the legislature chose very specific and narrow exceptions for specific purposes: *Fish* at paras 59 - 60.

[51] This point is reiterated in *McWilliam* at para 49:

The Adjudicator reasonably refused to cancel the NAP on the ground that it was invalid because the peace officer did not identify the type of demand being made. Alleged invalid, unlawful, unauthorized, illegal, improper, or impermissible demands are not part of the cancellation ground under *SAR* section 4(i)(iv): *Fish* at paras 53-64. The Adjudicator's interpretation, that an administrative breath demand does not have to be specifically formulated to be valid but only need be clear that the recipient must know they are obligated to provide a sample and it is not a choice, was reasonable: *Fish* at paras 53-64 and 72-74; *Morin* at para 42; *Hastings v Alberta (Director of SafeRoads)*, 2023 ABKB 400 at para 63.

[52] As has been noted in *Morin*, *Fish* and *McWilliam*, Mr. Stuhldreier's argument attempts to impose criminal principles onto the administrative SafeRoads regime. *McWilliam* deals with this argument directly. There, the NAP recipient argued that there is over 50 years of jurisprudence under both the *Criminal Code* and in the administrative context that unequivocally states that a "reasonable excuse" includes refusing an unlawful demand, and that it is an error to interpret it otherwise. In response, the Court noted at para 66 that:

...in the criminal context, questions have arisen about whether a lawful demand is an element of the criminal offence for refusal under the *Criminal Code*, or whether an unlawful demand provides a defence: *R v Alex*, 2017 SCC 37 at paras 47-48; *R v Degiorgio*, 2011 ONCA 527 at para 43; *R v Cabrelli*, 2014 ABQB 677 at paras 85-86; *R v Bundschuh*, 1988 CanLII 3837 (AB QB) at para 26. These matters do not fit neatly into or apply to the SafeRoads regime which does not have offences or defences, but rather

contraventions, NAPs, and specific cancellation grounds. Therefore, interpretations, findings or statements about reasonable excuse in the criminal context, for example, such as Moldaver J's statement, in *Alex*, at para 48, that “disobedience with unlawful compulsion is simply not criminal” (or similar findings in other criminal cases over the decades), cannot be said to provide a well-known meaning that must be followed, or assumed to equally apply, in an administrative regime.

[53] Mr. Stuhldreier attempts to distinguish *Fish*, arguing that *Fish* wrongly relies on *Wilson v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 47, which considered entirely different legislation under the BC regime, and further, that *Wilson* does not stand for the proposition that none of the conditions for a valid demand are applicable in administrative suspensions.

[54] I disagree that *Fish* is inapplicable here. *Fish* relies on *Wilson* primarily for the purpose of demonstrating that adjudicators are not required to incorporate the same protections as those provided in the *Criminal Code*, nor are they bound by jurisprudence interpreting s 320.27 of the *Criminal Code*. This is not something unique to the BC legislation. The general principle that *Fish* (and subsequently *McWilliam*) establishes is that the issue of the validity of the ASD demand does not form part of the statutory ground for cancellation of the NAP under s 4 of *SAR* and is therefore irrelevant to the analysis.

[55] I am bound by *Fish*, *Morin* and *McWilliam* as a matter of horizontal *stare decisis* unless Mr. Stuhldreier shows, using the *Sullivan* principles, that they should not be followed (that is, they have been undermined by subsequent appellate decisions, were made *per incuriam*, or were “not fully” considered). None of these factors have been established here. As far as I am aware none of these decisions have been appealed or otherwise subject to negative commentary on the relevant points by the Court of Appeal.

[56] In summary, the validity of an ASD demand does not form a specific cancellation ground under *SAR* s 4(i)(iii) to (v) but should form part of the assessment of the overall fairness or egregious unfairness: *Fish* at paras 58 and 64.

[57] The Adjudicator's conclusion that Mr. Stuhldreier had no reasonable excuse for his refusal to comply with the ASD demands was therefore reasonable. Therefore, this ground for judicial review also fails.

### c. Did the Adjudicator Find that the Process was Fair?

[58] Most of Mr. Stuhldreier's arguments focus on the overall fairness of the police investigation. He points to numerous instances which he says gives rise to the conclusion that the way in which the investigation transpired was unfair. He further argues that the Adjudicator failed to grapple with this issue and as a result, her conclusion on this point was unreasonable.

[59] Primarily, Mr. Stuhldreier says that as far as he was concerned, this investigation was a criminal investigation up until the time he was issued the NAP by Cst. Alipour. The investigation bore all the hallmarks of a criminal investigation, including the following:

- the ASD demand read to him by Cst. Alipour included a reference to the *Criminal Code*;
- he was told he could be arrested and charged under the *Criminal Code* if he did not comply;

- he was then arrested, handcuffed and put into the police vehicle; and
- he was Chartered and cautioned. He told police he wished to speak with a lawyer.

[60] Despite all these hallmarks of a criminal investigation, the police never told Mr. Stuhldreier that he was the subject of an administrative investigation. Further, Cst. Alipour made the Second Demand after Mr. Stuhldreier had been arrested, handcuffed and advised of his right to silence and his right to counsel.

[61] Mr. Stuhldreier argues that the police had conducted a criminal investigation right up until they decided to issue the NAP and release him. Once he was Chartered and cautioned, he was placed in an untenable position – on one hand, he was the subject of a criminal investigation in which he was cautioned that anything he says could be used against him, and advised that he had the right to receive legal advice, but on the other, he was involved in an administrative investigation which required his compliance with an ASD demand.

[62] This lack of “symmetry” has been the subject of criticism in previous cases, including *Gordon v British Columbia (Superintendent of Motor Vehicles)*, 2022 BCCA 260, and Mr. Stuhldreier says this renders the investigation unfair.

[63] Mr. Stuhldreier framed this issue in his written submissions before the Adjudicator as follows:

the Recipient was subject to egregious unfairness in the issuance of the NAP, and multiple breaches of his *Charter* rights against unreasonable search and seizure, detention and reasons for detention

[64] While the *Charter* issue is not relevant here, those written submissions did raise the issue of the overall fairness in how the investigation was conducted throughout and whether an ASD demand read after a NAP recipient had been Chartered and cautioned renders the process unfair. The written submissions concluded this point by saying:

All interpretations are equally non-*Charter* compliant and unfair to the Recipient. As such, the second demand is invalid and therefore the Recipient is entitled to refuse it, and the NAP should be cancelled, or the evidence obtained following this unfair second demand of refusal should be excluded from consideration under the general duty of fairness.

[65] The Adjudicator does initially raise the issue of fairness. She notes that she cannot assess *Charter* breaches or remedies but should consider those arguments under the assessment of the “overarching duty of fairness”. She then assesses whether Mr. Stuhldreier had established the necessary grounds to cancel the NAP under ss 4(i)(iv) and 4(i)(v) of *SAR*. In addressing the arguments under s 4(i)(v), the Adjudicator notes that:

I further infer Counsel is arguing the Recipient was treated with egregious unfairness as the officer made a second demand to the Recipient after the Recipient had been arrested. Counsel submits the officer cannot form his grounds to issue a NAP for Failure/Refusal and then restart the process with another ASD demand. Counsel notes this was after the Recipient was told he could speak to counsel such that his *Charter* rights had been breached. In addition, Counsel submits the Recipient believed he was under a criminal investigation and was not being processed administratively.

[66] The Adjudicator went on to focus on whether an invalid ASD demand rendered the refusal unreasonable, and whether the second ASD demand constituted “egregious unfairness”. Specifically, the Adjudicator considered the chronology of events, and whether the Second ASD Demand in the face of an arrest, *Charter* and caution of Mr. Stuhldreier was unfair. She concluded that the second ASD demand was not unfair, that it was in effect simply providing Mr. Stuhldreier with another opportunity to comply.

[67] While the Adjudicator does recognize that the Second ASD Demand was made after Mr. Stuhldreier was arrested, Chartered and cautioned, and concludes it was simply a matter of giving Mr. Stuhldreier a “second opportunity”, she fails to grapple with the effect of Mr. Stuhldreier’s right to remain silent and consult with counsel on the fairness of making the Second ASD Demand. She also fails to consider the effect of the issue of the validity of the First and Second Demands upon the fairness of the investigation. As is noted in *Fish* and *McWilliam*, these issues may be considered as matters of overall fairness even if they do not form part of the analysis under SAR s 4(i)(iv) and (v).

[68] The failure of the Adjudicator to grapple with these issues renders the decision on the issue of unfairness unreasonable.

[69] This is a case like *Woodworth* and *Fish*. In *Fish*, the question of unfairness related to the conduct of the police during the investigation as a whole; a finding that the police conduct was egregiously unfair to the recipient could potentially affect the entire basis for the NAP. In *Woodworth*, the recipient was Chartered and cautioned before any ASD demand was read, therefore raising the issue of whether the entire investigation was egregiously unfair. Here, the issue is whether the First and Second ASD Demands made by Cst. Alipour were invalid due to his previously held belief in Mr. Stuhldreier’s impairment, and whether that invalidity, and the police failure to distinguish the purpose for which the ASD demands were made in the face of a *Charter* and caution, renders the investigation unfair.

## V. Conclusions

[70] Accordingly, I would quash the Adjudicator’s decision in relation to the issue of whether the investigation was unfair and remit the matter back for reconsideration in front of a new Adjudicator with the benefit of these reasons.

Heard on the 21<sup>st</sup> day of November, 2024.

**Dated** at the City of Red Deer, Alberta this 22<sup>nd</sup> day of August, 2025.

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**L.K. Harris**  
**J.C.K.B.A.**

**Appearances:**

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