

CITATION:	Ilyas (Re), 2026 ABSRA 1012
DECISION DATE:	May 19, 2026

SAFEROADS ALBERTA

INTRODUCTION

1. At around 10:20 p.m., on April 19, 2026, Cst. C. Barrett, a peace officer with the Calgary Police Service, responded to a complaint at 16 Avenue NE, in Calgary, Alberta. The peace officer issued a Notice of Administrative Penalty (“NAP”) to the Recipient on the following ground under Section 88.1(1) of the *Traffic Safety Act*, R.S.A. 2000, c. T-6 (“TSA”):
 - a. the Recipient operated a motor vehicle while the Recipient’s ability to do so was impaired to any degree by alcohol or a drug or by a combination of alcohol and a drug (“Impaired Operation”).
2. On April 25, 2026, the Recipient applied for a written review (“Review”) of the NAP under Section 7(1) of the *Provincial Administrative Penalties Act*, S.A. 2020, c. P-30.8 (“PAPA”). My role as an adjudicator under Section 10 of PAPA is to conduct the Review and determine if the Recipient has established all grounds necessary to cancel the NAP on a balance of probabilities. The Recipient bears the burden of proof pursuant to Section 18(1) of PAPA.
3. The grounds on which I may cancel a NAP are set out in Section 4 of the *SafeRoads Alberta Regulation*, Alta Reg. 224/2020 (“Regulation”). This Review raises the following grounds:

To cancel the NAP on the basis of Impaired Operation under Section 4(e) of the Regulation:

- a. Section 4(e)(i): that the Recipient did not operate the motor vehicle;
 - b. Section 4(e)(iii): that the Director did not provide complete records to the Recipient as required by Section 12 of PAPA;
 - c. Section 4(e)(iv): that the Recipient’s ability to operate a motor vehicle was not impaired to any degree by alcohol or a drug or a combination of alcohol and a drug; and
 - d. Section 4(e)(v): that the officer did not advise the Recipient in writing of the right to a roadside appeal under Section 88.11 of the TSA, and the Recipient was unaware of that right.
4. The Recipient has made *Charter* allegations. As set out in **Appendix A**, I do not have authority to find *Charter* breaches or grant *Charter* remedies, but I will consider the arguments and evidence pertaining to them under my assessment of the grounds to

cancel the NAP and the overarching duty of fairness.

5. The Recipient has argued a breach in procedural fairness warranting a remedy. If necessary, I will consider the arguments and evidence pertaining to this argument under my assessment of the grounds to cancel the NAP and the overarching duty of fairness to determine whether a remedy is warranted.
6. I conducted the Review on May 11, 2026. The materials I considered in the Review are set out in **Appendix B**. For the reasons below, I have determined the outcome of the Review as follows: **the NAP is cancelled pursuant to Section 21(1)(b) of PAPA.**

PRELIMINARY ISSUE

7. In the course of the Review, it came to my attention that there is an error in dating in the police narrative. The NAP, the law enforcement agency (“LEA”) submissions on the SafeRoads Alberta portal (the “Portal”), and the police notes all state that the contravention happened on April 19, 2026, and the date April 18, 2026, only appears once in the police narrative. I also considered that the Motor Vehicle System (MOVES) date entry in the Portal is generated independently once the officer accesses the system. These records show that the Recipient’s information and related documents were system generated on April 19, 2026. The roadside appeal record and both seizure notices were also generated in the Portal on April 19, 2026. There is no evidence before me that the matter began on April 18, 2026 and continued into April 19, 2026, or that the NAP was generated on one date and issued on another.
8. The Recipient’s affidavit identifies April 18, 2026, as the date of the NAP and associated events. I considered whether there were independent markers within the affidavit or other submissions that corroborated this date, however, there is none. As the Recipient does not tell me there was a different occurrence date from the date the NAP was issued and served, I have placed more weight on the MOVES and Portal system generated document dates within the police evidence.
9. On a balance of probabilities, having weighed the consistency of the contemporaneous police and system-generated records against the isolated reference in the police narrative and the date listed in the Recipient’s affidavit, I find that the contravention occurred on April 19, 2026. I therefore find that the reference to April 18, 2026, in the police narrative is a clerical or typographical error. In the absence of prejudice, I assess the Recipient’s affidavit on the understanding that the events described relate to April 19, 2026.
10. The Recipient’s submissions cite Provincial Administrative Penalties Regulations (“PAPR”) as “(Alta Reg 224/2024)”, and refer to a “SafeRoads Alberta Act” as well as decisions in “Kaur v Director (SafeRoads Tribunal)” and “Sidhu v Director (SafeRoads Tribunal)”, without providing full citations or copies of those authorities. Without proper citations or sufficient identifying information, I am unable to locate or review the decisions

cited by the Recipient. In those circumstances, I cannot assess the relevance or applicability of those authorities and therefore cannot place weight on them, although I have considered the submissions in which they are referenced. I have, however, located the applicable regulation, properly cited as the Provincial Administrative Penalties Regulations, Alta Reg 217/2020, and it is this version that I rely on in this Review.

SECTION 4(e)(v): DID THE OFFICER NOT ADVISE THE RECIPIENT IN WRITING OF THE RIGHT TO A ROADSIDE APPEAL UNDER SECTION 88.11 OF THE TSA AND WAS THE RECIPIENT UNAWARE OF THAT RIGHT?

11. To succeed on this ground, the Recipient must establish on a balance of probabilities that the officer did not advise the Recipient in writing of the right to a roadside appeal under Section 88.11 of the TSA, and that the Recipient was unaware of the right to a roadside appeal under Section 88.11 of the TSA.
12. As articulated by the Alberta Court of Appeal in *Lausen v Alberta (Director of SafeRoads)*, 2023 ABCA 176 (CanLII) ("*Lausen*"), "the legislative purpose behind the ground ... (is) to afford voluntary access to meaningful safeguards for ensuring the reliability of the initial roadside test or evaluation."
13. The test requires a nuanced factual assessment of the totality of the circumstances, which requires me to consider, for example: the content of the written and oral advice, when and how it was issued, whether its content and timing of issuance were sufficient for the purpose, whether the officer by word or action did anything to obscure or undermine the written advice provided, whether there were any other particular circumstances that raised a duty on the officer to take further steps to ensure that the Recipient received the written advice, and in the latter case, whether the officer satisfied that duty. This is not a closed or mandatory list of factors or relevant circumstances, however.
14. The Courts have also provided direction on how the test is to be conducted. As stated in *Lausen* at para 50, the statutory scheme "requires written notice before the roadside appeal." As stated in *Lawrence v Alberta (Director of SafeRoads)*, 2024 ABCA 361 ("*Lawrence*") at para 15, the statutory scheme prescribes a specific procedure for officers to follow in issuing NAPs and conducting roadside appeals as follows:
 - a. the officer conducts an initial test using an approved screening device ("ASD") or other device or evaluation as specified in ss 88.11(1)(a-e) of the *Traffic Safety Act*;
 - b. if the test registers a "fail", the officer issues the NAP, which contains written information about the right to a roadside appeal;
 - c. the officer also orally advises the driver of the right to voluntarily take a second test;
 - d. the driver either requests a roadside appeal of the NAP or waives it;

- e. if the driver requests an appeal, the driver accompanies the officer and a second test is conducted using a different ASD or other device or process corresponding to the initial test as specified in ss 88.11(2)(a-e); and
 - f. if the second test registers a “fail”, the NAP is confirmed; if not, the officer cancels the NAP.
15. Although neither the *Lausen* Court nor the *Lawrence* Court went so far as to state that failure to follow the prescribed procedure should be read into the scheme as a standalone ground to cancel, the fact of a prescribed procedure puts the onus on law enforcement to either comply with this procedure or demonstrate similarly effective measures to ensure that a recipient is sufficiently advised and aware of their right to a roadside appeal.
16. The Agent for the Recipient (the “Agent”) relies on the Recipient’s affidavit and submits that the Recipient did not meaningfully understand his right to a roadside appeal. The affidavit states that the Recipient has no recollection of the interaction with police, including any rights being read or any roadside appeal being declined, and describes his condition as severely impaired at the time. The Agent further submits that, although an Urdu-speaking officer is reported to have conveyed the Recipient’s rights, there is no verifiable evidence confirming what was said, how it was translated, or whether it was understood. On that basis, the Agent argues that procedural fairness requires actual understanding of the right to a roadside appeal, and that any purported waiver, particularly in light of the Recipient’s claimed state, cannot be relied upon.
17. The police report shows that the officers were alive to the language issue. They asked the Recipient if he spoke English, and when he indicated he was not fluent, they asked him what language he spoke. He replied Urdu. The police then secured an Urdu-speaking officer who read him his *Charter* rights and *Caution* at 10:44 p.m. The Recipient indicated understanding and requested to speak with a free lawyer. Ten minutes later, at 10:54 p.m., the roadside appeal was read to him and he declined the appeal. The police evidence then shows that at 11:01 p.m., the police read the immediate roadside sanction (“IRS”) suspension and vehicle seizure notices to the Recipient in Urdu. The police provided the Recipient with a copy of the refused appeal documentation.
18. The first question is whether the officer advised the Recipient in writing of the right to a roadside appeal before or at the time the roadside appeal was offered. The police report indicates that the roadside appeal was read at 10:54 p.m. and declined. The report further indicates that the IRS suspension and vehicle seizure notices were read at 11:01 p.m., and that a copy of the refused roadside appeal documentation was provided. Based on this chronology, I am not satisfied that written notice of the right to a roadside appeal was provided before the roadside appeal was offered and declined at 10:54 p.m. As such, I find that the Recipient has satisfied the first prong of the test noted above.
19. That does not end my analysis, however, as I will next determine whether, in the absence of being served with the NAP, sufficient information was provided to the Recipient, such that awareness as to the purpose of the roadside appeal test could still be achieved.

20. Notably, the NAP contains essential information for a recipient to consider before deciding whether to accept or decline the opportunity for a roadside appeal. This includes details about the contravention, the penalties the recipient faces, and advice on the right to a voluntary roadside appeal. That said, I also accept that, in lieu of written advice, awareness can also be achieved if sufficient information is provided verbally at the relevant time, so that a recipient would understand the nature and purpose of the roadside appeal test prior to making their election of the same. Given this, I accept that awareness of the roadside appeal may take various forms including reading the NAP or a detailed verbal description of the process between the officer and the recipient to help form awareness.
21. Based on the Court's commentary in *Lausen and Lawrence*, there is a particular emphasis on the NAP itself when discussing awareness of the right to a roadside appeal and whether a recipient is considered aware of it and its associated penalties. Generally, I accept that a recipient must be aware of the meaningful elements, which is the existence of the NAP, which has associated penalties, and the roadside appeal being voluntary at their request, and that depending on the outcome, it is an opportunity to challenge the evidence used to issue the NAP.
22. In this case, the police evidence indicates that an Urdu-speaking officer was secured and read the roadside appeal at 10:54 p.m., following the earlier reading of *Charter* rights and *Caution* at 10:44 p.m. The Agent submits there is no verifiable evidence of what was said or understood, and the Recipient states he has no recollection of the interaction. However, the police report shows the exchange: What language do you speak? Urdu. The police read the Recipient his *Charter* rights in Urdu. The Recipient indicated understanding and requested to speak to a free lawyer. The roadside appeal provisions were read in Urdu. The Recipient declined the appeal. From these questions and answers, I find that on a balance of probabilities, the Recipient did understand when he was being addressed in Urdu as his responses were responsive and contextually appropriate to the situation.
23. However, even though I accept the police evidence that the officers addressed the language problem by securing an Urdu-speaking officer, and the Recipient gave responsive answers in Urdu, including that he wanted a free lawyer, the issue is whether the Recipient was aware of the right to a roadside appeal.
24. As outlined by the Court in the decision of *Van der Meulen v Alberta (Director of SafeRoads)*, 2024 ABKB 172, it held that at a minimum, a recipient should be aware the roadside appeal was a voluntary opportunity to appeal or challenge the contravention they were facing before they accepted the roadside appeal.
25. The Court in *Van der Meulen* also held that, "[i]t follows from the statutory interpretation undertaken in *Lausen* that to achieve awareness of the right to voluntarily undergo an appeal of the NAP, the driver must be aware that the officer has formed the grounds to

issue a NAP, the nature of the immediate penalties, and the further administrative and criminal sanctions and penalties that may flow. In addition, the driver must be aware that he has the choice to voluntarily provide a second breath sample to confirm his blood drug/alcohol concentration”.

26. In the case before me, the police narrative records only that the roadside appeal was “read” at 10:54 p.m. and “declined”. However, the chronology indicates the IRS suspension (which I infer to mean the NAP as this document contains the immediate roadside sanctions including the suspension details) and vehicle seizure notices were read at 11:01 p.m., after the roadside appeal was declined, and there is no evidence before me that written notice of the right to a roadside appeal was provided before or at the time of the 10:54 p.m. roadside appeal decision point. Regardless of the Recipient’s claim he does not recall any interaction or conversation with police and that he does not remember being offered or declining the roadside appeal, what I must determine is whether the police relayed the roadside appeal advice in such a way that the legislated objective was met. The issue in this case is that the police evidence does not establish the pertinent details of the NAP were conveyed prior to the time the decision was made. There is no evidence the Recipient was informed of the NAP he was receiving until after he declined the roadside appeal. Therefore, considering the guidance in *Lausen* and *Lawrence*, I am satisfied, on a balance of probabilities, that the Recipient has established he was unaware of the right to a roadside appeal at the time it was offered. The Recipient has satisfied the second prong of the test noted above.
27. The Recipient has established this ground to cancel. As my finding on this ground is conclusive to the outcome of this Review, I find it unnecessary to consider the other arguments and grounds raised.

DECISION

28. The Recipient must establish a ground to cancel every basis of the NAP. In this case, I have found:
- a. NAP for Impaired Operation: the NAP for Impaired Operation is cancelled pursuant to Section 4(e)(v) of the Regulation.
29. The Recipient has established all grounds necessary to cancel the NAP. The NAP is cancelled.
30. In accordance with Section 24(2) of the *Provincial Administrative Penalties Act*, SA 2020, c P-30.8, the Recipient may seek judicial review of this decision no later than 30 days after the date on which the decision or order was received. Please see Appendix C for the full text of Section 24(2).
31. More information about how to seek judicial review may be found at the Alberta Court of King’s Bench website here: <https://albertacourts.ca/kb/resources/announcements/filing-procedure-judicial-review-of-saferoads-decisions>.

32. The preferred method of service on the Director for filed documents is via e-mail at jsq.servicehmk@gov.ab.ca. Additional authorized methods of service can be found in Part 11 of the [Alberta Rules of Court](#), Alta Reg 124/2010.

NOTICE TO RECIPIENT

Please be advised that you have 60 days from the date of this decision letter to go to any Alberta registry location to receive a no charge duplicate driver's licence. This is provided you have no other suspensions, outstanding reinstatement conditions, or licence restrictions. After this 60-day period has expired, you will be responsible for paying for the duplicate service and the registry agent service fee. Please allow one clear calendar day from the date of this letter before attending an Alberta registry agent location to obtain your duplicate driver's licence to allow time for your driver profile to be updated. A "Seized Vehicle Release Authorization" form has been sent directly to the seizure lot on your behalf. Please contact the seizure lot directly to obtain the release of your vehicle. You will be required to pay seizure costs/storage fees prior to your vehicle being released. You may seek reimbursement of seizure costs from the law enforcement agency that issued the seizure notice by contacting the agency directly.

"Original signed by K. Que"

Adjudicator K. Que

Representation:

Written submissions by A. Chawli for the Recipient

APPENDIX A

ROLE OF THE ADJUDICATOR

An adjudicator with SafeRoads Alberta is delegated the authority to carry out certain functions of the Director under Section 10 of the *Provincial Administrative Penalties Act*, S.A. 2020, c. P-30.8 (“PAPA”). This includes the power to: 1) cancel the Notice of Administrative Penalty (“NAP”) if satisfied on a balance of probabilities that a ground or grounds prescribed in Section 4 of the *SafeRoads Alberta Regulation*, Alta Reg. 224/2020 (the “Regulation”) is met; and 2) confirm the NAP if not so satisfied. An adjudicator is also authorized under Section 21(2) to confirm the NAP with a substituted administrative penalty if the adjudicator is satisfied that the contravention was committed, but finds that previous contraventions attributed to the Recipient had not in fact been committed.

As set out in Section 18(1) of PAPA, the burden of proof in the review is on the Recipient.

An adjudicator does not have authority beyond the powers delegated under PAPA. In particular, there is no authority to cancel the NAP for a ground or grounds not set out in Section 4 of the Regulation. This includes for reasons of hardship, which are not recognized as a ground to cancel in the Regulation.

An adjudicator is not a court of competent constitutional jurisdiction under Section 11 of the *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3. Accordingly, an adjudicator does not have the power to find *Charter* breaches, nor grant a *Charter* remedy under Section 24 of the *Charter*. Nevertheless, an adjudicator is required to “balance *Charter* interests or values against (the) statutory mandate.”¹

In the context of a roadside sanction scheme for the promotion of traffic and public safety, this means that the duty of fairness requires an adjudicator to consider whether the impugned circumstances or police conduct underlying the claimed *Charter* breaches renders the evidence irrelevant or unreliable, such that it would be unfair to consider it or give it any weight.² An adjudicator may also cancel the NAP because the adjudicator finds that the circumstances of the NAP are so egregiously unfair that they outweigh the public interest in traffic and public safety.³

¹ *Borradaile v British Columbia (Superintendent of Motor Vehicles)*, 2020 BCSC 363 at para 21, citing the Supreme Court of Canada in *Dore v Barreau du Quebec*, 2012 SCC 12 and *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12

² *Thomson v Alberta (Transportation Safety Board)*, 2003 ABCA 256 at para 69.

³ *Baker v Alberta (Transportation Safety Board)*, 2004 ABQB 244 at paras 63 and 69.

APPENDIX B

EVIDENCE BEFORE THE ADJUDICATOR

INFORMATION FROM POLICE

- Advanced Projects Information System (“APIS”) Contravention Summary
- Notice of Administrative Penalty #C00465080A
- Seizure Notice (Driver’s and Owner’s Copies)
- Report of the Issuing Officer, Cst. Barrett
- Supplementary or other reports as follows:
 - Notes of Cst. Barrett
- Roadside appeal consent form (system generated)
- Supporting Declarations Form

INFORMATION FROM THE RECIPIENT

- Application for Review filed April 25, 2026
- Consent to Representation filed May 5, 2026
- Written submissions filed May 5, 2026

PAPA SECTION 4 TECHNICAL MATERIALS

- The SafeRoads Alberta technical materials library, which may be accessed at:
<https://saferoads.alberta.ca/technical-material>.

APPENDIX C

RIGHT OF JUDICIAL REVIEW

Provincial Administrative Penalties Act, S.A. 2020, c. P-30.8

Judicial review

24(1) Subject to subsection (2), no decision or order of the Director or adjudicator is to be questioned or reviewed in any court by application for judicial review or otherwise, and no order is to be made, process entered or proceedings taken in any court whether by way of certiorari, injunction, declaratory judgment, prohibition, mandamus, quo warranto, application to quash or set aside or otherwise, to question, review, prohibit or restrain any decision or order of the Director or adjudicator or any of the Director's or adjudicator's proceedings.

(2) A decision or order of the Director or adjudicator may be questioned or reviewed by way of an application for judicial review seeking an order in the nature of certiorari or mandamus if the application is filed with the Court of King's Bench and served on the Director or adjudicator no later than 30 days after the date on which the decision or order was received by the applicant.

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