



McNalley v Alberta (Director of SafeRoads)

2025 ABCA 98 - per de Wit, Woolley and Feth

Right to Counsel Ends with Screening

Defence appeal of Carruthers J.'s dismissal of judicial review. Police arrested Ms. McNalley, who asserted her right to counsel when police offered it. Before she could speak to a lawyer, the police made an ASD demand, which she refused. A NAP was issued on the basis of both impairment and refusal. The police also searched the appellant's home prior to the arrest.

Held: Appeal Dismissed

A NAP was issued for refusal to comply with breath demand. The court found that the right to counsel is suspended as soon as a demand for a screening demand is made under s. 320.27(1)(b) of the Criminal Code. The refusal to accord a reasonable opportunity, even if there is an assertion of right to counsel, does not operate as a reasonable excuse to a screening refusal, unless it can be shown that the driver was confused or uncertain about their obligation to comply (para. 14). The Court concluded that the search of the home was justified and did not change the analysis.

M. Pagels - Defence Counsel

Favourite Five ABSRA Decisions of the Month

1. Cleese (Re), 2025 ABSRA 479 – Adj. M. Culo

NAP issued for impaired operation and BAC-Over when evidence established a failure or refusal

The driver attempted, but failed, to provide an adequate breath sample on the ASD after 10 attempts. The officer issued a NAP for allegedly operating a motor vehicle while impaired by alcohol or drugs and BAC of 80 mg%+. The evidence suggests that the officer's intention was to issue the NAP for failure to comply with the breath demand, not for impaired operation. The only evidence of impairment was the smell of alcohol in the vehicle, which was insufficient to establish impairment on a balance of probabilities.

T. Foster – Defence Counsel

2. Weldgebrical (Re), 2025 ABSRA 472– Adj. G. Gill

Records of calibration and maintenance of ASD

The photograph of the tag for the ASD used for the roadside appeal was blurred and illegible. Failure to provide any proof that the ASD used for the roadside appeal was properly calibrated and maintained undermined the reliability of the second "Fail" result and deprived the Recipient of a meaningful opportunity to undergo a valid second test.

M. Habteyonas – Agent

3. Stenvall (Re), 2025 ABSRA 352 – Adj. A. Goodale

Incomplete records – blood analysis results



Section 2(g) of the *SafeRoads Alberta Regulation* mandates that if a blood sample was analyzed, the records showing the results of the analysis must be provided.

A. Bieman – Defence Counsel

4. Gregory (Re), 2025 ABSRA 475 – Adj. G. Gill

Breach of procedural fairness and deficiencies in police evidence

Recipient was not afforded procedural fairness where there was no evidence of a screening test or BAC measurement to support the BAC-Over contravention, the officer's notes and entries in the Portal were inconsistent and lacked sufficient detail to establish reasonable grounds for the NAP and the evidence regarding the roadside appeal process was incomplete and raised concerns about whether the Recipient was properly informed of their rights.

V. Semenuk – Defence Counsel

5. Gentry (Re), 2025 ABSRA 379 – Adj. E. Hak

Not properly advised of Roadside Appeal – inability to read documents

The recipient explained to the officer his inability to read documents without his glasses, but the officer claimed he explained it extensively. Gentry declined the second test. Gentry was taken to the police station for criminal charges, called a lawyer, and then given the NAP and told again about the roadside appeal. The inability of the driver to read the documents himself "...created an onus on the officer to ensure the information on the NAP and the roadside appeal form was relayed to him in such a way as to create awareness of the contents of the documents and to clearly explain to the Recipient the separation between the two unrelated matters and the consequences of an administrative sanction for a driving offence and the criminal charges for the assault investigation."

N. Dixon – Defence Counsel

Stay Informed – Stay Prepared

Understanding Alberta's impaired driving laws can make all the difference. Whether you're facing an Immediate Roadside Sanction (IRS) or simply want to stay ahead of legal changes, knowledge is your best defense.

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