



Kolner v Alberta (Director of SafeRoads)
2024 ABKB 456 – per Bokenfohr

**A parallel investigation means compliance
with both criminal and administrative rules**

Kolner was arrested and read his *Charter* rights. He asserted his right to counsel and the police then ignored his answer and went on with the roadside appeal.

Held: Judicial Review allowed in part, but the NAP was confirmed.

Justice Bokenfohr applied other judicial review decisions and concluded the right to counsel had been breached. The values underlying Charter rights must be respected in the SafeRoads regime. Once the driver was arrested, he was entitled to his right to counsel. However, at the time *Kolner* was decided by the Adjudicator, the law on the application of the *Charter* in SafeRoads cases was uncertain. That is not the case now. A declaration was a sufficient remedy “to protect against similar *Charter* breaches in the future.”

M. Oykhman – Defence Counsel

Favourite Five ABSRA Decisions of the Month

1. ***Dahal (Re)*, 2025 ABSRA 455** – Adj. Stockton-Rice

Evidence on times was unclear and did not establish that BAC was over within 2 hours of driving. Officer arrived approximately two and a half hours after the recipient said the accident occurred. There were conflicting times in the officer’s evidence. There were two Fail results on two different ASDs but there was not proof of operation within the preceding two hours.

Self-represented

2. ***Ewasiuk (Re)*, 2025 ABSRA 445** – Adj. Rosenow

Calibration and maintenance records need to be provided for all ASDs used in the investigation. It appeared that three ASDs may have been used. Three photographs were uploaded by the officer but two of them were identical. The calibration and maintenance records for all three ought to have been provided.

R. LaValley – Defence Counsel

3. ***Sidhu (Re)*, 2025 ABSRA 463** – Adj. Goodale

Officer did not properly note basis for the NAP.

The sole basis for the NAP was a BAC at or over 80 mg%. However, no calibration and maintenance documents were uploaded and there was no evidence any breath sample was ever taken.

H. Sidhu – Agent



4. Bower (Re), 2025 ABSRA 456 – Adj. Stockton-Rice

If more than one ASD was used, then calibration records for all the ASDs used must be disclosed.

The first ASD used produced an error message which prompted the officer to use a second device. The calibration records for only one device were uploaded and the adjudicator was not certain which ASD was portrayed in the photo.

S. Weber - Agent

5. Ridler (Re), 2025 ABSRA 465 – Adj. Magnien

Incomplete records were provided for the drug screening conducted on the recipient.

The expiry date of the test cassette used on the Recipient during the ADSE test was incomplete: 2025-05-. Adjudicator agreed with the defence and relied on the cases of *Korecki v Director*, SafeRoads Alberta and Minister of Justice and Solicitor General of Alberta (November 25, 2021), Red Deer No 2110 00831 (Alta QB) and *Plettell (Re)*, [2023 ABSRA 2360](#), which dealt with this same issue. The date was a required record and so the NAP was cancelled.

D. Williams - Agent

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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