



# Gunn Law Group's

## SafeRoads NetLetter

**Volume 4**

**April 2025**

***Rusinko v Alberta (Director of SafeRoads),***  
**2025 ABCA 121** per Slatter, Shaner, and Feth

**Section 7 cannot be successfully argued**

Director's appeal of Justice Harris' decision to reject the Director's application to strike pleadings based on s. 7 of the *Charter*. Multiple applicants had successfully argued that s. 7 could be raised in the context of the SafeRoads Regime. Relying on the Court of Appeal's decision in [\*Sahaluk v Alberta \(Transportation Safety Board\)\*](#), 2017 ABCA 153, Justice Harris held that such applicants were not without hope of success

### **Held: Appeal Allowed**

As recipients of NAPs do not face imprisonment, they cannot rely on s. 7 of the *Charter*. The decision in *Sahaluk* was based on a different legislative scheme. Under the SafeRoads regime, the administrative and criminal aspects are more separate than in the regime in place in *Sahaluk*. All claims based on s. 7 ought to be struck.

**M. Marchen** - Defence Counsel

### **Favourite Five ABSRA Decisions of the Month**

**1 [\*McGhie \(Re\)\*](#), 2025 ABSRA 735** – Adj. J. Obamonire

**Blood Drug Concentration ("BDC") Contravention – Not Established with Urine Sample**

The officer conducted a Standardized Field Sobriety Test ("SFST"), which resulted in a fail. Following this, a Drug Recognition Evaluation ("DRE") was administered at the detachment and it recorded a fail. A urine sample was obtained as part of the DRE process. The sample showed the presence of drugs consistent with potential impairment. However, in the absence of a blood sample, it is not possible to accurately link the drugs detected in the urine to a specific blood drug concentration. As such, the evidence does not establish, on a balance of probabilities, that the individual's blood drug concentration exceeded the prescribed legal limits.

**L. Bobyn** – Defence Counsel

**2. [\*Carson \(Re\)\*](#), 2025 ABSRA 779** – Adj. A. Leedham

**No Grounds for Issuing the NAP – Amounted to Incomplete Records**

The only evidence submitted by the law enforcement agency consisted of system-generated copies of the NAP, seizure notices, and portal entries containing the recipient's identification and the type of contravention. However, the records failed to include specific details outlining the grounds the officer relied upon in issuing the NAP. This omission rendered the records incomplete and insufficient to support the issuance of the NAP.

**D. Chivers** – Counsel

**3. [\*Ostrosser \(Re\)\*](#), 2025 ABSRA 805** – Adj. M. Rosenow

**Absence of Maintenance and Calibration Dates of ASD – Incomplete Records**



The officer observed indicia such as difficulty maintaining balance and a strong odour of alcohol, leading to a reasonable suspicion of impairment. The report was that the recipient had nearly struck a child while driving. However, rather than relying on these observations, the officer used an Approved Screening Device (“ASD”) as the basis for issuing the Notice of Administrative Penalty (“NAP”). The records, however, did not include photographs of the ASDs used or information about the maintenance and calibration dates for the ASD used.

**T. Scholten** – Counsel

#### **4. *Singh (Re)*, 2025 ABSRA 746** – Adj. J. Laun

##### **Limited English Proficiency and Panic – Sufficient to Establish Inability to Understand Demand**

The recipient’s first language was not English. When asked by the officer what day it was, the recipient responded with “March”. The Adjudicator found that an inability to answer simple questions was consistent with a language barrier, rather than a sign of impairment. It was noted that individuals with limited English commonly respond “yes” without fully understanding the question being asked. Mr. Singh was accused of failing to provide a sample but there was no evidence that the ASD was demonstrated or explained to the recipient in a manner that could assist in communication. Taken together, these factors establish, on a balance of probabilities, that the recipient did not know that a breath demand had been made.

**V. Semenuk** – Defence Counsel

#### **5. *Saunders (Re)*, 2025 ABSRA 929** – Adj. U. Akpabio

##### **Director’s Disclosure Obligations – Audio and Video Recordings of the Investigation**

This was a re-review after a successful judicial review. The NAP was issued for allegedly failing or refusing, without reasonable excuse, to comply with a demand. The recipient argued that the audio and video evidence ought to have been disclosed. The Adjudicator found that the “VICS video” was not disclosed, contrary to the requirements set out in *Smit v Alberta (Director of SafeRoads)*, 2023 ABKB 435 (“Smit”) which is binding authority. As the NAP was issued on June 22, 2023, prior to the August 8, 2023 amendments to the Regulation, those amendments did not apply. The officer also did not confirm the existence or non-existence of the recordings. Given the non-compliance with *Smit* and the incomplete disclosure, the NAP was cancelled.

**K. Beyak**, Counsel for the Recipient

### **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.

Have questions about your case? Contact **Gunn Law Group** for a consultation.

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