KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 20**

Date: **2026 01 22**
File No.: KBG-RG-00680-2024
Judicial Centre: Regina

BETWEEN:

WABOSHI NAKIHIMBA

APPLICANT/RESPONDENT

- and -

MINISTRY OF SOCIAL SERVICES

RESPONDENT/APPLICANT

Appearing:

Waboshi Nakihimba	self-represented applicant/respondent
Britannia M. Mohrbutter	for the respondent/applicant

FIAT — KLATT J.
January 22, 2026

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[1] Waboshi Nakihimba [Mr. Nakihimba] brought an application for judicial review against a decision made by the Ministry of Social Services [Ministry] that he was out of time to appeal a decision respecting an overpayment of Social Assistance benefits. It was not until after the Ministry had been served with Mr. Nakihimba's application for judicial review that it realized it failed to respond to Mr. Nakihimba's appeal. It was then that the Ministry arranged to hear his appeal, firstly to the Regional Appeal Committee [RAC], and then to the Social Services Appeal Board [SSAB]. Mr. Nakihimba refused to participate in the appeal process.

[2] There were two applications before me. The Ministry applied to have Mr. Nakihimba's application for judicial review struck or dismissed. In support of the Ministry's application, it filed affidavits from its officials Michaela Windl and Verna Johnson.

[3] In response to the Ministry's application to strike his application for judicial review, Mr. Nakihimba applied to strike the Ministry's affidavits, or portions thereof, on the basis that they were irrelevant. Specifically, Mr. Nakihimba seeks to strike paragraphs 19-27 of Ms. Johnson's April 30, 2024 affidavit [Johnson Affidavit #1], the whole of Ms. Johnson's May 16, 2024 affidavit and the whole of Ms. Wendl's February 26, 2025 affidavit.

[4] The parties agreed to have these two applications determined first. If the Ministry's application is granted, of course, there would be no necessity for a judicial review of its decision that is at the heart of Mr. Nakihimba's application.

[5] I will deal with Mr. Nakihimba's application to strike the Ministry's affidavits first.

[6] In his written submissions, and numerous times in his oral presentation, Mr. Nakihimba clarified that his main argument is rooted in the proposition that only the record of proceedings is relevant when considering an application for judicial review. While I agree that the record of proceedings is required in an application for judicial review, and that it is often the only material filed, there are some instances where it would be entirely appropriate for affidavit evidence to be filed (*i.e.*, to provide general background or to demonstrate procedural defects that are not apparent from the record of proceedings: *Fineday v Saskatchewan (Public Complaints Commission)*, 2024 SKKB 6 at para 22. See also: *Saskatchewan (Workers' Compensation Board) v Gjerde*, 2016 SKCA 30 at para 44, citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22).

[7] In any event, the application currently before me is not an application for judicial review. Affidavit evidence is typically required in an application to strike that is brought before the application for judicial review is determined on its merits. For its part, the Ministry confirmed that it will not rely on the affidavits if, and when, the application for judicial review proceeds.

[8] In his oral submissions, Mr. Nakihimba stated he did not agree with some of the statements contained in the Ministry's affidavits. For example, he cites para. 19 of the Johnson Affidavit #1 in which Ms. Johnson erroneously stated that the Ministry received his application for judicial review on February 29, 2024 (it was filed and served in March 2024). He says that this shows the Ministry is not being truthful and trying to mislead the Court. The Ministry accepts that the date was wrong. There being no evidence to the contrary, I agree with the Ministry that this mistake does not demonstrate a calculated effort on its part to mislead the Court. In any event, the date that the application was filed is irrelevant to the striking application.

[9] As to the various other complaints that Mr. Nakihimba had as to the content of the affidavits, he did not file an affidavit in response that addressed what he said were errors or "lies", despite being given the opportunity to do so. Because of the lack of an evidentiary basis in this regard, I will not address Mr. Nakihimba's assertions that the Ministry or its counsel has lied to the Court.

[10] Mr. Nakihimba objects to the affidavits being filed because, he said, they are prejudicial to him. Mr. Nakihimba does not explain how this is so except to say that the affidavits were prepared long after the events in question. Mr. Nakihimba did not, however, dispute the actual chronology of events as set out in the affidavits, even if he disagreed with some of the assertions in the affidavits.

[11] The Ministry's affidavits are necessary and helpful to understand the events that led to Mr. Nakihimba's application for judicial review. The admission of

the affidavits into evidence for the sole purpose of determining the Ministry's application to strike does not run contrary to any rule of evidence. In fact, *The King's Bench Rules* permit affidavit evidence to be filed and considered in this type of application. As I said, if the Ministry's application to strike is dismissed, the affidavits will not form part of the record to be considered during the judicial review hearing.

[12] In conclusion, no part of the affidavits will be struck. Mr. Nakihimba's application in this regard is dismissed.

[13] I turn now to the Ministry's application to strike Mr. Nakihimba's application for judicial review. The Ministry asserts that the application should be dismissed on several bases: (1) pursuant to Rule 7-9(2)(b) of *The King's Bench Rules* that it is frivolous; (2) pursuant to Rule 7-9(2)(e) that it is an abuse of the Court's processes; and (3) that it is moot. Alternatively, the Ministry argued that the Court should exercise its inherent jurisdiction and dismiss the application because the statutory appeal process offered an adequate alternative remedy which Mr. Nakihimba declined to exercise.

[14] Before addressing the merits of the Ministry's application, I will set out the chronology of events that is pertinent to this issue. I repeat that Mr. Nakihimba did not contest the following facts.

[15] On February 14, 2023, the Ministry sent Mr. Nakihimba a letter advising him that he received an overpayment of assistance benefits based on the fact that he had been receiving assistance benefits in Ontario that he failed to report when he applied for, and received, social assistance benefits in Saskatchewan. He was advised that he was required to repay the overpayment of $1,908.06. The letter advised him of his right to appeal that decision within 15 days.

[16] On February 17, 2023, Mr. Nakihimba notified the Ministry of his desire

to appeal the assessment of the overpayment. He did not dispute an overpayment of $600 but sought to appeal the balance of $1,308.06. The Ministry acknowledges that it received his appeal notice at that time.

[17] At the hearing before me, Mr. Nakihimba advised me he made several attempts to contact the Ministry officials to check the status of his appeal. He did not file affidavit evidence as to the dates or how often he called or emailed but I accept that he did so.

[18] In a letter dated December 29, 2023, Angela Yung of the Ministry advised Mr. Nakihimba that because he did not request an appeal within the required time frame as set out in the regulations, he was out of time to appeal.

[19] On March 25, 2024, Mr. Nakihimba filed his application for judicial review with the Court of King's Bench. He served the Ministry with his application on March 26, 2024.

[20] On April 9, 2024, Susan McMillan, the manager of Client Services at the Ministry spoke with Mr. Nakihimba on the phone and arranged an appeal date for April 17, 2024 before the RAC, the first avenue of appeal of a decision of the Ministry.

[21] At the appeal hearing on April 17, 2024, Mr. Nakihimba did not appear and did not contact the Ministry. The hearing proceeded and the RAC upheld the Ministry's decision respecting the overpayment. The Ministry notified Mr. Nakihimba of its decision dismissing his appeal.

[22] On April 30, 2024, Mr. Nakihimba sent a letter to the Ministry requesting an appeal of the RAC's decision to the SSAB, the next avenue of appeal. An appeal hearing before the SSAB was scheduled for May 28, 2024. The Ministry requested the hearing be rescheduled for June 11, 2024 but Mr. Nakihimba said he was not available that date and wanted it adjourned. The appeal hearing was set for June 25, 2024.

[23] On June 25, 2024, Mr. Nakihimba did not appear at the appeal hearing and did not contact the Ministry to arrange another hearing date. The hearing proceeded in his absence. The SSAB, finding no error, dismissed Mr. Nakihimba's appeal.

[24] On February 25, 2025, Mr. Nakihimba filed an amended application for judicial review.

[25] As a starting point, the Ministry asserts that the decision at the heart of Mr. Nakihimba's application for judicial review is the decision contained in the December 29, 2023 letter from Angela Yung to Mr. Nakihimba denying him an opportunity to appeal the overpayment. Thus, since the Ministry engaged the requested appeal procedures, the decision of Ms. Yung was moot and the application for judicial review should be dismissed on that basis.

[26] Mr. Nakihimba referred often to the December 29, 2023 decision to deny him the opportunity to appeal, and this letter was appended to the first application he filed. At the time he filed his application, that was his main complaint arising from the Ministry's failure or refusal to permit him to appeal. Then, after his appeals had been heard, Mr. Nakihimba's application came before me in Chambers on July 30, 2024. Given that the appeals had occurred, Mr. Nakihimba was given a further opportunity to amend his application. In his amended application filed in February 2025, he did not change or clarify which of the Ministry's decisions he wanted reviewed. He did add, however, complaints of racism, bias, and deception (to name a few) to his application.

[27] In the context of a judicial review application, litigants, whether self-represented or represented by a lawyer, must clearly and concisely set out the actual decision that they want reviewed. Self-represented litigants are challenged because they are often on unfamiliar ground. Despite Mr. Nakihimba's obvious intelligence and ability to articulate, he does not have the same level of legal understanding that is expected of lawyers.

[28] As I read the voluminous information Mr. Nakihimba filed, and considered his extensive submissions, it became apparent that Mr. Nakihimba wants a review of the decision as to the assessed overpayment of $1,308.06. The review Mr. Nakihimba desired is the same subject-matter as the appeals that were undertaken. Put differently, the substantive issue he raises in the application for judicial review is the same issue that was before the RAC and the SSAB during the appeal process. The added feature that permeates his judicial review application is the unfairness he says resulted from being told he was out of time to appeal.

[29] It is well settled that absent exceptional circumstances, a party cannot bring an application for judicial review where there was, or is, a right of appeal or an alternative remedy that was not pursued: *C.B. Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61 at para 30 [*C.B. Powell*]; *Harelkin v University of Regina*, 1979 CanLII 18, [1979] 2 SCR 561 (SCC); *Moyer v Corman Park (Rural Municipality)*, 2015 SKQB 281. The courts have narrowly interpreted what constitutes "exceptional circumstances". The threshold for exceptionality is high and even complaints over "procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted…": *C.B. Powell* at para 33.

[30] In *Strickland v Canada (Attorney General)*, 2015 SCC 37 at para 42 [*Strickland*], the Supreme Court explained that several factors come into play in considering whether an alternative remedy or forum is adequate to justify exercising the discretion to refuse to hear an application for judicial review. The Court stated:

> [42] … These considerations include the convenience of the alternative remedy; the nature of the error alleged; the nature of the other forum which could deal with the issue, including its remedial capacity; the existence of adequate and effective

> recourse in the forum in which litigation is already taking place; expeditiousness; the relative expertise of the alternative decision-maker; economical use of judicial resources; and cost: *Matsqui* [*Canadian Pacific Ltd. v Matsqui Indian Band*, 1995 CanLII, [1995] 1 SCR 3 (SCC)], at para. 37; *C.B. Powell Ltd. c. Canada (Agence des services frontaliers)*, 2010 FCA 61, [2011] 2 F.C.R. 332(F.C.A.), at para. 31; *Mullan* [D. J. Mullan, "The Discretionary Nature of Judicial Review", in R. J. Sharpe and K. Roach, eds., *Taking Remedies Seriously: 2009* (2010), 420], at pp. 430-31; Brown and Evans [D. J. M. Brown and J. M. Evans, with the assistance of C.E. Deacon, *Judicial Review of Administrative Action in Canada* (Carswell, 2013) (updated December 2014 to release 3)], at topics 3:2110 and 3:2330; *Harelkin*, at p. 588. …

[31] The court must engage in what is often referred to as a "balance of convenience" analysis that inquires into the adequacy of the alternative remedy or process as well as the appropriateness of judicial review. The Court in *Strickland* explained:

> [44] This balancing exercise should take account of the purposes and policy considerations underpinning the legislative scheme in issue: see, e.g., *Matsqui* [*Canadian Pacific Ltd. v Matsqui Indian Band*, 1995 CanLII, [1995] 1 SCR 3 (SCC)], at paras. 41-46; *Harelkin*, at p. 595. David Mullan captured the breadth of the inquiry well:
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> > While discretionary reasons for denial of relief are many, what most have in common is a concern for balancing the rights of affected individuals against the imperatives of the process under review. In particular, the courts focus on the question of whether the application for relief is appropriately respectful of the statutory framework within which that application is taken and the normal processes provided by that framework and the common law for challenging administrative action. Where the application is unnecessarily disruptive of normal processes ... the courts will generally deny relief. …
>
> [Emphasis added in original]

[32] What all this means is that a party cannot proceed to the court system unless they have pursued all effective remedies that were available within the scheme

of the administrative process. If the party who feels aggrieved could have had a remedy under the administrative process, judicial review in court should be allowed only in exceptional circumstances: *Strickland*.

[33] However, in the recent decision of *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 [*Yatar*], the Supreme Court clarified that an individual has the right to seek judicial review for questions not raised in the appeal. In other words, Justice Rowe explained:

> [3] As per *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, a right of appeal does not preclude an individual from seeking judicial review for questions not dealt with in the appeal. In this case, despite the statutory right of appeal limited to questions of law, judicial review is available for questions of fact or mixed fact and law. It is then a matter of discretion whether to undertake judicial review, having regard to the framework for analysis set out in *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713.
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> …
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> [54] When an applicant brings an application for judicial review, a judge must consider the application: that is, at a minimum, the judge must determine whether judicial review is appropriate. If, in considering the application, the judge determines that one of the discretionary bases for refusing a remedy is present, they may decline to consider the merits of the judicial review application (*Strickland*, at paras. 1, 38 and 40; *Matsqui* [*Canadian Pacific Ltd. v Matsqui Indian Band*, 1995 CanLII, [1995] 1 SCR 3 (SCC)], at para. 31). The judge also has the discretion to refuse to grant a remedy, even if they find that the decision under review is unreasonable (*Khosa* [*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12], at para. 135; *Strickland*, at para. 37, quoting *Minister of Energy, Mines and Resources* [*Canada (Auditor General) v Canada (Minister of Energy, Mines and Resources)*,1989 CanLII 73, [1989] 2 SCR 49 (SCC)], at p. 90).

[34] In this case, the adequate alternative remedy flows from Mr. Nakihimba's rights of appeal under the statutory scheme. *The Saskatchewan Assistance Act*, RSS

1978, c S-8 [*SAA*] provides two levels of appeals. The first appeal, to the RAC, is provided for in s. 15 of the *SAA*:

> **Appeal from decision of unit**
>
> **15** Subject to section 17.1, the minister shall appoint a committee for each unit to hear appeals from decisions of the unit respecting assistance, and a person who is dissatisfied with a decision of the unit may appeal to the committee on any grounds of appeal prescribed in the regulations.

The second appeal, to the SSAB, is provided for in s. 17 of *SAA*:

> **Appeal from decision of director**
>
> **17** Subject to sections 17.1 and 29.6, a person, including a unit administrator, who is dissatisfied with a decision of a committee mentioned in section 15 respecting assistance authorized by section 13 may appeal to the Social Services Appeal Board established pursuant to the authority granted by section 10 of *The Social Services Administration Act* on any of the grounds of appeal prescribed by the regulations, and there shall be no further appeal.

[35] *The Saskatchewan Assistance Regulations, 2014*, RRS c S-8 Reg 12 [*Regulations*] provide the framework for the appeals:

> **Appeals and reconsideration**
>
> **35**(1) Within 30 days after the date of a decision with respect to any of the following matters, an eligible recipient may appeal, in writing, the decision to the minister:
>
> (a) **Repealed.** 5 Jly 2019 SR 44/2019 s17.
>
> (b) a request for benefits or an increase in benefits was not dealt with within a reasonable time;
>
> (c) a determination of eligibility;
>
> (d) a variation, suspension or cancellation of entitlement to receive a benefit;
>
> (e) the assessment of an overpayment;

(f) a decision respecting the amount of a benefit.

(2) On receipt of a request pursuant to subsection (1), the minister shall reconsider the decision that is the subject of the request within 10 days after receiving the request and provide the eligible recipient with a written decision as soon as is reasonably possible.

…

36(1) Following an appeal pursuant to section 35, the minister shall arrange for an appeal hearing if:

(a) on the reconsideration, the minister determines that no error has been made with respect to the decision or that an adjustment to the satisfaction of the eligible recipient is not possible; and

(b) the eligible recipient notifies the minister that he or she would like to appeal the decision.

(2) An appeal pursuant to this section may be made only with respect to any of the matters mentioned in subsection 35(1).

…

(13) If an eligible recipient fails to appear in person or by a representative or advocate on the date and at the time and place set out in clause (4)(a), the appeal committee may:

(a) proceed in the absence of the eligible recipient; and

(b) make a decision on the basis of the written statement of the eligible recipient and the evidence provided by the minister.

(14) The appeal committee may make an immediate decision on the conclusion of the hearing.

(15) The appeal committee shall, no later than 30 days following the date of the hearing, give a written decision and reasons for the decision to:

(a) the eligible recipient; and

(b) the minister.

…

Appeals to the appeal board

37(1) An eligible recipient who is dissatisfied with the decision of an appeal committee made pursuant to section 36 may notify the minister in writing of:

(a) his or her intention to appeal the appeal committee's decision to the appeal board; and

(b) the grounds of the appeal.

(2) An eligible recipient who intends to appeal to the appeal board shall provide the written notice pursuant to subsection (1) within 20 days after the appeal committee's decision is given in writing.

…

(5) If the minister is notified of an appeal by the eligible recipient pursuant to subsection (1) or if the minister intends to appeal pursuant to subsection (3), the minister shall:

(a) in the case of an appeal by an eligible recipient, send the notice of appeal and the grounds of appeal to the secretary of the appeal board;

(b) transmit to the secretary of the appeal board:

(i) any documents and records in the possession of the minister relating to the matter under appeal;

(ii) a copy of the written decision and reasons of the appeal committee received pursuant to subsection 36(15); and

(iii) promptly on their being received pursuant to subsection (6), a summary of the issues and evidence presented before the appeal committee; and

(c) notify the appeal committee of the appeal.

(6) On being notified pursuant to subsection (5), the appeal committee shall promptly provide to the minister a summary of the issues and evidence presented before the appeal committee.

(7) The appeal board shall hear an appeal within 30 days after receipt of the notice of appeal by the secretary of the appeal board.

(8) The appeal board shall give not less than five days' written notice of the date, time and place of the hearing to the minister and the eligible recipient.

(9) All hearings pursuant to this section are to be held in private.

(10) A hearing pursuant to this section shall be conducted in an informal manner and the appeal board is not bound by rules of law concerning evidence.

(11) Recording devices must not be used at hearings.

(12) The testimony of the eligible recipient and any other witnesses at the hearing must relate to the issue under appeal.

(13) The minister must be given the opportunity to present additional evidence and to question the eligible recipient or his or her representative or advocate.

(14) The eligible recipient, or his or her representative or advocate, must be given the opportunity:

> (a) to question the representative of the minister who attends the hearing and the minister's witnesses;
>
> (b) to examine any documents submitted by the minister; and
>
> (c) to present additional evidence related to the issue under appeal.

…

(17) If an eligible recipient fails to appear in person or by a representative or advocate on the date and at the time and place set out in subsection (8), the appeal board may:

> (a) proceed in the absence of the eligible recipient; and

> (b) make a decision on the basis of the written statement of the eligible recipient and the evidence provided by the minister.
>
> …

[36] In his oral submissions before me, Mr. Nakihimba acknowledged that the appeal process had to be exhausted before the judicial review application can be heard. He stated, however, that the Ministry did not have jurisdiction to entertain his appeal because they did not follow their procedures. The only explanation he gave for not participating in the appeals was that he believed the Ministry's impartiality made it all "unfair from the beginning". Accordingly, he says, he was denied procedural fairness.

[37] I agree with Mr. Nakihimba that the Ministry did not follow its procedures and that there is no excuse for that. However, it is clear that once the Ministry realized it did not act diligently or fairly, they attempted to rectify the situation and undertake the appeal process. The Ministry's failure to comply with the statutory time frames to schedule the appeal did not, in my view, strip it of the jurisdiction to give Mr. Nakihimba the remedy he sought. Moreover, from the evidence before me, Mr. Nakihimba agreed to the appeal dates and one was even changed because he was unavailable.

[38] In oral argument, Mr. Nakihimba stated he wanted an opportunity to cross-examine witnesses and explain his story. The *Regulations* prescribe several important hallmarks of procedural fairness such as the ability to cross-examine witnesses, examine documents, present additional supporting evidence and witnesses, and to designate a representative or advocate to act on his behalf.

[39] Each level of appeal provides for a hearing *de novo*. In other words, the matter in question is determined anew at each appeal hearing. The client can present additional evidence as long as it relates to the matter under appeal and the RAC or SSAB, whatever the case may be, can reconsider the initial decision made by the

Ministry's unit. All that Mr. Nakihimba wanted he could have had if he had participated in the appeal process. Why he scheduled the appeal dates only to refuse to attend is perplexing.

[40] Apart from the administrative appeal mechanisms, the *SAA* does not provide for an appeal to the Court for either questions of law or questions of mixed fact and law. However, as set out in *Yatar*, judicial review may still be available despite any restriction on the statutory rights of appeal. But I do not read *Yatar* as saying that a person has the unqualified right to bring an application for judicial review on an issue that could have been considered in the statutory administrative appeal processes but where the person refused to engage in those processes.

[41] *Yatar* did not affect the basic principle coming out of *Strickland* that I must determine whether judicial review is appropriate. I may decline to consider the merits of the judicial review application if one of the discretionary bases for refusing a remedy was present, *i.e.*, whether there was an adequate alternative: *Strickland* at para 40.

[42] Many of the cases that consider whether there existed an adequate alternative remedy deal with situations where the appeal process has not yet occurred. Here we have a case where once the appeal process was underway, with the apparent agreement of Mr. Nakihimba, he refused to participate in it. I observe that Mr. Nakihimba did not, at any time, dispute that he failed to advise the Ministry that he was receiving benefits through the Ontario social assistance system when he applied for social assistance benefits in Saskatchewan. Nor did he appear to dispute the mathematical calculation of the overpayment. The thrust of his argument was that he was suffering financially, in considerable debt with no ability to support himself.

[43] Here there was an adequate remedy available with more procedural benefits than the Court would have on judicial review. If I were to accede to Mr.

Nakihimba's request in these circumstances, it would act as a green light to permit a person to proceed directly to judicial review without first going through the statutory administrative appeal process.

[44] Accordingly, the Ministry's application to strike Mr. Nakihimba's application for judicial review is allowed. Because of my decision in this regard, I decline to consider whether Mr. Nakihimba's application should be struck under Rule 7-9 of *The King's Bench Rules*.

[45] No costs will be awarded in the circumstances.

J.
B.L. KLATT