KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 78**

Date: **2026 04 13**
File No.: KBG-RG-00081-2025
Judicial Centre: Regina

BETWEEN:

WABOSHI NAKIHIMBA

APPLICANT

- and -

SOUTHWEST REGION APPEAL COMMITTEE and MINISTRY OF SOCIAL SERVICES

RESPONDENTS

Appearing:

Waboshi Nakihimba	self-represented respondent
Britannia Mohrbutter	for the respondent, Ministry of Social Services
No one appearing	for the respondent, Southwest Region Appeal Committee

FIAT
April 13, 2026

McMURTRY J.

[1] On January 16, 2025, Mr. Nakihimba applied for judicial review and several other remedies, against the Southwest Region Appeal Committee [Appeal Committee] and the Ministry of Social Services [MSS]. Many of the remedies sought, were against the decision of the Appeal Committee, made January 8, 2025 [*Appeal Decision*]. The remainder sought relief against the MSS.

2026 SKKB 78 (CanLII)

[2] On April 9, 2025, Mr. Nakihimba filed an amended application that was effectively the same as his January application and sought the same remedies. Mr. Nakihimba filed a second amended application on July 7, 2025, replacing both previous applications. The new application is a repetition of the first and second applications, except for some changes to the relief he seeks. He also brought a Notice of Constitutional Question.

2026 SKKB 78 (CanLII)

[3] On February 24, 2025, the respondent MSS applied to strike Mr. Nakihimba's applications. At the hearing on the application to strike, I determined that none of Mr. Nakihimba's applications should proceed until a decision was made on the application to strike.

[4] *The King's Bench Rules* encourage the timely and cost-effective resolution of disputes. If Mr. Nakihimba's application is struck, no hearing dates will have been scheduled unnecessarily.

[5] As a preliminary matter, Mr. Nakihimba challenges the standing of the Ministry of Justice to respond to his application. He presented no reasons for his request, so I will not consider it further.

Background

[6] Mr. Nakihimba receives income assistance benefits under *The Saskatchewan Assistance Act,* RSS 1978, c S-8 [*SAA*]. In December 2024, MSS reduced his entitlement to benefits because Mr. Nakihimba had received an amount of money from Via Rail in settlement of a claim. He appealed the denial of benefits. In the following letter, the Supervisor of Income Assistance workers summarized why his benefits were reduced and explained the procedure in place for his appeal. The letter said:

> We have received and reviewed your request for an appeal hearing. Your case will be heard by the Regional Appeal Committee via teleconference, on January 8, 2025, at 2:15 pm.
>
> The Regional Appeal Committee is made up of individuals who do not work for the ministry.
>
> You may choose to have an advocate to help you prepare and present your appeal.
>
> The ministry is unable to provide interim benefits because you declared that you withdrew $350.00 from your credit card and $527.33 from your line of credit, therefore your needs were met for December 2024. $350.00 + $527.33 + $385.00 = $1,262.33 which is more than your SIS [Saskatchewan Income Support] entitlement.
>
> At the hearing, a ministry official will present a report outlining the ministry's position. A copy of this report will be emailed to you.
>
> If you have any questions or concerns, please feel free to contact me by phone at […].
>
> [Affidavit of Tammy Gillert affirmed February 26, 2025 [Gillert Affidavit] at Exhibit "A"]

2026 SKKB 78 (CanLII)

Decision of the Appeal Committee

[7] The Appeal Committee hearing was held, as scheduled, on January 8, 2025. Mr. Nakihimba did not attend. Nonetheless, the hearing proceeded, and the Appeal Committee released its decision that day. The Appeal Committee's decision reads, as follows:

> On January 8, 2025, your appeal was heard by the Regina Social Services Regional Appeal Committee in your absence and Tammy Gillert; Supervisor of SIS [Saskatchewan Income Support] Client Service Centre, in attendance via telephone.
>
> Our decision is to deny your appeal.
>
> On December 9, 2024, the Ministry notified you that due to a change in your circumstances, i.e. the lump sum payment you received from Via Rail, they were issuing you with an [*sic*] SIS

payment of $375.00 “for your remaining December 2024 entitlement.” You have appealed that decision.

We understand that you notified the Ministry on November 8, 2024, that you had received $2,000.00 from Via Rail for a settlement, but the Ministry was not clear on what the settlement was for, e.g. whether it was a settlement for wages (earned income) or for some other purpose. As a result, the Ministry notified you on November 19, 2024, that they were suspending your benefits pending clarification of the nature of the settlement income. You have also appealed against that suspension.

Thinking the $2,000.00 might be a settlement for wages, and therefore partially exempt, the Ministry issued you $375.00 for December. Having now ascertained that the settlement was not for wages and therefore not exempt as earned income, the Ministry has now assessed you with an overpayment of $375.00.

Our role is to determine whether the Ministry has correctly followed the regulations and policies that our provincial government has put in place for the Saskatchewan Income Support (SIS) program. SIS Regulation 2-7 states that a portion of a household’s earned income (e.g. wages) is considered exempt, but all other income reduces the amount of benefits to which a client is entitled. SIS Regulation 1-2 defines an overpayment as “a payment of an amount in excess of a client’s entitlement …”

Our finding is that the Ministry was correct to consider the $2,000.00 settlement you received from Via Rail as unearned income, and was correct, once they knew what the settlement was for, to consider the $375.00 issued to you to be an overpayment.

SIS Regulation 2-4 (Eligibility criteria) states that applicants must satisfy the minister that they have a budget deficit and must confirm eligibility for any benefits or the amount of any benefit to which they may be entitled. Since the Ministry was not clear on the amount of benefits you could be entitled to in December 2024, we also find that the Ministry was correct to suspend your benefits in November pending clarification of the nature of the $2,000.00 settlement and how it would affect the benefits to which you were entitled.

<u>If you do not agree with this decision, you have the right to appeal to the Social Services Appeal Board</u> … This must be

2026 SKKB 78 (CanLII)

> done within **15** calendar days of the date of this letter. The Ministry also has the right to appeal this decision.
>
> Emergency assistance may be available until your appeal hearing. …
>
> [Gillert Affidavit at Exhibit "B"]
>
> [Bold emphasis in original]
> [Underline emphasis added]

[8] As stated in the *Appeal Decision*, Mr. Nakihimba did not attend the hearing before it. He acknowledged that he received proper notice of the date and time of the appeal hearing, but he decided it was futile to participate as he believed the Appeal Committee would defer to the original decision maker. For the same reason, he decided not to appeal to the Appeal Board. Instead, he brought this application for judicial review.

Application by Waboshi Nakihimba

[9] Mr. Nakihimba seeks the following orders, set out in his second amended application, which was filed on July 7, 2025:

(a) Quashing the *Appeal Decision*;

(b) Declaring the *Appeal Decision* void *ab initio*;

(c) Staying the proceedings "arising from [MSS's] retaliation of the $2000 settlement [he] received from Via Rail … on October 31, 2024" (at para. 3);

(d) Refusing standing to the MSS and prohibiting the Appeal Committee or MSS from making submissions at this hearing because they are *functus officio*;

2026 SKKB 78 (CanLII)

(e) Banning publication of this matter because the settlement with Via Rail is confidential and the matter involves the applicant's finances;

(f) Directing MSS to provide the applicant with temporary benefits;

(g) Judgment against the MSS for $1,561;

(h) Judgment against the MSS for $620; and

(i) Costs of $10,000.

2026 SKKB 78 (CanLII)

[10] In his application, Mr. Nakihimba quotes from case law, administrative law texts, the *International Covenant on Civil and Political Rights*, the *Canadian Charter of Rights and Freedoms* [*Charter*], and Investopedia, amongst others. He also outlines his difficult financial situation. Although discussion of his complaints against the *Appeal Decision* is limited, I believe paras. 25 and 28 of his application fairly set out his arguments. Note that his references to "Bryan" are to the chair of the Appeal Committee:

> 25. The process that Bryan followed in making his decision is very poor. Bryan disregarded, overlooked or mischaracterized all the relevant evidence I provided to him and failed to consider any of my protected grounds. The statutory scheme that granted Bryan his power is the Act [*The Saskatchewan Assistance Act*, RSS 1978, c S-8]. I can't stress how important it was for me that Bryan make the right decision. What I expect is procedural fairness and natural justice. I need a competent, impartial authority to fully restore the SIS [Saskatchewan Income Support] benefits I was denied in November 2024 and otherwise grant me restitutio ad integrum [*sic*]. Bryan did not follow proper procedure. **Bryan breached his duty of procedural fairness towards me**.
>
> …
>
> 28. I have over $25,000 of debt. The Ministry suspended my benefits in November 2024, even though they knew how bad my

> financial situation was. The Ministry only issued me $385 out of the $1005 I was entitled to for the month of December 2024, so I was forced to borrow money to pay for my rent, utilities and other living expenses. Tammy Gillert ("**Tammy**") denied my request for temporary benefits, **which means I was effectively denied my right to appeal in a meaningful and procedurally fair way**. Bryan rubber stamped the Ministry's decision and ignored some of my evidence. Bryan and the Ministry both failed to accommodate my protected grounds under the Saskatchewan Human Rights Code, 2019 ("**Code**").
>
> [Emphasis in original]

[11] In addition, Mr. Nakihimba argues that the Ministry failed to consider his "disability" as a "black man … **unemployed for over 18 consecutive months**" (Second amended application at para. 36) (emphasis in original); that the Appeal Committee and the Ministry "don't care about my protected grounds … [and] made no effort to accommodate me", although they had a duty to do so (Second amended application at para. 36).

[12] Finally, Mr. Nakihimba claims in his second amended application at para 42:

> 42. … Bryan has no expertise in interpreting the common law either, so this Court should not defer to his decision. Bryan is not a lawyer which [is] one of the reasons why his deficient [*sic*] is deficient. Bryan does not even understand his enabling statute. The Appeal Committee erred in law by acting contrary to the principles of natural justice, the common law and statutory law. The Ministry acted in bad faith by withholding certain evidence from the Appeal Committee. Bryan displayed a **reasonable apprehension of bias**. The Ministry destroyed the only prospect I had of catching up on my bills in 2024.
>
> [Emphasis in original]

[13] Mr. Nakihimba also brought a Notice of Constitutional Question. In it, he claims that ss. 3-13(2.1) (a),(a.1), (b) and 3-14 (a),(a.1), (b) of *The Saskatchewan Income Support Regulations*, RRS c S-8 Reg 13 [*SIS Regulations*] breached his rights

2026 SKKB 78 (CanLII)

under ss. 7 and 15 of the *Charter* because the *SIS Regulations* prohibit him from challenging the validity of the *SAA* under the *Charter*, or *The Saskatchewan Human Rights Code, 2019*, SS 2018, c S-24.2 [*SHRC*] before the Appeal Committee or Appeal Board.

2026 SKKB 78 (CanLII)

[14] Mr. Nakihimba claims he is a member of a protected class, as a person who is socially or economically disadvantaged. He asserts that provincial programs must ameliorate the condition of such persons, as recognized in s. 6(4) of the *Charter*, which reads:

> **Mobility of citizens**
>
> **6** …
>
> **Affirmative action programs**
>
> (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

[15] In sum, I believe he is seeking judicial review of the *Appeal Decision* because he believes the hearing before the Appeal Committee was unfair as the Appeal Committee could not fully consider his rights as a member of a protected class. In other words, he asserts that the actions of the MSS to reduce his benefits, following his receipt of the payment from Via Rail, was contrary to the *Charter* and the *SHRC*, but such arguments could not form part of his appeal.

Relevant Legislation

[16] The *SIS Regulations*, enacted pursuant to the *SAA*, set out a multi-level appeal procedure, permitting an applicant or a recipient of benefits to appeal decisions relating to these benefits. In s. 3-12, the *SIS Regulations* provide for a reconsideration of the decision by the Minister:

2026 SKKB 78 (CanLII)

> **Appeals and reconsideration**
>
> **3-12**(1) Within 15 days after the date of a decision with respect to any of the following matters, an applicant or client may appeal, in writing, the decision to the minister:
>
> (a) a decision disallowing an application or reapplication for benefits;
>
> (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, except with respect to overpayments of the Provincial Training Allowance and Skills Training Benefit;
>
> (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 7 days after receiving the request and provide the applicant or client with a written decision as soon as is reasonably possible.
>
> (3) If an applicant or client has been denied benefits or services pursuant to a plan or program administered by another ministry or agency of the Government of Saskatchewan or by the provincial health authority or a community-based organization and the applicant or client subsequently applies for benefits pursuant to these regulations, there is no appeal pursuant to subsection (1) of a decision to deny benefits with respect to an element of need that is analogous to the need contemplated by the plan or program administered by the ministry, agency, provincial health authority or community-based organization.

[17] If the reconsideration has been unfavourable to the applicant, or recipient of benefits, an appeal to an appeal committee is available, at s. 3-13 of the *SIS Regulations*:

Appeal with regard to benefits

3-13(1) Following an appeal pursuant to section 3-12, 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 applicant or client is not possible; and

(b) the applicant or client notifies the minister that the applicant or client 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 3-12(1).

(2.1) An appeal committee does not have the jurisdiction to hear any ground of appeal:

(a) that may require a decision or determination concerning the constitutional validity, applicability or operability of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;

(a.1) that, pursuant to section 52 of *The Saskatchewan Human Rights Code, 2018*, may require a decision or determination concerning the operability of the Act or these regulations;

(b) that may require a remedy pursuant to subsection 24(1) of the *Canadian Charter of Rights and Freedoms* or pursuant to *The Saskatchewan Human Rights Code, 2018*;

…

(9) The applicant or client, or the representative or advocate mentioned in subsection (8), must be given the opportunity:

(a) to question the representative of the minister who attends the hearing and witnesses of the minister; and

(b) to examine any documents submitted by the minister.

(10) The appeal committee or its representative may:

2026 SKKB 78 (CanLII)

(a) examine:

(i) the applicant or client or the representative or advocate mentioned in subsection (8);

(ii) the representative of the minister;

(iii) any other witnesses; and

(b) inspect any document submitted at the hearing.

…

(12) On completing the hearing, the appeal committee shall briefly summarize the issues and evidence and policies relating to those issues.

(13) If an applicant or client 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 applicant or client; and

(b) make a decision on the basis of the written statement of the applicant or client and the evidence provided by the minister.

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

[18] Finally, if the applicant, or recipient of benefits, has been unsuccessful before the appeal committee, he or she may proceed further with an appeal to the appeal board, as provided in s. 3-14 of the *SIS Regulations*:

Appeals to the appeal board

3-14(1) An applicant or client who is dissatisfied with the decision of an appeal committee made pursuant to section 3-13 may notify the minister in writing of:

(a) the individual's intention to appeal the appeal committee's decision to the appeal board; and

(b) the grounds of the appeal.

2026 SKKB 78 (CanLII)

(2) An applicant or client who intends to appeal to the appeal board shall provide the written notice pursuant to subsection (1) within 15 days after the appeal committee's decision is given in writing.

(2.1) An appeal board does not have the jurisdiction to hear any ground of appeal:

(a) that may require a decision or determination concerning the constitutional validity, applicability or operability of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;

(a.1) that, pursuant to section 52 of *The Saskatchewan Human Rights Code, 2018*, may require a decision or determination concerning the operability of the Act or these regulations;

(b) that may require a remedy pursuant to subsection 24(1) of the *Canadian Charter of Rights and Freedoms* or pursuant to *The Saskatchewan Human Rights Code, 2018; or*

(c) that may require a review of an opinion of the minister that is provided pursuant to subclause 2-10(a)(i) or subsection 4-15(5).

…

(12) The testimony of the applicant or client 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 applicant or client or the representative or advocate of the applicant or client.

(14) The applicant or client, or the representative or advocate mentioned in subsection (13), 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

2026 SKKB 78 (CanLII)

> (c) to present additional evidence related to the issue under appeal.
>
> …
>
> (17) If an applicant or client 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 applicant or client; and
>
> (b) make a decision on the basis of the written statement of the applicant or client and the evidence provided by the minister.

[19] Mr. Nakihimba appealed to the Appeal Committee, provided for in s. 3-13. At the hearing, he was entitled to cross-examine the witnesses presented by the MSS at the hearing and to examine any documents submitted to the Appeal Committee. He did not avail himself of the opportunity to do so.

[20] After his appeal was denied, he was entitled to appeal further to the Appeal Board but did not do so. At both levels of appeal, the hearing is *de novo*, meaning the committee or board could have reviewed the circumstances afresh.

Position of the MSS

[21] The Minister argues that the Court has the discretion to refuse to entertain an application for judicial review when the applicant had an adequate alternative remedy but did not pursue it. In so arguing, the Minister relies on a decision of the Court of Appeal in *Saskatoon (City) v Wal-Mart Canada Corp.*, 2019 SKCA 3 [*Wal-Mart*].

[22] In *Wal-Mart*, the Court of Appeal explained why an application for judicial review may fail if there is an adequate alternative remedy. The Court analysed the matter as follows:

> [34] There are a number of discretionary grounds on which a court may refuse to undertake judicial review. These grounds

2026 SKKB 78 (CanLII)

> include where there is an adequate alternative remedy or when the application is premature. ...
>
> [35] The relationship between adequative alternate remedy and prematurity was recently described by the Federal Court of Appeal in *McDowell v Automatic Princess Holdings*, LLC, 2017 FCA 126, 148 CPR (4th) 1 [*McDowell*], as follows:
>
> > [26] [...] The doctrine of adequate alternate remedy comes within the broader doctrine of prematurity, but they are not the same. While both address the issue of fragmentation of administrative proceedings by untimely recourse to the courts, each addresses a slightly different issue. Adequate alternate remedy deals with the case of respecting the administrative scheme created by Parliament, as in *C.B. Powell* [2010 FCA 61]. Prematurity deals with preventing parties from delaying proceedings by coming to court for a remedy that may prove to be moot or overtaken when the tribunal renders its final decision. Prematurity is best understood in the context of interlocutory decisions.

[23] The Court, in *Wal-Mart*, discussed the significance of an adequate alternative remedy:

> [40] The existence of an adequate alternative remedy is a discretionary ground for refusing to undertake judicial review: *Strickland v Canada (Attorney General)*, 2015 SCC 37, [2015] 2 SCR 713 [*Strickland*]. In *Huerto v Saskatchewan*, 2008 SKCA 107, 311 Sask R 288, this Court described this principle:
>
> > [68] There are, of course, a variety of situations where the courts have declined to exercise their jurisdiction, or found that their jurisdiction should not be exercised, because of the existence of parallel dispute resolution procedures. In the context of judicial review, it is well established that a court should not grant prerogative relief if the applicant has failed to pursue an adequate alternative remedy. See: *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561. <u>As well, the courts will not act when a legislature has established a comprehensive non-judicial system of dispute resolution in a particular area</u>. See, for example, *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929.

2026 SKKB 78 (CanLII)

[41] It has been noted that "Canadian courts have enforced this general principle vigorously" (*Toth Equity Limited v Ottawa (City)*, 2011 ONCA 372 at para 35, 283 OAC 33 [*Toth Equity*]). Relief may be refused even where the ground of review is the wrongful denial of a participatory right in breach of the duty of fairness (*Harelkin v University of Regina*, 1979 2 SCR 561 [*Harelkin*]) or is a substantial jurisdictional error (*Canadian Pacific Ltd. v Matsqui Indian Band*, [1995] 1 SCR 3 [*Matsqui*]).

[42] As described by Donald J.M. Brown and John M. Evans, in *Judicial Review of Administrative Action in Canada*, loose-leaf (Rel November 5, 2018) vol 2 (Toronto: Thomson Reuters, 2017) at para 3:2100 [*Judicial Review*], adequate alternative remedies are, generally speaking, other administrative remedies and other judicial proceedings:

> An applicant's failure to pursue a statutory remedy will usually bar relief in judicial review proceedings if the other remedy is considered to be an adequate alternative to judicial review. And in that regard, two main categories of alternative remedy can be identified: other administrative remedies, and other judicial proceedings. Furthermore, the courts have recognized various subcategories within these two broad groups. For example, alternative administrative remedies include reconsideration by the original decision-maker, an appeal to an independent administrative tribunal, or a petition to Cabinet. Similarly, the alternative legal remedies include a right of appeal to a court, some other form of statutory judicial remedy, or an application for judicial review to the Federal Court. Of course, any discretion to consider the adequacy of an alternative remedy can be removed by statute.
>
> (Footnotes omitted)

[43] In *Strickland*, the Supreme Court identified a number of considerations relevant to deciding whether an alternative remedy or forum is adequate:

> [42] **The cases identify a number of considerations relevant to deciding whether an alternative remedy or forum is adequate so as to justify a discretionary refusal to hear a judicial review application. These considerations include the convenience of the alternative remedy; the nature of the error alleged;**

2026 SKKB 78 (CanLII)

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*, at para. 37; *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 F.C.R. 332, at para. 31; Mullan [D.J. Mullan "The Discretionary Nature of Judicial Review", in R.J. Sharpe & K. Roach, *Taking Remedies Seriously: 2009*. Montréal: Canadian Institute for the Administration of Justice, 2010, 420], at pp. 430–31; Brown and Evans, at topics 3:2110 and 3:2330; *Harelkin*, at p. 588. In order for an alternative forum or remedy to be adequate, neither the process nor the remedy need be identical to those available on judicial review. As Brown and Evans put it, "in each context the reviewing court applies the same basic test: is the alternative remedy adequate *in all the circumstances* to address the applicant's grievance?": topic 3:2100 [italic emphasis added by Cromwell J.].

[43] The categories of relevant factors are not closed, as it is for courts to identify and balance the relevant factors in the context of a particular case: *Matsqui*, at paras. 36–37, citing *Canada (Auditor General)* [[1989] 2 SCR 49], at p. 96. Assessing whether there is an adequate alternative remedy, therefore, is not a matter of following a checklist focused on the similarities and differences between the potentially available remedies. The inquiry is broader than that. The court should consider not only the available alternative, but also the suitability and appropriateness of judicial review in the circumstances. In short, the question is not simply whether some other remedy is adequate, but also whether judicial review is appropriate. Ultimately, this calls for a type of balance of convenience analysis: *Khosa*, [2009 SCC 12] at para. 36; *TeleZone*, [2010 SCC 62] at para. 56. As Dickson C.J. put it on behalf of the Court: "Inquiring into the adequacy of the alternative remedy is at one and the same time an inquiry into whether discretion to grant the judicial review remedy should be exercised. It is for the courts to isolate and balance the factors which are relevant …" (*Canada (Auditor General)*, at p. 96).

2026 SKKB 78 (CanLII)

> [44] This balancing exercise should take account of the purposes and policy considerations underpinning the legislative scheme in issue: see, e.g., *Matsqui*, at paras. 41–46; *Harelkin*, at p. 595. David Mullan captured the breadth of the inquiry well:
>
> > 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 [p. 447].
>
> [45] The factors to be considered in exercising this discretion cannot be reduced to a checklist or a statement of general rules. All relevant factors, considered in the context of the particular case, should be taken into account.
>
> (Italic emphasis added by Cromwell J., underline emphasis added)
>
> [Italic and underline emphasis in original]
> [Bold emphasis added]

2026 SKKB 78 (CanLII)

[24] The Court in *Wal-mart* held that the Chambers judge erred in exercising his jurisdiction to hear the application after concluding that the internal remedies available were not effective alternative remedies:

> [51] In my view, the Chambers judge erred in his approach by failing to take the required broader view of the issue. The *dictum* in *Strickland* [*Strickland v Canada (Attorney General)*, 2015 SCC 37] necessitates a consideration of whether "an 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" (*Strickland* at para 44, quoting David Mullan, "The

> Discretionary Nature of Judicial Review", in Robert J. Sharpe and Kent Roach, eds, *Taking Remedies Seriously: 2009* (Montréal: Canadian Institute for the Administration of Justice, 2010) at 447). The question before the Chambers judge was not simply whether the City's proposed alternatives were adequate. Instead, the inquiry was broader, and the Chambers judge was required to consider whether judicial review was *appropriate* in these circumstances, accounting for the purposes and policy considerations underpinning the assessment appeal scheme (see *Strickland* at para 43). The Chambers judge focused on the efficacy and convenience of the City's proposed alternatives, but did not orient and analyze these alternatives within the broader statutory scheme created by the Legislature. In so doing, he did not undertake the mandated inquiry and thus erred.
>
> [Italics emphasis in original]
> [Underline emphasis added]

[25] In *Nakihimba v Saskatchewan (Ministry of Social Services)*, 2026 SKKB 20 [*Nakihimba*] Klatt J. was confronted with an application by Mr. Nakihimba to review a different decision made by the MSS to deny benefits because of a claimed overpayment. In that case, Mr. Nakihimba appealed the MSS decision to the Appeal Committee and to the Appeal Board. He did not attend either appeal hearing, and he was unsuccessful at both levels of appeal.

[26] MSS applied to strike his judicial review application in that case because Mr. Nakihimba had an adequate alternate remedy. Klatt J. agreed, and explained her reasons as follows in *Nakihimba*:

> [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

2026 SKKB 78 (CanLII)

> 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.
>
> ...
>
> [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. …

[27] The reasons Mr. Nakihimba gave for not appearing at the appeal hearings in *Nakihimba* were different than he has offered in this Court. However, Klatt J.'s conclusions are relevant here. As she explained to Mr. Nakihimba, an adequate alternate remedy was available through the appeal process and by choosing to bring a judicial review application, he was circumventing the normal processes provided under the *SAA*. As such, she declined to hear his judicial review application. Klatt J. held as follows:

> [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.

2026 SKKB 78 (CanLII)

[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 [Regional Appeal Committee] or SSAB [Social Services Appeal Board], 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* [*Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8], 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* [*Strickland v Canada (Attorney General)*, 2015 SCC 37] 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 <u>yet</u> 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

2026 SKKB 78 (CanLII)

> 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.
>
> [Underline emphasis in original]
> [Bold emphasis added]

[28] I agree with Klatt J. that the appeal procedure available under the *SIS Regulations*, which Mr. Nakihimba refused to use, would have provided him with an adequate alternate remedy. Mr. Nakihimba's concerns that he would not receive a fair hearing at either level of the appeal procedure was fanciful and not based on any relevant concern.

[29] Mr. Nakihimba complained that the persons on the appeal committee and board are not lawyers. However, I am satisfied that non-legally trained persons, familiar with Social Services rules and regulations, are fully competent to determine the questions before them. In essence, these questions were whether he could receive a settlement of $2,000 from Via Rail without experiencing any consequences to his entitlement to benefits.

[30] Mr. Nakihimba argues that the inability of the Appeal Committee or Appeal Board to consider *SHRC*, or the *Charter* meant these bodies could not

2026 SKKB 78 (CanLII)

adequately adjudicate the issue before them. Mr. Nakihimba's concerns are misplaced. He has provided no reasonable argument that he was discriminated against by the MSS under a prohibited ground, in other words because of his colour, ancestry, place of origin, race, or receipt of public assistance, as he claims. Consequently, the inability of the appeal bodies to consider the *SHRC* or *Charter* is immaterial.

[31] Mr. Nakihimba's judicial review application is designed to avoid the processes intended by the Legislature of the province to provide quick, free, access to an appeal procedure if a claimant disagrees with a decision made to reduce benefits. The questions raised by Mr. Nakihimba about the correctness of the first line decision to reduce his benefits are exactly those the appeal committees and appeal boards were created to answer.

[32] The application to strike the judicial review application is granted.

J.
J.E. McMURTRY

2026 SKKB 78 (CanLII)