

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

	)	<i>R. Drake</i>
	)	<i>on their own behalf</i>
	)	<i>(via teleconference)</i>
<i>RON DRAKE</i>	)	
	)	<i>D. Fenske</i>
	)	<i>for the Respondent</i>
<i>(Appellant) Applicant</i>	)	
	)	<i>M. Smith</i>
<i>- and -</i>	)	<i>on a watching brief</i>
	)	<i>for the Social Services</i>
<i>DIRECTOR, WESTERN-BRANDON</i>	)	<i>Appeal Board</i>
	)	
	)	<i>Chambers motions heard:</i>
<i>(Respondent) Respondent</i>	)	<i>July 14, 2026</i>
	)	
	)	<i>Decision pronounced:</i>
	)	<i>July 24, 2026</i>

LEMAISTRE JA

[1] The applicant seeks leave to appeal two orders of the Social Services Appeal Board (the board) under section 23 of *The Social Services Appeal Board Act*, CCSM c S167 [the *SSAB Act*].

[2] In the orders, the board confirmed the respondent's decisions denying benefits for dental services for composite fillings, a cellular telephone battery, a computer operating system upgrade and studded bicycle tires under *The Manitoba Assistance Act*, CCSM c A150 (the appeals).

[3] The applicant raises issues with the integrity of the process, leading to the board's orders. His position is that the proceedings were unfair and breached his rights under the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*].

[4] For the reasons that follow, the motions for leave to appeal are denied.

[5] Section 23 of the *SSAB Act* permits an appeal to this Court on a question of law with leave. The applicable test for leave to appeal was explained by Pfuetzner JA in *Stadler v Director St Boniface/St Vital*, 2021 MBCA 7 at para 22:

The decision to grant or deny leave to appeal is discretionary and the test is well-known. In addition to the statutory requirement of identifying a question of jurisdiction or a point of law, the applicant must have an arguable case that has a reasonable prospect of success. Moreover, the question of jurisdiction or point of law must raise an issue that warrants the attention of the Court. At the end of the day, even if all of these criteria are not met, leave can be granted if the denial of leave might result in an injustice (see *Stadler 2018* at paras 14-15).

[6] The issues raised by the applicant involve questions of law. However, I am not persuaded that the issues have a reasonable prospect of success, warranting the attention of a full panel of this Court. In other words, the proposed grounds of appeal do not survive a preliminary examination as to whether they have the potential to succeed and change the result (see *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 74; see also *Boryskiewich v Stuart*, 2014 MBCA 77 at para 9).

[7] Section 9 of the *SSAB Act* permits the board to “establish its own rules of practice and procedure”. It has done so by publishing, on its website, the Policy and Procedures Manual (the manual) (see Manitoba, Department of Families, Social Services Appeal Board, “Policy and Procedures Manual” (last visited 21 July 2026), online: <gov.mb.ca/fs/ssab/policy_procedure.html>). The manual states, among other things:

- The chair of the board is in control of the hearing.
- The chair may end the hearing if a party does not comply with their direction.
- No recording of the hearing is allowed.
- The hearing begins with the parties providing a brief presentation summarizing their positions, following which, the appellant provides information about why they disagree with the decision under appeal.
- Only information that is relevant to the issue(s) under appeal will be admissible.
- If the hearing is terminated prematurely, the board may decide the matter under appeal and issue an order based on the written evidence and any oral evidence from the hearing.

[8] The applicant argues that the proceedings, including the hearings held on January 14 and 27, 2026, were unlawful. He raises several procedural concerns, including that limits were imposed on the scope of the hearings, that he was unable to participate meaningfully, that the hearings were terminated

prematurely and that the board nevertheless purported to determine the appeals in the absence of a meaningful hearing. The applicant further submits that the alleged procedural defects constituted breaches of his rights under sections 2(b), 7, 15 and 24(1) of the *Charter*

[9] In assessing the applicant's procedural fairness arguments, I have considered the factors relevant to the duty of fairness as articulated by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC). These factors include:

- the nature of the decision being made and the process followed in making it (see *ibid* at para 23);
- the nature of the statutory scheme and the terms of the statute pursuant to which the body operates (see *ibid* at para 24);
- the importance of the decision to the individual or individuals affected (see *ibid* at para 25);
- the legitimate expectations of the person challenging the decision (see *ibid* at para 26); and
- the choices of procedure made by the agency itself, particularly when the statute leaves to the decision maker the ability to choose its own procedures or when the agency has an expertise in determining what procedures are appropriate in the circumstances (see *ibid* at para 27).

[10] I am also mindful that the requirements of procedural fairness are highly variable and context-specific (see *Canadian Pacific Railway Company*

v Canada (Attorney General), 2018 FCA 69 at para 40). The ultimate question is whether the party knew the case they had to meet, had a fair chance to respond and had their case fully and fairly considered by an impartial decision maker (see *ibid* at para 41).

[11] Applying these principles, the applicant's arguments concerning procedural fairness do not have a reasonable prospect of success.

[12] Section 2 of the *SSAB Act* states that:

Purpose

2 The purpose of this Act is to give Manitobans a fair, impartial and *informal* appeal process from decisions relating to various social services and programs.

Objet

2 La présente loi a pour objet de mettre à la disposition des Manitobains et Manitobaines un processus d'appel des décisions ayant trait à différents programmes et services sociaux qui soit *informel*, juste et impartial.

[emphasis added]

[13] The respondent's decisions that were the subject of the appeals related to denials of benefits. Although the board's orders confirming the denials of benefits are important to the applicant, considering the nature of the benefits denied, it cannot be said that the board's orders had grave and permanent consequences to him or others.

[14] The applicant's expectations of the appeal process were unrealistic and inconsistent with the manual and the board's communications. The applicant's arguments relate to actions taken by the board that are expressly

permitted by procedural rules established under statute and made publicly available (see the *SSAB Act*, s 9).

[15] Among other things, the board was entitled to remind the applicant that the sole issue to be addressed at the hearing scheduled for January 14, 2026 was the denial of dental benefits. It was also entitled, during that hearing, to limit the applicant's attempts to raise objections concerning the scope of the appeal and to terminate the hearing when the applicant continued to refuse to address the issue before the board.

[16] The board was further entitled to impose conditions governing the conduct of the hearing scheduled for January 27, 2026; those conditions were consistent with the hearing process set out in the manual. Finally, the board was entitled to terminate the January 27, 2026 hearing when the applicant refused to address the three issues that were the subject of that appeal.

[17] With respect to the alleged *Charter* breaches, the applicant's submissions arise entirely from his assertion that the appeal process was unfair. I am not satisfied that the applicant has established an arguable case that the board breached his section 2(b) right to freedom of expression by limiting oral submissions to relevant matters, his section 7 right to a fair hearing or his section 15 right to equality. As I have already explained, the board was entitled to conduct the appeal process in the manner in which it did. Moreover, the manual confirms that the procedures employed were consistent with those applied in all appeals before the board.

[18] The applicant filed extensive written materials in both appeals before the board and was afforded the opportunity to make *relevant* submissions at the hearings. The board provided comprehensive reasons for

its decisions. The reasons demonstrated careful consideration of the relevant portions of the applicant's written materials and that the board fully and fairly decided the issues properly before it.

[19] The applicant has not established an arguable case of substance that the board failed to follow its procedural rules or lacked the authority to make them. Nor has he established that it is arguable that, notwithstanding the termination of the hearings before he completed his oral submissions, the board's decisions, based on the written materials, failed to meaningfully address the issues relevant to the appeals. Accordingly, the applicant has not shown that the proposed appeal warrants the attention of a full panel of this Court. Finally, in the circumstances, I am not persuaded that denying leave would result in an injustice.

[20] In the result, the motions for leave to appeal are denied. There will be no order as to costs.

leMaistre JA
