Citation: Drake v Western Region (Director), 2025 MBCA 68
Date: 20250724

IN THE COURT OF APPEAL OF MANITOBA

Docket: AI25-30-10220	)	
B E T W E E N:	)	
	)	
RONALD DRAKE	)	
	)	
(Appellant) Applicant	)	***R. Drake***
	)	*on their own behalf*
- and -	)	*(via teleconference)*
	)	
DIRECTOR, WESTERN REGION	)	***D. Fenske***
	)	*for the Respondents*
(Respondent) Respondent	)	
	)	***A. H. Leaver***
- and -	)	*on a watching brief*
	)	*for the Social Services*
Docket: AI25-30-10221	)	*Appeal Board*
B E T W E E N:	)	
	)	*Chambers motions heard:*
RONALD DRAKE	)	***July 3, 2025***
	)	
(Appellant) Applicant	)	*Decision pronounced:*
	)	***July 24, 2025***
- and -	)	
	)	
DIRECTOR, WESTERN - BRANDON	)	
	)	
(Respondent) Respondent	)	

EDMOND JA

Introduction

[1] The applicant is a recipient of employment and income assistance (EIA) pursuant to *The Manitoba Assistance Act*, CCSM c A150 [the *MAA*]. The respondents, Director, Western Region (the Western Region director) and Director, Western - Brandon (the Western - Brandon director) (together, the

directors), of the Department of Families (the department), denied the applicant's two separate requests for EIA funding. The applicant appealed both decisions (the appeals) as permitted pursuant to *The Social Services Appeal Board Act*, CCSM c S167 [the *SSABA*]. The appeals to the Social Services Appeal Board (the board) were also denied.

[2] The applicant filed the present motions, with supporting affidavits, seeking an extension of time to file two applications for leave to appeal the decisions of the board issued on February 13, 2025 and dated February 24, 2025 (the first decision) and issued on February 20, 2025 and dated February 27, 2025 (the second decision), respectively.

[3] Section 23(1) of the *SSABA* provides for a limited right to appeal a decision of the board to this Court "on any question involving the board's jurisdiction or on a point of law" after obtaining leave to appeal.

[4] The directors filed briefs, opposing the motions just prior to the hearing. At the hearing, the applicant made a preliminary objection. He submits that the directors' briefs should be struck from the record, or alternatively, given no weight, as the briefs were filed past the deadline pursuant to rule 43.1(3) of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R, requiring a respondent to file material no later than four days after being served with the motions. The directors acknowledged that the materials were filed late and requested leave to give notice of their legal position on the motions, not file evidence.

[5] On the preliminary objection, I advised the applicant that the remedy usually granted when deadlines are missed is to allow the party adversely affected by the late filing an adjournment or additional time to respond or

make an order of costs against the offending party. The applicant did not want the motions adjourned or delayed and did not ask for costs. As a result, the motions were heard, and the applicant addressed the directors' briefs during his submissions. I am not prepared to grant the relief requested by the applicant. While the briefs were filed late, I am not satisfied the applicant suffered any significant prejudice by the late filing and the applicant was given a full opportunity to reply to the directors' positions. No order is necessary in the circumstances.

[6] As regards the motions seeking an extension of time and leave to appeal the first decision and the second decision, for the reasons that follow, the motions are adjourned *sine die* to permit the applicant to give notice pursuant to section 7(2) of *The Constitutional Questions Act*, CCSM c C180 [the *CQA*].

Background Facts

[7] The first decision is an appeal from the decision of the Western Region director to deny funding for certain costs necessary for the reinstatement of the applicant's driver's licence. The board upheld the Western Region director's decision to deny funding for those costs and provided reasons for decision to the applicant.

[8] The facts underlying the request for funding relate to the applicant being pulled over by police while he was driving in Calgary, Alberta in December 2020. The police demanded that he participate in a roadside screening test and the applicant objected to the test during the COVID-19 pandemic. Due to a threat by the police officer, the applicant blew into the testing device, but his sample failed to register. He was not offered another

chance to blow into the device. The applicant was charged with refusal to provide a breath sample under Alberta's administrative sanctions regime.

[9] The applicant's licence was suspended, and his vehicle was impounded. He did not file an appeal respecting the sanctions in Alberta, given the short time frame. Once the impoundment period expired, he returned to Manitoba. Relying on the sanctions imposed in Alberta, Manitoba Public Insurance imposed a fifteen-month licence suspension. The applicant did not appeal the licence suspension to the Manitoba Licence Suspension Appeal Board.

[10] The applicant was advised that in order to have his driver's licence reinstated, he was required to pay for an Addictions Foundation of Manitoba assessment and an ignition interlock device on his vehicle. Since the applicant is on EIA, he is unable to afford these items. Therefore, he requested funding from the department.

[11] The Western Region director took the position that the *MAA* and the *Assistance Regulation*, Man Reg 404/88R [the *MAA Regulation*], do not require the department to pay for legal fees or fines and his request for the costs associated with reinstating the applicant's driver's licence was denied.

[12] The applicant appealed, and prior to the hearing before the board, he attempted to file an extensive amount of material, including medical evidence, social work information and legal submissions respecting multiple alleged breaches of the *The Human Rights Code*, CCSM c H175 [the *HR Code*] and 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*].

[13] Although the director of the board refused to forward all of his materials to the board, the board heard submissions and accepted the applicant's position that there was no evidence he was impaired by alcohol at the time the administrative sanction was imposed in Alberta. The applicant submitted that if his driver's licence is not reinstated, he will never be able to leave the EIA program.

[14] The sole issue before the board was whether the department was required to assist the applicant with the financial cost of complying with the re-licencing requirements. After reviewing the relevant provisions of the *MAA* and the *MAA Regulation*, the board noted that neither of them spoke to the issue of driver's licence fees, administrative, civil or criminal fines, or other monetary penalties. The board reviewed the department's policy and the position advanced by the applicant that the department should make an exception to its policy in this case. The board exercised its discretion and refused to do so.

[15] In the first decision, the board specifically addressed the considerable amount of evidence filed by the applicant and gave reasons why certain issues would not be considered. It bears repeating the decision made by the board in light of the applicant's allegations of procedural unfairness. The board stated:

> Prior to the hearing, [the applicant] submitted a considerable amount of evidence related to his property tax dispute with the City of Brandon and to the series of events that led up to the loss of his driver licence. The evidence submitted in relation to the loss of his driver licence included numerous media stories and articles criticizing administrative sanctions for impaired driving in Alberta and British Columbia.

The [board] reviewed the property tax evidence and advised [the applicant] that it was not relevant to his appeal. The [board] reviewed the evidence related to the loss of his licence and the administrative sanctions regulations and advised [the applicant] that:

> The appeal issue for tomorrow's hearing is the Department's decision to deny funding for the steps necessary to have your driver license reinstated. The Department has characterized the requested funds as legal fees or fines. You submit, in essence, that they are necessary for your health and financial security. The Board's decision will address this dispute.
>
> The [board] has determined that the following issues will not be part of tomorrow's hearing:
>
> - The conduct of members of the Calgary Police Service, as that conduct has no bearing on the Department's decision;
>
> - The legitimacy or fairness of the police officer's decision to levy an administrative sanction for what he determined to be a refusal to provide a breath sample, as that sanction was implemented and is a matter of fact;
>
> - The impaired driving legislation, regulation and policies of the Government of Alberta, as the Board has no jurisdiction over those policies;
>
> - The impaired driving legislation, regulation and policies of the Government of Manitoba and of MPI, as the Board has no jurisdiction over those policies;
>
> - Your ongoing property tax dispute with Municipal Relations and the City of Brandon, as that dispute is unrelated to the issue of your driver license; and
>
> - Any process or dispute with another tribunal or agency, such as the Ombudsman and the MHRC.

The Board will allow submissions on whether MPI's requirements, including the AFM assessment, constitute legal expenses or other types of expenses.

[16] In the first decision, the board specifically addressed the applicant's submission that the facts warranted an exception to the policy as follows:

> In essence, [the applicant] is arguing that the Department should make an exception to its policy because his original charge was unwarranted, the penalty schemes in Alberta and Manitoba are unfair and unconstitutional, and he is unable to afford the costs of obtaining his license.
>
> In determining whether [the applicant] warrants an exception, the Board considers the following factors:
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> - [the applicant] did not attempt to appeal the original sanction in Alberta;
>
> - [the applicant] has not filed an appeal with the License Suspension Appeal Board in Manitoba, which is the tribunal which has jurisdiction over the relicensing requirements; and
>
> - [the applicant] denies responsibility for the original sanction and does not demonstrate any insight into how his actions might have contributed to the continuing loss of his license.
>
> Given [the applicant's] adamant stance that he bears no responsibility for the circumstances he finds himself in, the Board determines that his situation represents the kind of moral hazard the Department's policy is intended to prevent. [The applicant's] situation does not warrant an exception to the policy.

[17] The second decision is an appeal from the decision of the Western - Brandon director, which dealt with the calculation of the applicant's shelter costs covered under the EIA program. The applicant claims that the entire amount of his yearly home insurance cost is a recoverable expense and that it should be included in his EIA budget. The department decided to pay for half of the total cost because there are two names listed as owners on the title to

the property (i.e., the applicant and his brother). The department also did not cover the cost of third-party liability coverage, as it was contrary to policy.

[18] The applicant explained that he is the sole occupant of the property where he resides, all the belongings within the property are his and there are no personal belongings of his brother. Although the property is registered in both of their names, the applicant submitted that he was responsible for the full amount of the insurance cost.

[19] The board heard submissions on the issue and determined that the department had correctly applied its policy respecting reimbursement of home insurance; therefore, the appeal was denied.

[20] The applicant made two separate requests for the board to reconsider the first decision and the second decision pursuant to section 22 of the *SSABA*.

[21] In two letters dated April 24, 2025, sent from the board to the applicant (the reconsideration letters), the board explained the circumstances when it may grant a reconsideration, considered the requests and the numerous grounds cited in the materials, and gave reasons for denying the requests. The reconsideration letters addressed the applicant's various submissions in a comprehensive manner. The issue of the board's jurisdiction was addressed in the reconsideration letters. The letters state, in part, as follows:

> The Board does not have jurisdiction to hear a matter or make an order if the matter raised on appeal does not fall within the purview of a designated Act.

> A significant part of your submission raised various Charter issues. Section 2 of *the Administrative Tribunals Jurisdiction Act* states:
>
> 2 Notwithstanding any other Act, an administrative tribunal does not have jurisdiction to determine a question of constitutional law unless a regulation made under section 6 has conferred jurisdiction on the tribunal to determine the question.
>
> The Board is not designated under Section 6 and therefore does not have jurisdiction to determine a question of constitutional law, notwithstanding any other Act.
>
> [underlining in original]

[22] The applicant submits that the conduct of the board amounts to breaches of sections 7, 9, 12 and 15 of the *Charter*. Because the board advised that it had no jurisdiction to hear and decide the *Charter* arguments pursuant to section 2 of *The Administrative Tribunal Jurisdiction Act*, CCSM c A1.9 [the *ATJA*], the applicant challenges its constitutional validity. Section 2 purports to deny jurisdiction to the board to determine a question of constitutional law because the board is not designated under section 6 of the same act to determine such a question.

[23] The applicant submits that section 2 of the *ATJA* is unconstitutional as the *Charter* applies to all government boards and tribunals. There is no evidence or indication in the appeals that notice was provided to the Attorney General of Canada (the AGC) and the Attorney General of Manitoba (the AGM) challenging the constitutional validity or applicability of section 2 of the *ATJA* in accordance with the *CQA*.

The Test for Extending Time

[24] Recently, leMaistre JA in *Cann v Access Fort Garry (Director)*, 2025 MBCA 18 at paras 9-12, dealt with the test to be applied on a motion to extend the time for leave to appeal to this Court in the context of an application for leave to appeal an order of the board:

> Recently, in *Bartel-Zobarich v Manitoba Association of Health Care Professionals (MAHCP-Bargaining Unit)*, 2022 MBCA 64, this Court reviewed the criteria for granting an extension of time to commence an appeal at paras 11-12:
>
> > The factors for this Court to consider when determining whether to grant an extension of time to commence an appeal are well settled. They are whether:
> >
> > 1) the applicant had a continuous intention to appeal from a time within the period when the appeal should have been filed;
> >
> > 2) the applicant has a reasonable explanation for the delay;
> >
> > 3) the applicant has an arguable ground of appeal;
> >
> > 4) any prejudice suffered by the other party can be addressed if the extension is granted;
> >
> > 5) whether it is right and just in all the circumstances that the time for commencing the appeal be extended.
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> See *Delichte v Rogers*, 2018 MBCA 79 at paras 16-17; *Samborski Environmental Ltd v The Government of Manitoba et al*, 2020 MBCA 63 at para 36; and *Guilbert v Economical Mutual Insurance Company*, 2022 MBCA 1 at para 13.
>
> As noted by Mainella JA in *Delichte*, consideration of the final factor requires the Court to "look broadly at the relevant circumstances and do what justice requires" (at para 17; see also *Samborski* at para 36; and *Guilbert* at para 13).

These factors are equally applicable on a motion to extend time to file an application for leave to appeal.

Section 23(1) of the *SSABA* provides a limited right to appeal an order of the board:

Appeal to Court of Appeal **23(1)** Any party to the appeal before the appeal board may appeal the board's order to The Court of Appeal on any question involving the board's jurisdiction or on a point of law, but only after obtaining leave to appeal from a judge of The Court of Appeal.	**Appel à la Cour d'appel** **23(1)** Avec l'autorisation d'un juge de la Cour d'appel, toute partie à un appel devant la Commission d'appel peut interjeter appel à la Cour d'appel de l'ordonnance de la Commission d'appel sur une question qui touche la compétence de celle-ci ou sur une question de droit.

Therefore, in order to establish an arguable ground of appeal, the applicant must raise a question of jurisdiction or of law.

Discussion

[25] The materials filed by the applicant focus on numerous grounds of appeal, including alleged breaches of procedural fairness as a result of the directors rejecting materials the applicant sought to submit for consideration; an alleged error in law by refusing to consider potential breaches of the *HR Code* and of the *Charter*; and alleged bias when one of the members of the board (i.e., K. Harrison) signed the reconsideration letters despite the applicant requesting a new panel member be assigned to review his requests for reconsideration.

[26] One of the questions raised by the applicant relates to the jurisdiction of the board to hear and decide questions of constitutional law. The board

noted that a significant part of the submissions advanced by the applicant raised various *Charter* issues. As noted above, the board advised in the reconsideration letters that it had no jurisdiction to consider those issues, relying upon section 2 of the *ATJA*.

[27] In my view, this submission raises a constitutional legal issue as to whether the Province of Manitoba can limit the jurisdiction of an administrative tribunal or board to determine a question of constitutional law. In accordance with section 7(2) of the *CQA*, notice of the applicant's challenge is required to be given to the AGC and the AGM. There is no evidence such notice was provided prior to the hearing.

[28] In accordance with section 7(2) of the *CQA*, I am satisfied that the applicant has challenged the constitutional validity of section 2 of the *ATJA*, and specifically, whether the board can hear and decide *Charter* issues. Therefore, prior to deciding the motions, the applicant must give at least thirty days' notice to the AGC and the AGM of his challenge in accordance with the form of notice specified in section 7(4) of the *CQA*. If the applicant has questions about the manner of service, I direct the directors' counsel to assist in answering any questions the applicant may have.

[29] The applicant's motions must be adjourned to provide the required notice and determine whether the AGC and the AGM wish to reply and be heard on this issue.

[30] It is premature to consider the substance of the applicant's motions until the notice requirement has been satisfied.

Disposition

[31] In the result, both motions are adjourned pending notice being provided to the AGC and the AGM and a reply from them on whether they desire to be heard. If they do wish to be heard on this issue, then the parties may agree on a timetable for filing material and contact the registrar to set a date for the hearing before me in the fall of 2025. If the AGC and the AGM do not wish to be heard, then the parties should so advise the registrar and reasons for decision will be delivered on the two motions.

Edmond JA