KONTZAMANIS GRAUMANN SMITH MACMILLAN INC., Applicant v DARREN STROHAN, Respondent

LRB File Nos.: 209-24 and 241-24; September 23, 2025
Vice-Chairperson, Carol L. Kraft (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Kontzamanis v Strohan,* 2025 SKLRB 44

Counsel for the Applicant, Kontzamanis Graumann Smith Macmillan Inc.: Robert Frost-Hinz

The Respondent, Darren Strohan: Self-Represented

Application for summary dismissal of appeals granted – Appeals raise no arguable question of law – Charter claim under Section 15 not substantiated

REASONS FOR DECISION

Background:

[1] Carol L. Kraft, Vice-Chairperson: The Employer, Kontzamanis Graumann Smith MacMillan Inc. ("KGSMI"), filed two Summary Dismissal Applications seeking to dismiss appeals brought by Darren Strohan. These appeals challenge interim decisions made by an adjudicator appointed under Section 4-3(2) of *The Saskatchewan Employment Act, SS 2013, c S-15.1* (the "Act") to hear Mr. Strohan's complaint alleging discriminatory termination pursuant to Section 3-35 of the Act.

[2] An Occupational Health and Safety Officer found no unlawful discriminatory action. Mr. Strohan appealed that finding. An Adjudicator was appointed by the Board pursuant to s. 4-3 of the Act.

[3] During pre-hearing proceedings with the Adjudicator, disputes arose regarding the exchange of witness lists. Mr. Strohan later requested the adjudicator's recusal, alleging bias. The adjudicator denied the recusal application, finding no reasonable apprehension of bias.

[4] Mr. Strohan subsequently filed two appeals with the Board: one challenging the Adjudicator's handling of the witness list issue, and the other challenging the recusal decision. KGSMI responded to both appeals and filed corresponding Summary Dismissal Applications. Written submissions were received from Mr. Strohan; KGSMI did not provide further submissions.

[5] Further, in his submissions in response to the Summary Dismissal Applications, Mr. Strohan alleges that his rights under Sections 15.1 and/or 15.2 of the *Canadian Charter of Rights and Freedoms* have been violated. He claims that his appeal was handled in a manner that differed from other appellants due to his status as a "Section 3 appellant" under the Act. He seeks a declaration that his Charter rights were infringed and requests numerous orders. Mr. Strohan also provided a Notice of Constitutional Question to the Board, and to both the Attorney General of Saskatchewan and the Attorney General of Canada.

Argument on behalf KGSMI:

[6] KGSMI's submissions, which are the same in both of its applications for Summary Dismissal, are two-fold. First, that Mr. Strohan's Notices of Appeal should be dismissed on the basis that the applications are interlocutory in nature, and therefore pre-emptory. Secondly, that the Appeals should be summarily dismissed on the basis of having no arguable case.

Argument on behalf Mr. Strohan:

[7] In LRB File No. 175-24, Mr. Strohan challenges the Adjudicator's determination that KGSMI complied with the procedural direction regarding witness disclosure ("Witness List Appeal"). He contends that the Adjudicator improperly revised his earlier order and failed to enforce it.

[8] In LRB File No. 214-24, Mr. Strohan appeals the Adjudicator's decision not to recuse himself, alleging a reasonable apprehension of bias ("Recusal Appeal").

[9] Mr. Strohan submits that the Board lacks jurisdiction to summarily dismiss his appeals without an oral hearing, as the authority under subsection 6-111(1)(p) of the Act is confined to union-related matters under Part VI. His appeals arise under Parts III and IV, which address employment standards, occupational health and safety, and adjudicative review, and are therefore outside the scope of Part VI. He argues that applying Part VI powers to dismiss appeals under Part IV contravenes the statutory framework and legislative intent.

[10] As well, Mr. Strohan contends that the appeals should not be dismissed as interlocutory. He argues that the Witness List Appeal seeks enforcement of an Adjudicator's order requiring KGSMI to produce a witness list, while the Recusal Appeal arises from the Adjudicator's failure to enforce that order, prompting a request for recusal. Mr. Strohan asserts that KGSMI's refusal to comply with the witness list obstructs procedural fairness and delays the proceedings.

[11] He further argues that his appeals are not frivolous or vexatious and raise legitimate procedural issues. He maintains that the refusal to produce the witness list denies him the right to know the case to be met, a fundamental aspect of procedural fairness. He also expresses concern about the Adjudicator's impartiality, citing conduct that he believes demonstrates bias. He submits that dismissing the appeals would reward non-compliance, cause irreparable prejudice, and undermine the integrity of the adjudicative process. Accordingly, he asserts that the appeals have a reasonable prospect of success and should be allowed to proceed.

[12] Finally, Mr. Strohan brings a constitutional challenge under s. 15 of the *Canadian Charter of Rights and Freedoms.*

Relevant Statutory Provisions:

[13] The following provisions of the Act were considered in this matter:

> ***Procedures on appeals***
>
> ***4-4****(3) An adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the adjudicator considers appropriate.*
>
> ***Right to appeal adjudicator's decision to board***
> ***4-8****(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III or Part V may appeal the decision to the board on a question of law.*
>
> *(3) A person who intends to appeal pursuant to this section shall:*
>
> > *(a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and*
> >
> > *(b) serve the notice of appeal on all parties to the appeal.*
>
> *. . .*
>
> *(6) The board may:*
>
> > *(a) affirm, amend or cancel the decision or order of the adjudicator; or*
> >
> > *(b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board considers appropriate.*
>
> ***Powers re hearings and proceedings***
> ***6-111****(1) With respect to any matter before it, the board has the power:*
>
> > *. . .*
> > *(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;*
> >
> > *(q) to decide any matter before it without holding an oral hearing.*

Analysis and Decision:

Jurisdiction

[14] Mr. Strohan argues that the Board lacks jurisdiction to summarily dismiss appeals arising under Part IV of the Act asserting that the Board's powers under subsection 6-111(1)(p) of the Act are confined to union-related matters under Part VI. However, this interpretation is not supported by the statutory language.

[15] Section 4-8(2) of the Act confirms that a person directly affected by a decision of an adjudicator under Part III or Part V may appeal that decision to the Board on a question of law. Section 4-8(6) further empowers the Board to affirm, amend, cancel, or remit the adjudicator's decision. Taken together, these provisions establish that the Board has jurisdiction to hear and dispose of appeals under Parts III and IV, including by way of summary dismissal, where appropriate. Accordingly, the Board is satisfied that it has the statutory authority to consider and determine the KGSMI's summary dismissal applications in this matter.

[16] Secondly, it is well established that the Board has authority to summarily dismiss an application, and that it may do so without holding an oral hearing: *Saskatchewan Government and General Employees' Union, Local 1105 v Darryl Upper*, 2023 CanLII 10506 (SK LRB). The source of this authority is found at section 6-111 of the Act.

[17] Summary dismissal applications are generally determined by the Board on the basis of written submissions alone. This promotes efficiency and timeliness in resolving such applications. An applicant or respondent may request the ability to make oral submissions, or the Board may ask the parties for same, but such circumstances tend to be exceptional. The Board's authority to dismiss an application without an oral hearing was discussed in *Siekawitch v Canada Union of Public Employees, Local 21,* 2008, CanLII 47029 at 4-5 (Sask LRB).

Test for Summary Dismissal

[18] The test for summary dismissal is well established. In *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB), the Board summarized the applicable principles:

(a) The Board may summarily dismiss an application where, assuming the applicant can prove all alleged facts, there is no reasonable chance of success. This authority should be exercised only in plain and obvious cases.

(b) In making this determination, the Board considers only the application, any particulars provided, and documents referenced therein.

(c) Summary dismissal is appropriate for applications that are patently defective, that is where the flaws are apparent without weighing evidence or assessing credibility. The Board assumes the facts are true or provable and asks whether they disclose an arguable case. If not, dismissal is warranted to preserve efficiency and avoid unnecessary use of resources.

[19] This test has been consistently applied by the Board.

[20] The question for the Board is whether, assuming the appellant proves the allegations, the claim has no reasonable chance of success, or in other words, whether it is plain and obvious that the application discloses no arguable case. An arguable case exists where, if the facts alleged are accepted as true or provable, the claim raises a legal issue worthy of consideration. At this stage, the Board does not assess credibility or require proof; the threshold is simply whether the appeal presents a reasonable prospect of success based on the legal grounds advanced.

[21] While *Roy* suggests limiting the Board's review to the Notice of Appeal, the Board in *CUPE v Rosom*, 2022 CanLII 100088 (SK LRB), recognized that the Replies from self-represented parties may be treated as particulars. The Board adopts that approach here and will consider Mr. Strohan's Replies accordingly.

[22] As noted in *Andritz Hydro Canada Inc. v Lalonde*, 2021 CanLII 61031 (SK LRB) at paras 15–16, appeals under section 4-8 of the Act require a modified application of the summary dismissal test. Because such appeals are limited to questions of law, the "lack of evidence" criterion is less relevant. Instead, the focus is on whether the grounds of appeal disclose an arguable case, specifically, whether the appellant has identified a potential legal error in the adjudicator's decision. This may include procedural unfairness, misapplication of legal principles, or factual findings that give rise to a legal error, such as findings made without evidence, based on irrelevant evidence, or founded on irrational inferences.

[23] In this case, KGMSI bears the onus of demonstrating that Mr. Strohan's appeal discloses no arguable case. For the reasons that follow, the Board finds that KGMSI has demonstrated that Mr. Strohan's appeals disclose no arguable case and must be dismissed.

Interlocutory Decisions

[24] KGSMI argues that the appeals should be summarily dismissed on the basis that they are interlocutory in nature.

[25] Mr. Strohan submits that his appeals are not interlocutory in nature, as they raise substantive issues of procedural fairness. He argues that KGSMI's refusal to comply with a production order obstructs his ability to prepare his case, and that the Adjudicator's failure to enforce that order warrants recusal due to perceived bias and a loss of confidence in the adjudicative process.

[26] Prematurity is the term usually used to describe the doctrine applied when an applicant seeks judicial review (or in this case, an appeal to the Board) of an interlocutory decision in the administrative law context before the tribunal (in this case the Adjudicator) renders its decision, or before the process can otherwise be considered at an end (see *McDowell v Automatic Princess Holdings*, LLC, 2017 FCA 126 at para 26).

[27] Prematurity deals with preventing parties from delaying proceedings by coming to court (in this case the Board) for a remedy that may prove to be moot or overtaken when the tribunal (Adjudicator) renders its final decision. Prematurity is best understood in the context of interlocutory decisions: *Stevens v Anderson*, 2022 SKKB 270 (CanLII) at para 35.

[28] The seminal decision on the difference between final and interlocutory orders is *Hendrickson v. Kallio,* 1932 CanLII 123 (ON CA):

> *The interlocutory order from which there is no appeal is an order which does not determine the real matter in dispute between the parties – the very subject matter of the litigation, but only some matter collateral. It may be final in the sense that it determines the very question raised by the application, but it is interlocutory if the merits of the case remain to be determined.*

[29] Thus an interlocutory order is one that "does not determine the real matter in dispute between the parties", meaning that "The merits of the case remain to be determined."

[30] The Board finds that both appeals concern procedural rulings made during the course of an ongoing adjudication and do not determine the substantive rights or final outcome of the matter. As such, they are properly characterized as interlocutory.

[31] Clearly, the Adjudicator's decision regarding a witness list does not determine the real matter in dispute, and the merits of Mr. Strohan's appeal remain to be determined. It is an interlocutory decision.

[32] With respect to the Adjudicator's decision on recusal, the Saskatchewan Court of Appeal in *Ayers v Miller*, 2019 SKCA 2 (CanLII) at para 16, strongly suggests that a recusal order is interlocutory. This supports the Board's preliminary finding that the appeal concerns a procedural ruling made during the course of an ongoing adjudication. Moreover, the Court emphasized that mere disagreement with a judge's ruling (in this case, an adjudicator's decision) does not establish a reasonable apprehension of bias. The Board addresses the substance of Mr. Strohan's recusal allegations later in this decision.

[33] Having found the decisions are interlocutory, the next question is whether they are subject to appeal under Section 4-8(2) of the Act. This section provides for the right to appeal an adjudicator's decision to the Board:

> ***4-8****(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III or Part V may appeal the decision to the board on a question of law.*

[34] The question is what is meant by "decision". Does it mean only the final decision of the adjudicator, or does it also include interlocutory decisions.

[35] KGSMI argues that the appeals should be dismissed on the basis that they are interlocutory in nature, and therefore pre-emptory, suggesting that interlocutory decisions are not properly the subject of appeal. However, KGSMI's assertion is made without reference to any supporting case law or statutory authority.

[36] KGSMI refers to *Canadian Union of Public Employees, Local 1561 v. Athabasca Health Authority*, 2003 CanLII 62860 (LRB). However, this decision does not establish a general rule that interlocutory appeals must be dismissed. Rather, it reflects a discretionary procedural ruling made by the Board, which declined to bifurcate a hearing due to concerns about delay, lack of prejudice, and absence of precedent. The decision emphasized that procedural matters are best left to the Board's discretion.

[37] KGSMI does not address the Board's decision in *Arch Transco Ltd. (Regina Cabs) v United Steel*, 2020 CanLII 100542 (SK LRB) ("Arch"), which held that the Board's jurisdiction under section 4-8(2) of the Act is not limited to appeals of final decisions.

[38] In *Arch*, the Board interpreted the right of appeal broadly, concluding that a person directly affected by an adjudicator's decision under Part III may appeal on a question of law, regardless of whether the decision is final. While the Board acknowledged policy concerns about interlocutory appeals, it found no statutory language limiting the scope of appeal to final decisions and emphasized the importance of preserving access to appeal rights in the absence of such limits.

[39] The Court of Appeal's subsequent decision in *Patel v Saskatchewan Health Authority*, 2021 SKCA 115, may have implications for the interpretation of "decision" under the Act. However, KGSMI did not address *Patel* or its potential impact on the Board's reasoning in *Arch*.

[40] KGSMI, having brought the applications on the basis that the decisions Mr. Strohan was appealing were interlocutory, bore the responsibility to identify and present all relevant legal authority in support of its position. Summary dismissal is an exceptional remedy, subject to a stringent test. KGSMI had a full opportunity to make its case but failed to persuade the Board that Mr. Strohan's appeals ought to be dismissed because they are not final decisions. Accordingly, the appeals will not be dismissed solely on the basis that they concern interlocutory matters.

No Arguable Case

[41] The Board finds, however, that the grounds advanced by Mr. Strohan fail to raise a question of law that is reasonably capable of succeeding. The submissions consist primarily of disagreement with procedural rulings made by the adjudicator, without identifying any legal error. Accordingly, for the reasons that follow, the Board concludes that the appeals are properly summarily dismissed on the basis that they disclose no arguable case.

The Witness List

[42] Mr. Strohan alleges procedural unfairness arising from the handling of witness list disclosures. He asserts that:

- On June 25, 2024, during a preliminary conference, the Adjudicator directed both parties to exchange witness lists in preparation for the October 2024 hearing.
- On June 28, KGSMI's counsel confirmed the parties' mutual obligation to comply.
- On July 29, Mr. Strohan submitted his witness list, naming 16 individuals.
- On August 19, KGSMI advised it had no additional witnesses to add and could not yet determine which of Mr. Strohan's witnesses it might call.

- On August 30, the Adjudicator responded to Mr. Strohan's enforcement requests, stating:

> *My view is that Frost-Hinz has not 'reneged on my order'. He has simply indicated that he does not intend to call any witnesses that are not on your list.*

[43] In his Reply, Mr. Strohan emphasized that the June 25, 2024 directive was understood by both parties as binding, and that the Adjudicator reiterated this direction in subsequent emails. For example, on June 29, the Adjudicator wrote: "Strohan will provide his witness list within 3 weeks of receiving the OHS disclosure and the Employer will provide a response list within 3 weeks of receipt of Strohan's list."

[44] Mr. Strohan argues that the Adjudicator's August 30 clarification effectively revised the original directive without notice or justification, and that this contributed to a perception of bias and procedural unfairness.

[45] The exchange of witness lists prior to a hearing is a common and recommended practice in administrative and quasi-judicial proceedings. It serves several important purposes rooted in procedural fairness, efficiency, and effective case management. Advance disclosure minimizes the risk of surprise and ensures that each party has a fair opportunity to prepare for cross-examination and rebuttal. It also promotes efficiency by reducing the likelihood of adjournments due to unanticipated witnesses and allows the adjudicator to allocate hearing time appropriately. Requiring witness lists supports transparency and accountability in the presentation of evidence and helps parties focus their cases, potentially narrowing issues or identifying agreed facts. The practice is widely recognized as a procedural tool that upholds the integrity of the hearing process.

[46] The Board notes that the June 25, 2024 conference included a discussion of timelines for the exchange of witness lists. Mr. Strohan refers to the direction variously as an "Order" and a "directive." However, the Board finds that it was not issued as a binding procedural order under the Act. No written order was made, no formal ruling was recorded, and the adjudicator did not invoke any statutory authority to compel compliance. Instead, the direction was part of a case management discussion typical of adjudicative proceedings, intended to facilitate hearing preparation and procedural efficiency.

[47] Such directions are routinely provided by adjudicators in administrative contexts, are more fluid, and do not carry the same legal weight as formal orders. The Adjudicator's subsequent clarification of this direction, in response to the parties' communications, falls within the scope of

his procedural discretion and does not constitute a revision of a formal order. While the Board notes that the direction was not a formal order, this distinction is not determinative. The Board does not accept that the Adjudicator's handling of the witness list issue gives rise to procedural unfairness.

[48] There is no procedural obligation to submit a list of witnesses a party does not intend to call, and there is no evidence that Mr. Strohan was misled or prejudiced by the clarification. The Adjudicator's interpretation of his own procedural direction falls within his discretion, and Mr. Strohan's disagreement with that interpretation does not amount to procedural unfairness.

[49] Mr. Strohan identified a substantial number of witnesses he intends to call in support of his case. It is a well-understood and routine aspect of litigation that any party who calls witnesses must be prepared for those individuals to be cross-examined. This is a matter of basic procedural fairness and common sense in case preparation. Mr. Strohan cannot reasonably assert prejudice arising from the need to prepare for such cross-examinations, particularly where he has voluntarily chosen to rely on these witnesses.

[50] Further, it is not incumbent upon one party to confirm, in advance, whether it intends to cross-examine a particular witness identified by another party. However, the inclusion of a witness on a party's list does not guarantee that the witness will be called to testify. Consequently, where a party, such as KGSMI, does not request that a specific witness be made available for cross-examination, it assumes the risk that the witness may not be presented. That risk lies with the party who elects not to take steps to ensure the witness's availability.

[51] In this case, Mr. Strohan complied with the directive to submit his witness list. KGSMI responded that it did not intend to call any additional witnesses. Mr. Strohan's claim that the absence of a separate list impairs his ability to prepare is contradicted by his own actions. He has already identified the individuals he intends to call. The procedural framework does not require KGSMI to duplicate that list or identify which of Mr. Strohan's witnesses it may cross-examine.

[52] The Board is not persuaded that Mr. Strohan's allegations establish an arguable case of procedural unfairness. Applying the test set out in *Roy,* the Board finds that Mr. Strohan's Notice of Appeal has no reasonable chance of success. The adjudicator's clarification regarding the witness list direction was within his procedural discretion and did not deprive Mr. Strohan of a fair opportunity to present his case. The concerns raised by Mr. Strohan reflect a subjective perception of unfairness rather than a breach of any procedural rule or principle. The process as

described does not disclose any procedural unfairness. In these circumstances, the Board is satisfied that the appeal raises no arguable case.

[53] The duty of procedural fairness is a cornerstone of administrative law, as affirmed by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)* 1999 CanLII 699 (SCC) among other decisions. These decisions emphasize that fairness is context-specific and must be assessed in light of the nature of the decision, the statutory framework, and the expectations of the parties.

[54] In this case, the adjudicator's direction regarding witness lists, and his subsequent clarification, fall within the scope of procedural discretion afforded under the Act. The adjudicator provided both parties with an opportunity to comply, responded to concerns raised, and maintained a process that allowed Mr. Strohan to present his case. There is no indication that the adjudicator's conduct deprived Mr. Strohan of a fair hearing or violated the principles of natural justice.

[55] Accordingly, the Board is satisfied that the appeal in LRB File No. 175-24 should be dismissed. KGSMI's summary dismissal application in LRB File No. 209-24 is granted.

Recusal

[56] In his Notice of Appeal, Mr. Strohan alleges that the Adjudicator erred in denying his recusal request. He claims the Adjudicator failed to consider the full context of events beginning with the June 25, 2024, conference, including subsequent email exchanges and oral submissions on September 27, 2024. He argues that his concerns were misunderstood or mischaracterized, and that unrelated conflict of interest issues were improperly conflated with his recusal application.

[57] Mr. Strohan also alleges that the Adjudicator failed to enforce the June 25, 2024 directive regarding witness list disclosure. He asserts that KGMSI's refusal to produce a list on August 19, 2024, and the Adjudicator's brief response on August 30, stating it was his "view" that KGMSI had not reneged on the directive, amounted to a revision of the original order without notice or justification. He interprets this as evidence of bias and procedural unfairness.

[58] In his Reply, Mr. Strohan reiterates that he made two requests (August 20 and 29) for enforcement of the directive, and that the Adjudicator's delayed and minimal response contributed to his perception of bias. He formally requested recusal on September 6, 2024, citing these concerns.

[59] The Board understands Mr. Strohan's appeal to allege a reasonable apprehension of bias, based on the following:

(a) The Adjudicator's delayed responses to procedural concerns, which Mr. Strohan says affected his ability to prepare for the hearing;

(b) Mr. Strohan's contention that the Adjudicator mischaracterized his concerns as a misunderstanding of the process, even though he believes he explained them clearly and supported them with evidence, including a video recording of the proceedings;

(c) The Adjudicator's handling of the witness list issue, including the alleged revision of the procedural record without notice or explanation.

[60] Mr. Strohan submits that these actions, taken together, demonstrate a lack of impartiality.

[61] The test for reasonable apprehension of bias is long established and objective. It asks whether an informed and reasonable person, viewing the matter realistically and practically and with knowledge of all relevant circumstances, would conclude that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly. This formulation originates from *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, and was adopted by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

[62] There is a strong presumption of impartiality in judicial and quasi-judicial proceedings. To rebut this presumption, the party alleging bias must present serious and substantial grounds supported by cogent evidence. Mere suspicion or dissatisfaction is insufficient. The Ontario Court of Appeal has described this as a "stringent test" that imposes a "heavy burden" on the alleging party: see *Hazelton Lanes Inc. v. 1707590 Ontario Limited*, 2014 ONCA 793 at paras 58–65; *Taucar v. Human Rights Tribunal of Ontario*, 2017 ONSC 2604; and *Bailey v. Barbour*, 2012 ONCA 325.

[63] The test is not based on the subjective views of the party alleging bias. Rather, it requires a contextual and fact-sensitive inquiry into whether a reasonable and informed person, aware of the adjudicator's conduct and the surrounding circumstances, would perceive a real likelihood of bias. See *Agrium Vanscoy Potash Operations v. United Steel Workers Local 7552*, *Elaine Germain v. Saskatchewan Government Insurance* 2015 SKCA 84 (CanLII).

[64] The Saskatchewan Court of Appeal reaffirmed this approach in *International Brotherhood of Electrical Workers, Local 2038 v. Stuart Olson Industrial Contractors Inc.*, 2023 SKCA 115, citing with approval the Board's reasoning in *Lalonde v. United Brotherhood of Carpenters and Joiners of America, Local 1985*, 2003 CanLII 62882 (SK LRB), and *Jans Estate v. Jans*, 2020 SKCA 61. The Court emphasized that the threshold for establishing bias is high, and that mere conjecture or procedural dissatisfaction does not suffice.

[65] Accordingly, the test is not whether Mr. Strohan subjectively believes the adjudicator was biased, but whether an informed and reasonable person, considering the matter in context, would conclude it is more likely than not that the adjudicator could not decide fairly.

[66] The Board must assess the Adjudicator's conduct in its full context to determine whether it could reasonably give rise to a perception of bias. This requires an objective evaluation of the facts, not speculation or assumption.

[67] Mr. Strohan alleges that the Adjudicator failed to respond promptly to his procedural concerns. He states that he emailed the Adjudicator on August 20 and 29, 2024, requesting enforcement of a June 25, 2024 directive requiring both parties to exchange witness lists. He received only a brief response on August 30, which he characterizes as delayed and insufficient. He contends that this contributed to his perception of bias and procedural unfairness.

[68] Mr. Strohan further claims that the Adjudicator improperly revised the June 25, 2024 directive without notice or justification. He asserts that:

(a) the Adjudicator made a formal order on June 25 requiring both parties to exchange witness lists;

(b) he complied on July 29;

(c) KGMSI declined to submit a list on August 19, stating it had no additional witnesses;

(d) and the Adjudicator's August 30 response, that KGMSI had not "reneged" on the directive, effectively revised the original order.

[69] Mr. Strohan argues that the Adjudicator's acceptance of KGMSI's position, without compelling it to produce a separate list, amounted to preferential treatment. He submits that this

revision occurred without notice, application, or appeal, and undermined the integrity of the process.

[70] The Board finds that Mr. Strohan's allegations regarding delay, revision of a procedural directive, and lack of enforcement do not meet the legal threshold for a reasonable apprehension of bias. The applicable test, as set out in *Committee for Justice and Liberty v. National Energy Board* and reaffirmed in *Agrium Vanscoy Potash Operations v. United Steel Workers Local 7552*, is whether an informed person, viewing the matter realistically and practically, would conclude that the decision-maker may not be impartial.

[71] First, a nine-day delay in responding to procedural correspondence, without evidence of prejudice or improper motive, does not support a finding of bias. Administrative adjudicators routinely manage multiple files, and short delays in communication, particularly when followed by a substantive response, do not reasonably suggest partiality.

[72] Second, the Adjudicator's August 30 clarification, that KGMSI did not intend to call additional witnesses, was consistent with the parties' communications and within his procedural discretion. There is no requirement to produce a witness list if no witnesses are being called, and an informed person, viewing the matter objectively, would not interpret this as evidence of bias.

[73] Finally, the Adjudicator's decision not to compel KGMSI to submit a separate witness list did not impair Mr. Strohan's ability to present his case. It reflected a reasonable interpretation of the directive and did not amount to unequal treatment or favoritism.

[74] Mr. Strohan's allegations of bias are grounded in his personal interpretation of the Adjudicator's conduct, particularly the August 30 email. His characterization of the Adjudicator's "view" as "straight up bias" reflects a subjective perception rather than objective evidence. The Board must assess such claims based on objective evidence, not personal disagreement or speculation.

[75] While Mr. Strohan clearly disagrees with certain procedural decisions, his concerns do not establish a reasonable apprehension of bias. They reflect disagreement with the exercise of discretion, not evidence of partiality. Mr. Strohan does not allege that the Adjudicator had any personal interest, relationship, or conduct that would reasonably support a finding of bias. His concerns focus on procedural management, specifically, the timing and content of the Adjudicator's August 30 email, which he interprets as a revision of an earlier directive. However,

these concerns reflect dissatisfaction with discretionary decisions rather than objective evidence of partiality.

[76] The Board finds that Mr. Strohan's allegations do not meet the objective legal test for a reasonable apprehension of bias. His concerns do not rebut the strong presumption of impartiality that applies to adjudicators acting within their statutory authority. Accordingly, the Board is satisfied that the appeal in LRB File No. 214-24 should be dismissed. KGSMI's summary dismissal application in LRB File No. 241-24 is granted.

The Charter

[77] The Respondent raised, in his written submissions, allegations of a Charter breach. His submits as follows at parge 45 of 54 of his written submissions filed with the Board on January 9, 2025:

> *92. Respondent declares to this Board, and to the Attorney General of Saskatchewan and Canada that he believes that the Employer's applications 209-25 & unknown are a violation of Section 15 of the Charter of Rights and Freedoms. Respondent is a Section 3 appellant under the Act. The Act allows for application 209-24 & unknown under section 6. On December 11, 2024, Respondent was instructed by the Vice-Chair that but for the 209-24 & unknown application by the employer, he would have to forward his "arguable case at law" by January 9, 2025, to advance his appeal. While Respondent endeavored to do that, he discovered on January 2, 2025, that his case was singularly being handled exceptionally differently than that of any other person before him seeking assistance from this Board because he is a Section 3 appellant. Respondent identified and relies on the information of this document for allegations thereof in this document.*

[78] Notice pursuant to *The Constitutional Questions Act* was provided to the Attorney General for Saskatchewan and the Attorney General of Canada. The Attorney General of Canada notified the Board on January 17, 2025 that it did not wish to make submissions. On January 28, 2025, the submissions were provided by the Attorney General of Saskatchewan.

[79] The Attorney General of Saskatchewan responded to the Respondent's Notice of Constitutional Question, which alleged that Part III of *The Saskatchewan Employment Act* violates section 15 of the *Canadian Charter of Rights and Freedoms*. The Respondent claims that, as a Section 3 appellant, he was treated differently than others under the Act, and that this differential treatment amounts to discrimination based on disability. Specifically, he argues that the occupational health and safety provisions under Part III lack the same level of enforcement through the Court of King's Bench as those under Part II, and that this discrepancy reflects systemic inequality.

[80] The Attorney General of Saskatchewan submits that Part III does not create a distinction based on disability, nor does it impose a burden or deny a benefit in a manner that perpetuates disadvantage. Applying the test from *R v Sharma*, 2022 SCC 39, the Attorney General notes that there is no facial or adverse effect discrimination in Part III, and that all individuals under its scope are treated equally. The absence of King's Bench oversight in Part III does not amount to a Charter violation, as the Charter does not require uniformity across legislative schemes. Moreover, Part III provides comprehensive protections through occupational health and safety legislation, with appellate oversight available through an Adjudicator, the Labour Relations Board, and ultimately the Court of Appeal.

[81] The Attorney General of Saskatchewan submits that Mr. Strohan has not raised a justiciable issue under section 15 of the Charter. His allegations do not demonstrate a distinction based on an enumerated or analogous ground, nor do they establish a disproportionate impact on persons with disabilities. Accordingly, the constitutional challenge does not disclose a valid equality rights claim.

[82] The Board has considered the submissions of Mr. Strohan and the Attorney General of Saskatchewan and finds that Mr. Strohan has not established a breach of section 15 of the *Canadian Charter of Rights and Freedoms*. The legislative framework under Part III of *The Saskatchewan Employment Act* does not create a distinction based on disability, nor does it result in a disproportionate impact on persons with disabilities. Accordingly, the Board concludes that the constitutional challenge does not disclose a justiciable issue under the Charter.

Conclusion:

[83] For the foregoing reasons, an Order will issue as follows:

(a) that the applications in LRB File Nos.: 209-24 and 241-24 are granted; and

(b) that the applications in LRB File Nos.: 175-24 and 214-24 are dismissed pursuant to Section 6-111(1)(p) of *The Saskatchewan Employment Act*.

[84] The Board thanks the parties for the submissions they provided, all of which were reviewed and considered in making a determination in this matter.

DATED at Regina, Saskatchewan, this **23rd** day of **September, 2025.**

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson