KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 9**

Date: **2026 01 12**
Docket: KBG-SA-00865-2025
Judicial Centre: Saskatoon

BETWEEN:

CITIZENS FOR PUBLIC JUSTICE, KIKÉ DUECK a minor by their litigation guardian KRIS DUECK, SHERRY OLSON, MATTHEW WIENS, and the SASKATCHEWAN ENVIRONMENTAL SOCIETY INC.

APPLICANTS

- and -

THE GOVERNMENT OF SASKATCHEWAN

RESPONDENT

Counsel:

Glenn A. Wright	for the applicants
C. Elaine Thompson, K.C. and Michael Baumgartner (student-at-law)	for the respondent

---

JUDGMENT
January 12, 2026

R.S. SMITH J.

Introduction

[1] SaskPower Corporation [SaskPower] is a Crown corporation created by the Government of Saskatchewan [Government] that operates under the Government's direction. SaskPower has indicated its intention to extend the life of two coal-powered

generating stations as they are necessary to fulfill the electricity needs of the Province of Saskatchewan.

[2] The applicants are an eclectic crew of citizens who love the Earth. They take umbrage with the decision as coal-powered generating stations increase greenhouse gases [GHG] that foul the Earth's atmosphere.

[3] The applicants seek, by way of Originating Application, an order effectively setting aside the decision to extend the life of the said stations.

[4] The Government replies by seeking an order striking out or setting aside the Originating Application on the basis that:

(1) The Originating Application fails to raise justiciable issues; and

(2) The Originating Application does not articulate a matter that is suitable for judicial review.

[5] The matter came to court on October 15, 2025, and the Court ordered that there be a preliminary debate on whether the Originating Application raises a justiciable issue. That debate came before me on November 10, 2025.

Background

[6] On June 18, 2025 Jeremy Harrison, Minister of Crown Investments Corporation and the Minister responsible for SaskPower, wrote a letter to all SaskPower employees. The germane extracts are:

> I am writing to inform you that the Government of Saskatchewan has made the decision that SaskPower's coal-generating power assets will be life-extended as we bridge to nuclear baseload power generation. …

> SaskPower is projecting that power demand will massively increase over the next two decades. Our government has decided upon an all-of-the-above approach to meeting this unprecedented demand growth. To that end, we have added hundreds of megawatts of new renewable power generation, new natural gas plants, and biomass. This is in addition to our already existing hydro and other assets.
>
> We have also made the strategic decision that our priorities going forward will be reliable and affordable power generation along with energy security. This led to a fundamental reconsideration of the future role of coal in our system. …
>
> …
>
> The Government of Saskatchewan remains committed to the goal of a net zero grid by 2050. But this must be done responsibly and be based on the deployment of nuclear generating assets fueled by uranium mined in our province. We have been working diligently on the options that exist in this space including partnering with the Governments of Ontario, Alberta, and New Brunswick on small modular reactor (SMR) development. …
>
> …
>
> The Government of Saskatchewan is going to be realistic in not compromising the reliability, affordability and security of the power grid when we are already making such significant contributions to environmental sustainability. Other announcements will be coming in due course as we chart our path based on the principles of reliability, affordability, and energy security. This will include grid enhancements, new generation projects, and significant investments in SaskPower's future. This decision will position Saskatchewan at the center of the North American energy grid with options for export and for the potential attraction of new investments that are large scale users of electricity. [Coal Decision]
>
> …

[7] The Originating Application seeks, *inter alia*, an order in the nature of *certiorari* setting aside or quashing the Coal Decision.

[8] In support of their arguments, each of the applicants have filed an affidavit averring to the sundry shibboleths of environmental activism. This is not to say they do not have cause for concern.

[9] In *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at paras 7-12, the Supreme Court cautioned us all:

> 7 Global climate change is real, and it is clear that human activities are the primary cause. In simple terms, the combustion of fossil fuels releases greenhouse gases ("GHGs") into the atmosphere, and those gases trap solar energy from the sun's incoming radiation in the atmosphere instead of allowing it to escape, thereby warming the planet. Carbon dioxide is the most prevalent and recognizable GHG resulting from human activities. Other common GHGs include methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride.
>
> 8 At appropriate levels, GHGs are beneficial, keeping temperatures around the world at levels at which humans, animals, plants and marine life can live in balance. And the level of GHGs in the atmosphere has been relatively stable over the last 400,000 years. Since the 1950s, however, the concentrations of GHGs in the atmosphere have increased at an alarming rate, and they continue to rise. As a result, global surface temperatures have already increased by 1.0[degrees]C above pre-industrial levels, and that increase is expected to reach 1.5[degrees]C by 2040 if the current rate of warming continues.
>
> 9 These temperature increases are significant. As a result of the current warming of 1.0[degrees]C, the world is already experiencing more extreme weather, rising sea levels and diminishing Arctic sea ice. Should warming reach or exceed 1.5[degrees]C, the world could experience even more extreme consequences, including still higher sea levels and greater loss of Arctic sea ice, a 70 percent or greater global decline of coral reefs, the thawing of permafrost, ecosystem fragility and negative effects on human health, including heat-related and ozone-related morbidity and mortality.
>
> 10 The effects of climate change have been and will be particularly severe and devastating in Canada. Temperatures in

this country have risen by 1.7[degrees]C since 1948, roughly double the global average rate of increase, and are expected to continue to rise faster than that rate. Canada is also expected to continue to be affected by extreme weather events like floods and forest fires, changes in precipitation levels, degradation of soil and water resources, increased frequency and severity of heat waves, sea level rise, and the spread of potentially life-threatening vector-borne diseases like Lyme disease and West Nile virus.

11 The Canadian Arctic faces a disproportionately high risk from climate change. There, the average temperature has increased at a rate of nearly three times the global average, and that increase is causing significant reductions in sea ice, accelerated permafrost thaw, the loss of glaciers and other ecosystem impacts. Canada's coastline, the longest in the world, is also being affected disproportionately by climate change, as it experiences changes in relative sea level and rising water temperatures, as well as increased ocean acidity and loss of sea ice and permafrost. Climate change has also had a particularly serious effect on Indigenous peoples, threatening the ability of Indigenous communities in Canada to sustain themselves and maintain their traditional ways of life.

12 Climate change has three unique characteristics that are worth noting. First, it has no boundaries; the entire country and entire world are experiencing and will continue to experience its effects. Second, the effects of climate change do not have a direct connection to the source of GHG emissions. Provinces and territories with low GHG emissions can experience effects of climate change that are grossly disproportionate to their individual contributions to Canada's and the world's total GHG emissions. In 2016, for example, Alberta, Ontario, Quebec, Saskatchewan and British Columbia accounted for approximately 90.5 percent of Canada's total GHG emissions, while the approximate percentages were 9.1 percent for the other five provinces and 0.4 percent for the territories. Yet the effects of climate change are and will continue to be experienced across Canada, with heightened impacts in the Canadian Arctic, coastal regions and Indigenous territories. Third, no one province, territory or country can address the issue of climate change on its own. Addressing climate change requires collective national and international action. This is because the harmful effects of GHGs are, by their very nature, not confined by borders.

[10] The question is not whether climate change is real. The question is how best to address it. The corollary question is how best to address it and at the same time balance the various interests in play including the electricity needs of Saskatchewan and incidental economic considerations.

[11] There are intractable competing interests on the proverbial table. An equally legitimate question is whether it is appropriate for the Court to weigh in on the solution or whether this particular debate is beyond the proper scope of the Court.

Applicants' Argument

[12] In the applicants' brief filed October 23, 2025, starting at paragraph 51 the applicants argue:

> 51. The Originating Application in this case is seeking judicial review of the Coal Decision based on the archetypical standards of legality from administrative law, including review for reasonableness and correctness in relation to the constraints that legally bear upon the decision. The Applicants assert that judicial review applications are distinct from constitutional challenges to specific laws under section 52 of the *Constitution Act, 1982* [Schedule B to the *Canada Act 1982* (UK), 1982, c 11].
>
> 52. The Respondent's brief conflates judicial review with *Charter* [*Canadian Charter of Rights and Freedoms*] challenges to laws by referring to a significant body of case law that has no direct bearing on this case. Cases involving barriers to justiciability with respect to final determinations of the constitutionality of laws of general applications and the appropriate remedies in those cases must be approached with caution when addressing justiciability in context to judicial review of discretionary government decision-making [*Doré v Barreau du Québec*, 2012 SCC 12 at paras 22-58]. In the first context, the Court is tasked with assessing the constitutionality of a norm that is general in scope, requiring the assessment of "legislative policies", while in the latter context the Court is assessing the legality of a specific decision based on its unique

> circumstances [*Multani v Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 at paras 112, 121].

[13] Then at paragraph 60:

> 60. As a final note, the Respondent cites *Operation Dismantle* at paragraphs 12-16 of their brief to argue against the justiciability of the underlying application for judicial review in this matter [Brief of the Respondent, Attorney General of Saskatchewan, dated October 6, 2025, citing *Operation Dismantle v The Queen*, [1985] 1 SCR 441 [*Operation Dismantle*]. The Applicants assert that this application is not about judging "the wisdom of executive exercises of power." What this case is about is whether the Coal Decision is legal in accordance with the standards furnished by administrative law, including the correctness and reasonableness of the decision in relation to a wide variety of relevant constraints bearing upon it. The Applicants anticipate that the application for judicial review, if allowed to proceed, would focus on the legality of the Respondent's *decision-making process* rather than the final outcome. However, it is also notable that *Operation Dismantle* stands for the proposition that even Cabinet decision-making must comply with the *Charter*, as succinctly stated by Wilson J.:
>
> I would conclude, therefore, that if we are to look at the Constitution for the answer to the question whether it is appropriate for the courts to "second guess" the executive on matters of defence, we would conclude that it is not appropriate. **However, if what we are being asked to do is to decide whether any particular act of the executive violates the rights of the citizens, then it is not only appropriate that we answer the question; it is our obligation under the *Charter* to do so** [*Operation Dismantle*]. Emphasis added.

[14] In the conclusion section of their brief, the applicants posit starting at paragraph 91:

> 91. The applicants challenge the Coal Decision to extend the life of coal generation to 2050. While there may be portions of the Coal Decision letter that could be

> characterized as political announcements, or broad policy decisions, there is clearly action that is already being taken as a result of the Respondent's decision and direction to SaskPower. When the Respondent steps into the shoes of the administrative decision maker and directs immediate action, such decisions are administrative in nature and subject to a judicial review process, particularly when those decisions are not transparent, intelligible, or justified.
>
> 92. The Coal Decision is legally and factually flawed, undermines federal law and international obligations, and threatens constitutional protections related to climate impacts. Given its serious implications and lack of alternative remedies, the Coal Decision is subject to judicial review to uphold the rule of law.

[15] The applicants seek an order that the Court order the respondent to provide to them "any relevant record of proceedings related to the Government of Saskatchewan's decision to extend coal-fired generation to 2050." Only after such disclosure the applicants argue that there should be an argument respecting both the issue of justiciability and the merits of the Originating Application to set aside the Coal Decision.

[16] The applicants cite no statute or treaty or other edict that would underpin the relief they seek. It would appear their complaint is that the Coal Decision is yet another wrongheaded decision on the part of the Government of Saskatchewan.

Government Reply

[17] The Government begins its analysis with a review of the touchstone Supreme Court decision respecting administrative and judicial review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Starting at paragraph 5 counsel for the government makes the case:

5. In [*Vavilov*] the Supreme Court revised the framework for administrative review, replacing the contextual analysis framework (which oriented around the relative expertise of the statutory decision maker) with a presumption that an administrative decision is reasonable on the merits (para 16-17). The Court explained that the contextual framework had become unwieldly to the point where debates around the appropriate standard of review were overshadowing the review on the merits and undermining access to justice. The Court emphasized that the new analytical framework for administrative decisions is designed to simplify review, provide certainty to the parties, and to respect legislative choices to limit court interference in administrative decision making.

6. *Vavilov* provides a framework for reviewing decisions under delegated statutory authority.

7. (Minister Harrison's letter of June 18, 2025) is not a decision exercising delegated statutory authority. No statutory authority limits when a Minister can write a letter. No legislative constraint is asserted to govern the mandate, contents, or effect of the Letter. The Letter has no legal aspect. The Letter is an announcement of a core policy decision.

8. The Government submits that the framework for judicial review in *Vavilov* does not provide the Court with a judicially manageable standard upon which to review the Letter.

...

11. With the recent proliferation of diffusely pleaded *Charter* claims having to do with the environment fears and concerns about societal inequity, a jurisprudential trend is developing, emphasizing the need for claimants to plead a sufficient legal component in order to anchor a political claim. This trend is especially pronounced in the context of claims asserting infringement of section 7 *Charter* rights.

12. In an early decision striking a s.7 *Charter* claim, Wilson J.'s concurring judgement in *Operation Dismantle v. The Queen*, [1985] 1 SCR 441 confirmed that a section 7 claim asserting that Canada's decision to allow US cruise missile testing on Canadian soil was insufficiently proximate to

engage the section 7 rights of Canadian citizens. Although Wilson J.'s decision concurred with the majority in the result only, her reasoning in *Operation Dismantle* has been cited throughout justiciability jurisprudence as the basis for what has become the Canadian jurisprudential approach to "political questions" (*La Rose v Canada* 2023 FCA [*La Rose*] 241 at para 34; *Schmidt v the Queen* 1987 CanLII 48 (SCC); *Gosselin v Quebec (Attorney General)* 2002 SCC 84 (Arbour J. in dissent) at para 330; *Finlay v Canada (Minister of Finance* 1986 CanLII 6 (SCC) at para 33; *Canada (Auditor General) v Canada (Minister of Energy, Mines and Resources* 1989 CanLII 73 (SCC); *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society* 2012 SCC 45 at para 40.

...

14. Wilson J.'s reasoning disclosed an underlying concern about the need to ensure that governments retain flexibility to make broad core policy decisions, without legal constraints having to do with the risk of ancillary effects on Canadians. She explained that many state decisions affect life, liberty and security of citizens, but that to allow the ambit of section 7 protection to extend to a right of Canadians to protection in the realm of broad executive decisions about international affairs, could have a paralyzing effect on government decision-making in this field ... [quote omitted].

15. While Wilson's J. [sic] emphasized that the Canadian constitution does not preclude the assessment of political questions (as is the case in American jurisprudence), her point was that courts must still balance the need to protect citizens with the need for government to be free to make broad policy decisions. Her concern is particularized by the distinction she draws between non-justiciable questions about whether a policy is sound, and justiciable questions about whether a policy decision breaches rights ... [quote omitted].

16. *Operation Dismantle* confirms that to be justiciable, a *Charter* claim must be capable of principled legal assessment based on rights, not questions concerning the wisdom of executive exercises of power.

...

28. While *Imperial Tobacco* deals with the difficulty of establishing proximity between government action and harm in the context of a tort claim, the Court's comments on proximity are relevant to the proximity analysis required to establish the existence of a *Charter* right in constitutional rights claims because the purpose of proximity in both types of claims includes a concern about unduly fettering executive decision-making:

> Since this is a motion to strike, the question before us is simply whether, assuming the facts pleaded to be true, there is any reasonable prospect of successfully establishing proximity, on the basis of a statute or otherwise. On one hand, **where the sole basis asserted for proximity is the statute, conflicting public duties may rule out any possibility of proximity being established as a matter of statutory interpretation**: *Syl Apps*. On the other, where the asserted basis for proximity is grounded in specific conduct and interactions, ruling a claim out at the proximity stage may be difficult. So long as there is a reasonable prospect that the asserted interactions could, if true, result in a finding of sufficient proximity, and the statute does not exclude that possibility, the matter must be allowed to proceed to trial, subject to any policy considerations that may negate the prima facie duty of care at the second stage of the analysis. (at para 47)

29. Third, *Imperial Tobacco* confirms that the weighing of social economic and political considerations to arrive at a course or principle of action is the proper role of government, not the courts. A sufficiently proximate relationship between tobacco companies and Canada was determined to exist in cases where the companies relied on statements Canadian officials made about the advantages of light or mild cigarettes. But, the claim was ultimately struck because the impugned state conduct was characterized as a matter of core policy.

> Instead of defining protected policy decisions negatively, as "not operational", the majority in Gaubert defines them positively as discretionary legislative or administrative decisions and conduct that are grounded in social, economic, and political considerations. Generally, policy decisions are made by legislators or

> officers whose official responsibility requires them to assess and balance public policy considerations. The decision is a considered decision that represents a "policy" in the sense of a general rule or approach, applied to a particular situation. It represents "a course or principle of action adopted or proposed by a government": *New Oxford Dictionary of English* (1998), at p. 1434. **When judges are faced with such a course or principle of action adopted by a government, they generally will find the matter to be a policy decision. The weighing of social, economic, and political considerations to arrive at a course or principle of action is the proper role of government, not the courts.** For this reason, decisions and conduct based on these considerations cannot ground an action in tort.
>
> Policy, used in this sense, is not the same thing as discretion. Discretion is concerned with whether a particular actor had a choice to act in one way or the other. Policy is a narrow subset of discretionary decisions, covering only those decisions that are based on public policy considerations, like economic, social and political considerations. Policy decisions are always discretionary, in the sense that a different policy could have been chosen. But not all discretionary decisions by government are policy decisions. (paras 87-88 emphasis added)

...

31. In *Tanudjaja* [2014 ONCA 852] the Court of Appeal for Ontario struck broadly pleaded *Charter* claims based on s.7 and s.15 (equality rights), concerning the adequacy of government action to address homelessness. The claims were struck because no judicially discoverable or manageable standard was pleaded upon which the court could assess the adequacy of broad social policies by application of law.

> Finally, **there is no judicially discoverable and manageable standard for assessing in general whether housing policy is adequate or whether insufficient priority has been given in general to the needs of the homeless. This is not a question that can be resolved by application of law**, but rather it engages

> the accountability of the legislatures. Issues of broad economic policy and priorities are unsuited to judicial review. Here, the court is not asked to engage in a "court-like" function, but rather to embark on a course more resembling a public inquiry into the adequacy of housing policy. (emphasis in original brief)

Analysis

[18] My colleague, Justice Kuski Bassett, recently grappled with a similar debate in *Dykstra v Saskatchewan Power Corporation*, 2025 SKKB 175 [*Dykstra*]. In it, the applicants brought an Originating Application asking the Court to impose "an exacting plan on the Respondents to combat climate change". From paragraph 6 of the judgment:

> 6 ... For example, they seek a Court order directing the Government to prepare a "generation and asset management plan" that will provide and deliver "Net Zero electricity" by "the end of year 2035 or in the alternative by end of year 2040 at the latest" (para. 15(b)). They plead that, "given the urgency of the climate crisis and the pressing need for transformative action within the next 7 years, such an order is warranted" (para. 45). In the Claim, the Applicants state that "Net Zero means that GHG emissions produced by human activity are reduced sharply and that any remaining GHG emissions that cannot be eliminated are negated completely by implementing methods of absorbing carbon dioxide from the atmosphere to offset remaining GHG emissions" (para. 3).

[19] Justice Kuski Bassett penned a learned treatise on the issue of justiciability. I willingly associate myself with her analysis and, more to the point, adopt same, in full. At paragraph 69 she quotes from a relatively recent Supreme Court decision:

> 69 In *R v Chouhan*, 2021 SCC 26 at para 84, [2021] 2 SCR 136, in the context of considering whether amendments to the *Criminal Code*, RSC 1985, c C-46 were constitutional, Moldaver and Brown JJ. **explained the court's role in conducting a *Charter* analysis. They stated the analysis**

> **requires the court to "protect against incursions on fundamental values" but "not to second guess policy decisions" of the legislature, because when "struggling with questions of social policy and attempting to deal with conflicting [social] pressures 'a legislature must be given reasonable room to manoeuvre'"** (citing *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 at 194, per La Forest J. (concurring); and *Black v Law Society of Alberta*, [1989] 1 SCR 591 at 627).
>
> [Emphasis in original]

[20] My colleague notes at paragraph 118 of *Dykstra*:

> 118 In the circumstances, I agree with the submissions made by the Respondents. The issues in the Claim are not properly advanced for constitutional adjudication. **Through the remedies sought, the Applicants ask the Court to direct the enactment of new laws and engage in ongoing policy oversight, which is in essence court-directed legislative reform**. The Applicants are dissatisfied with what they regard as the Respondents' completely inadequate, irresponsible, and harmful response to climate change, and they ask the Court to direct the legislative branch and control Government choices around electricity delivery in the province for years to come. In my view, to do so would require the Court to disregard the time-honoured separation of powers in our constitutional democracy in a manner that exceeds its institutional capacity and legitimacy.
>
> [Emphasis in original]

[21] My colleague's remarks are apposite to the within debate.

[22] Not every dispute is justiciable. Climate change is real. Therapeutic steps should be taken. This is why it is important that all citizens of the body politic elect thoughtful and intelligent people to sit in our parliament, legislature and municipal councils.

[23] I respectfully posit, the Court's role is to administer justice, resolve legal disputes and interpret the Constitution and laws, acting as the independent judicial branch of government that upholds the rule of law and protects rights. It is not for the

Courts to sift through the granular details with a view to directing departments and government agencies as to the appropriate steps to be taken to reach a particular goal.

[24] The Courts are not designed to manipulate the nuts and bolts of government action with a view to achieving policy ends. Those steps should be taken by men and women who will be answerable to the body politic for their actions.

[25] The Courts should be cautious and exercise deference to those who are elected and thus accountable to the people who bear the impact of those decisions.

[26] In sum, Courts should not be dictating to the Government of Saskatchewan what its overarching environmental policy should be. Nor should the Courts purport to decide the multiple steps to be taken to combat climate change. In fact, the Courts should not be deciding the day-to-day steps of a government, like where to put the town dump or where the bicycle lanes should be situated.

[27] It is appropriate to grant the relief sought by the government, namely an order under Rule 7-9 of *The King's Bench Rules* striking out and setting aside the application brought by the applicants in its entirety.

[28] The government has sought costs. I note that the government is fortunate to have two very insightful counsel on its staff who have argued this matter. No fees were paid to outside firms. Although the legal debates herein are somewhat esoteric, it all stems from the problem of climate change which should concern all citizens. Respectfully, in my view, an award of costs against the applicants serves no larger good.

J.
R.S. SMITH