

CITATION: 2026 NBKB 099

Docket: FC-458-2025

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

SAYED ISMAIL,

Appellant,

-and-

CUSTOM CARPENTRY BY MARC INC.

Respondent.

DECISION

Dates of Hearing:	April 23, 2026
Date of Decision:	May 21, 2026
Subject Matter:	Small Claims Appeal; Questions of Law or Fact
Before:	Justice Terrence J. Morrison
At:	Burton, New Brunswick
Appearances:	Sayed Ismail, <i>per se</i> The Respondent, not present

DECISION

Morrison, J.

I. INTRODUCTION

[1] This matter involves a dispute between Custom Carpentry by Marc Inc. (“Custom Carpentry”) and Sayed Ismail, regarding an invoice issued by Custom Carpentry for renovations to Mr. Ismail’s home. Custom Carpentry submitted an invoice for \$10,460.11 for the work it performed. Mr. Ismail refused to pay the invoice, claiming that Custom Carpentry breached the contract between them by unilaterally charging an hourly rate higher than that agreed upon, inflated the hours worked on the job, poor workmanship including improper installation of a non-return valve, overcharging for material, among other issues. As a result of Mr. Ismail’s refusal to pay the invoice, Custom Carpentry filed a claim against Mr. Ismail under the *Small Claims Act*, SNB 2012 c.15, for the outstanding invoice amount of \$10,460.11. Mr. Ismail filed a response, denying the claim and making a counterclaim of \$4000.00 for damages allegedly suffered as a result of delays in the work, expected remediation of errors, and increased risk of failure of the house drainage system due to improper installation of the non-return valve. After the conclusion of a two-day hearing, the adjudicator issued a decision dated November 6, 2025 (the “Decision”) largely in favour of the plaintiff. After some adjustments, the adjudicator awarded Custom Carpentry the sum of \$9,229.08 and rejected Mr. Ismail’s counterclaim but for \$100.00 to remedy deficiencies. The adjudicator ruled that Custom Carpentry shall have judgment against Mr. Ismail in the total amount of \$9,129.08.

[2] This is an appeal by Mr. Ismail, pursuant to s. 20 of the *Small Claims Act*, which provides for an appeal of an adjudicator's decision to the Court of King's Bench of New Brunswick in accordance with the regulations under the Act. Subsection 42.1(2) of the *General Regulation – Small Claims Act*, NB Reg. 2012-103 (the “*General Regulation*”) provides as follows:

42.1(2) A party to an action may appeal a decision of the court **on a question of law or jurisdiction** to the Court of King's Bench by filing a notice of appeal (Form 17.1) with the clerk of the judicial district where the action was heard, with the filing fee required by the Rules of Court.[Emphasis added]

[3] In his Notice of Appeal, filed December 8, 2025, Mr. Ismail raises the following grounds of appeal:

1. Incorrect application of the law. The Adjudicator failed to apply the correct legal principles by disregarding the express terms of the binding agreement between the parties. Instead, the decisions were made based on what the Adjudicator considered to be common practice, rather than adhering to the contractual obligations agreed upon by the Claimant and Defendant.
2. Decisions issued by the Adjudicator are based on an *altered* voice.
3. The Adjudicator's decisions related to labour costs are not supported by the evidence provided by the Claimant.
4. The Adjudicator was unable to rule on the key issue of the location of the Non-Return Valve (NRV). This makes the Adjudicator's ruling on the defendant's request for compensation for potential damages inconsistent. These two matters cannot be separated, and a ruling on one without properly addressing the other undermines the coherence and fairness of the decision.
5. The decision documents issued by the Adjudicator failed to address significant aspects related to the costs, quantity, and relevance of materials involved in the project. Furthermore, no reasons were provided by the Adjudicator for the omission of these critical issues from the decision.

6. There were procedural abnormalities/irregularities during the two-day hearing. These irregularities resulted in the Defendant not being given an adequate opportunity to present his case and file response to the evidence submitted by the Claimant. This lack of opportunity to respond undermined the fairness of the proceedings and the outcome of the trial.

[4] As required by the *General Regulation* (s. 42.1(6)) the adjudicator submitted a Summary Report on Appeal, which was filed on February 20, 2026.

[5] This appeal was heard on April 25, 2026. Mr. Ismail appeared in person. Custom Carpentry did not appear, nor did it make any written submissions. During the hearing, Mr. Ismail gave oral explanations/arguments with respect to each of the grounds of appeal. I address Mr. Ismail's submissions in the analysis found later in these reasons.

II. ANALYSIS AND DECISION

A. *Question of Law*

[6] As mentioned, an appeal lies to the Court only on a question of law or jurisdiction. Findings of fact cannot ground an appeal to this Court (*Moyer v. Intact Insurance Company* 2024 NBKB 167 at paras. 8-9). Thus, the *General Regulation* provides for a limited statutory appeal.

[7] In *Patel v. New Brunswick (Executive Director of Assessment)*, 2024 NBCA 108, our Court of Appeal outlined the constraints imposed on appellate courts (as this Court is in this matter) when dealing with a limited statutory right of appeal, at paragraph 19:

19 Thus, in an appeal under a limited statutory right of appeal, the appellate standards engaged are those that are applicable to the

issues that fall within the scope of the limited right of appeal and are raised by the grounds of appeal. Where the right is limited to questions of law, as is the case under s. 37, the standard of review is correctness. Similarly, on questions of mixed fact and law, where there is an extricable question of law, the standard is correctness. A **statutory right of appeal that is limited to questions of law precludes a determination of questions of fact** on the palpable and overriding standard; that standard is engaged only where the scope of the appeal includes questions of fact. **If this were not the case, the words in the statute limiting the right of appeal would be meaningless, and the legislative intent to confer a limited right of appeal would be frustrated.** Indeed, to otherwise apply all of the appellate standards would disregard the legislated limit on the right of appeal to questions of law. [Emphasis added]

[8] The threshold question is whether the Notice of Appeal raises any question or questions of law or jurisdiction. For the reasons that follow, I conclude that grounds 1 to 5 do not. I deal with ground #6 separately.

[9] The law recognizes questions of law, questions of fact and questions of mixed fact and law. The distinction between these questions was addressed by the Supreme Court of Canada in *Canada (Director of Investigations and Research) v. Southam Inc.* [1997], 1 SCR 748, at paragraph 35:

35 Section 12(1) of the *Competition Tribunal Act* contemplates a tripartite classification of questions before the Tribunal into questions of law, questions of fact, and questions of mixed law and fact. **Briefly stated, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests.** A simple example will illustrate these concepts. In the law of tort, the question what “negligence” means is a question of law. The question whether the defendant did this or that is a question of fact. And, once it has been decided that the applicable standard is one of negligence, the question whether the defendant satisfied the appropriate standard of care is a question of mixed law and fact. **I recognize, however, that the distinction between law**

on the one hand and mixed law and fact on the other is difficult. On occasion, what appears to be mixed law and fact turns out to be law, or vice versa. [Emphasis added]

[10] The underlying dispute in this case is about whether there was a breach of an oral contract for renovations to the appellant's home. This is a contract interpretation case. In *Dustin Ramsey dba Down to Earth Construction v. Monique Pitre Construction*, 2025 NBKB 217, Doucet, J. outlines the Court's task in such cases, at paragraph 26:

26 **In cases where the claim arises from the whether or not a construction/renovation contract was completed, or deficiencies with respect to the work, the trial judge ought to resolve the case exclusively on the basis of contract principles.** (See *J.E.G. Construction Ltee. v. Blanchard* [1996] N.B.J. No. 460 (NBCA) para. 5). **In short, my task is to determine the terms of the contract between the parties and whether the contract was fulfilled.** If the Plaintiff discharged his obligations under the contract, then his claim will succeed. If not, then he may not succeed in recovering his total claim, possibly entitling the Defendant to a credit for deficiencies. Therefore, it is essential to ascertain the terms of the contract between the parties. It should be noted that the Defendant did not file a Counter-Claim. [Emphasis added]

[11] Historically, the interpretation of a contract was considered a question of law. However, that view was changed by the Supreme Court of Canada's decision in *Sattva Capital Corp. v. Creston Moly Corp.* [2014], 2 SCR 633. The significance of *Sattva* in determining what is or is not a question of law, fact or mixed fact and law in the context of contractual interpretation was extensively canvassed by our Court of Appeal in *New Brunswick Highway Corporation v. MRDC Operations Corporation*, 2023 NBCA 19. Writing on behalf of a unanimous Court, Quigg, J.A. outlined the principles expounded in *Sattva*, at paragraph 30:

30 *Sattva* articulates the following principles of contract law:

The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement (see *Moore Realty Inc. v. Manitoba Motor League*, 2003 MBCA 71, 173 Man. R. (2d) 300, at para. 15, per Hamilton J.A.; see also *Hall*, at p. 22; and *McCamus*, at pp. 749-50). As stated by Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*, [1998] 1 All E.R. 98 (H.L.):

The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. (p. 115)

With respect for the contrary view, I am of the opinion that the historical approach should be abandoned. Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix.

The purpose of the distinction between questions of law and those of mixed fact and law further supports this conclusion. One central purpose of drawing a distinction between questions of law and those of mixed fact and law is to limit the intervention of appellate courts to cases where the results can be expected to have an impact beyond the parties to the particular dispute. It reflects the role of courts of appeal in ensuring the consistency of the law, rather than in providing a new forum for parties to continue their private litigation. For this reason, Southam identified the degree of generality (or “precedential value”) as the key difference between a question of law and a question of mixed fact and law. The more narrow the rule, the less useful will be the intervention of the court of appeal: [...]

Similarly, this Court in *Housen* found that deference to fact-finders promoted the goals of limiting the number, length, and cost of appeals, and of promoting the autonomy and integrity of trial proceedings (paras. 16-17). These principles also weigh in favour of deference to first instance decision-makers on points of contractual interpretation. The legal obligations arising from a contract are, in most cases, limited to the interest of the particular parties. Given that our legal system leaves broad scope to tribunals of first instance to

resolve issues of limited application, this supports treating contractual interpretation as a question of mixed fact and law.

Nonetheless, it may be possible to identify an extricable question of law from within what was initially characterized as a question of mixed fact and law (*Housen*, at paras. 31 and 34-35). Legal errors made in the course of contractual interpretation include “the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor” (*King*, at para. 21). Moreover, there is no question that many other issues in contract law do engage substantive rules of law: the requirements for the formation of the contract, the capacity of the parties, the requirement that certain contracts be evidenced in writing, and so on.

[Emphasis in original; paras. 48, 50-53]

[12] While it may be possible to identify an extricable question of law from within an apparent question of mixed fact and law, such cases are rare and appellate courts are to be cautious in identifying such questions of law, especially in cases of contractual interpretation (*Sattva*, paras. 54-55; *MRDC*, para. 31).

B. *The Alleged Errors – Grounds of Appeal*

[13] It is useful to restate the grounds of appeal and to summarize the appellant’s submissions and the adjudicator’s responses found in her Summary Report for Appeal with respect to each of the grounds of appeal.

(1) Ground 1 – Incorrect Application of the Law Regarding Contracts

[14] Although couched as an incorrect application of the law of contractual interpretation, the appellant’s submission and the adjudicator’s reasoning reveal the contrary. In

oral submissions, the appellant argued that this ground of appeal relates to the adjudicator's rejection of his evidence that the contract was unilaterally converted to a fixed price contract and that the labour rate charged differed from the agreed amount of \$45/hour. The adjudicator reports that the Decision in this regard was based on her assessment of the testimony of the parties upon which she concluded that the scope of work expanded at both the request of the appellant and due to unforeseen circumstances of which the appellant became aware.

[15] With respect to the hourly rate, the adjudicator concluded, based on an assessment of the evidence, that the parties, through their conduct, had agreed to an hourly rate of \$50 per hour.

[16] The first ground of appeal questions the assessment of the evidence by the adjudicator and her conclusions based on that assessment. It raises a question of fact, not a question of law.

(2) Ground 2 – Altered Invoice

[17] In his oral submission, the appellant stated that Custom Carpentry provided him with an invoice on June 29, 2023. The appellant submits that the invoice Custom Carpentry submitted to the adjudicator was different from the one provided to him, so “it had to have been altered”. The appellant stated in his submissions that he asked the adjudicator to rule on the admissibility of the “altered” invoice. In the Summary Report on Appeal, the adjudicator advises that she found no evidence of an altered or inappropriate invoice.

[18] The Decision does not appear to deal directly with the “admissibility” issue advanced by the appellant. However, the issue turns on the adjudicator’s assessment of the veracity of the evidence. This, too, is clearly a question of fact and does not raise a question of law.

(3) Ground 3 – Evidence Does Not Support Labour Costs

[19] The appellant takes issue with the adjudicator not accepting his evidence with respect to the number of hours worked and the appropriate hourly rate for the assistants who worked on the job. In his oral submission, the appellant explained that there was a discrepancy in the number of hours Custom Carpentry recorded in its time sheets and the invoice submitted. He further pointed out that he provided the adjudicator with his own records of the hours worked, which showed significantly fewer hours worked than the evidence submitted by Custom Carpentry. In his oral submission, Mr. Ismail stated that the adjudicator “lacked the authority” to accept only the evidence of Custom Carpentry and that “it was unfair” for her to do so.

[20] In her Summary Report for Appeal, the adjudicator explains that she accepted the evidence of the claimant regarding the employee time sheets and the hours worked. This is explained in paragraphs 48 to 55 of the Decision.

[21] This ground of appeal is simply the appellant disagreeing with the adjudicator's assessment of the evidence. This ground relates solely to a question of fact and does not raise a question of law.

(4) Ground 4 – Adjudicator Failed to Rule on the Location of the Non-Return Valve

[22] The appellant alleges that the adjudicator failed to make a ruling on the location of the non-return valve installed by Custom Carpentry's subcontractor. The adjudicator refused Mr. Ismail's counterclaim as it relates to compensation for potential losses as a result of the alleged improper location of the non-return valve. The appellant submits that the two rulings are inconsistent. He alleges that a ruling on one, (damages) without properly addressing the other (location of the non-return valve) undermines the cohesion and fairness of the Decision.

[23] As explained by the adjudicator in the Summary Report on Appeal, the issue of compensation for the alleged improper location of the non-return valve formed part of Mr. Ismail's counterclaim. As such, he bore the burden of proof. Custom Carpentry called Mr. Noel, a licenced plumber, who provided a detailed explanation of the function of the non-return valve and how its installation complied with the plumbing code.

[24] The adjudicator noted that Mr. Ismail did not agree with Mr. Noel's evidence. However, while Mr. Ismail is himself an engineer, he did not give expert testimony (nor would he be able to) and he did not call any independent expert evidence to refute the evidence of Mr. Noel. The adjudicator concluded that without such evidence Mr. Ismail failed to discharge his burden to

prove that the non-return valve was improperly located. In his oral submission, Mr. Ismail stated that the issue of the location of the non-return valve was an engineering question, not a plumbing question, and the adjudicator was wrong to rely on the evidence of Mr. Noel, a plumber.

[25] Again, what Mr. Ismail alleges is an error by the adjudicator goes to her evaluation of the evidence. Further, whether or not the adjudicator accepted Mr. Noel's evidence as to the proper location of the non-return valve, it is clear that she found Mr. Ismail's failure to submit any evidence resulted in his failure to prove this aspect of his counterclaim. This is purely an evidentiary determination and therefore involves a question of fact and not a question of law.

[26] I turn now briefly to the appellant's assertion that there is a logical and legal inconsistency in the finding (or lack thereof) with respect to the location of the non-return valve and the adjudicator's refusal to award compensation for potential damages. There is not.

[27] The adjudicator, having ruled that she could not make a finding on the location of the non-return valve, found that, regardless, Mr. Ismail's claim for damages was too speculative to be recoverable. The two conclusions are not linked. Again, although not explicit, the adjudicator found that even if the non-return valve was in the wrong place, Mr. Ismail would not be able to recover for the amounts claimed. The Summary Report on Appeal and Mr. Ismail's oral submissions reveal he was claiming compensation for losses that had not yet occurred but rather for the increased risk of loss in the future. The claim included a notional increase in his insurance premiums if a loss occurred in the future. The adjudicator rejected these as too speculative to be recoverable.

[28] The adjudicator's ruling that the damages claimed by the appellant were not recoverable is completely independent from the issue of whether or not the non-return valve was improperly located. There is therefore no inconsistency in the findings that would undermine the logical integrity of the adjudicator's ruling on these issues.

[29] Again, to be clear, this ground of appeal does not raise a question of law.

(5) Ground 5 – Failure to Address Aspects Related to the Costs, Quantity and Relevance of Materials Involved in the Project

[30] The appellant asserts that the Decision does not address significant aspects of the evidence regarding costs, quantities and relevance of materials. It can be an error of law for a decision maker to make a finding of fact where there is no evidence to support it. However, insufficiency of evidence is generally regarded as a question of fact (*R. v. M. (B.)* 1996 Carswell NB 445 (NBCA) at para. 7). It must also be noted that a trier of fact (adjudicator or judge) is obligated to consider relevant factors but is not required to discuss every piece of evidence when providing reasons (*Dustin Ramsey* at para.25).

[31] It is clear from the Summary Report on appeal (with references to the Decision) that the adjudicator considered the testimony of the parties, including references to specific materials and invoices which were marked as exhibits. The ground of appeal itself asserts that the adjudicator had relevant documents submitted to her. The appellant's complaint appears to be that

the Decision fails to comment on certain aspects of the evidence and provides no reasons for not doing so.

[32] Again, the adjudicator was not required to comment on every piece of evidence. It is clear that there was some evidence to support the adjudicator's findings. Accordingly, this ground of appeal raises a question of fact and not a question of law.

[33] For the reasons outlined above, I conclude that grounds 1 to 5 in the Notice of Appeal do not raise any question of law. Accordingly, they are dismissed.

[34] I turn now to a consideration of ground 6.

(6) Ground 6 – Defendant Having Insufficient Time to Present His Case

[35] The thrust of the alleged error put forward by the appellant on ground 6 is that he was not given sufficient time to present his case in response to the claim. He submits that that undermines the fairness of the proceedings.

[36] Although not articulated as such, this ground of appeal raises the question of whether the appellant was denied natural justice by not being given the opportunity to be heard and present evidence. Denial of natural justice is neither a question of law, a question of fact or a question of mixed law and fact. It is regarded in itself as an excess of jurisdiction (*Syndicat des*

employés professionnels de l'Université du Québec à Trois-Rivières v. Université du Québec à Trois-Rivières [1993], 1 SCR 471, at para. 43).

[37] There can be no doubt that the appellant was owed a duty of procedural fairness. The degree of procedural fairness is determined by the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)* [1999], 2 SCR 817. The *Baker* approach was summarized by our Court of Appeal in *Wilson v. Department of Social Development*, 2024 NBCA 41, at paragraph 44:

44 The right to procedural fairness, at common law, may be determined by particular contextual elements as expressed by L'Heureux-Dubé J. in *Baker* (paras. 23-27). In a recent decision *R.A. Farm Inc. v. New Brunswick (Minister of Public Safety)*, 2020 NBQB 170, [2020] N.B.J. No. 262 (QL), LeBlanc J. (as she then was) effectively summarized these five well-known factors from *Baker*:

(i) The proximity of administrative process to the judicial process. If the process provided for, the function of the tribunal, the nature of the decision-making body, and the determinations to be made to reach a decision resemble judicial decision making, procedural protections closer to the trial model will more likely be required by the duty of fairness.

(ii) The nature of the statutory scheme and the “terms of the statute pursuant to which the body operates”. Greater procedural protections will be required, for example, when no appeal procedure is provided within the statute or when the decision making is determinative of the issue and further requests cannot be submitted.

(iii) The importance of the decision to the individual(s) affected. More stringent procedural protections will be required the more important the decision is to the lives of those affected and the greater its impact on that or those person(s).

(iv) The legitimate expectations of the person challenging the decision. Circumstances affecting procedural fairness take into account the promises or regular practices of administrative decision-makers and it will, generally, be unfair for them to act in contravention of representations as to procedure or backtrack on substantive promises without according significant procedural rights.

(v) The choice of procedures by the decision maker. The determination of what procedures are required by the duty of fairness should take into account and respect 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. [para. 37]

[38] In the present case, the *Small Claims Act* provides for a quasi-judicial process for the adjudication of claims under a certain dollar value. While the rules of evidence are relaxed, the process has all the trappings of a full judicial trial. The Decision in this matter was of significant importance to the parties involved.

[39] The rule of natural justice engaged by this ground of appeal is the *audi alteram partem* rule – the right of a party to be heard. It is clear to me that, applying the *Baker* factors, Mr. Ismail was entitled to a hearing, to present evidence and to be heard. Breach of that obligation would be a breach of natural justice and thus an excess of the adjudicator’s jurisdiction. As noted, a question of jurisdiction is a permissible ground of appeal.

[40] The question becomes whether Mr. Ismail was denied the opportunity to present evidence and to be heard.

[41] The record on this appeal, including the exhibits submitted to the adjudicator, the Summary Report for Appeal, the Decision and Mr. Ismail's own submissions reveal that extensive evidence relating to the matters in issue was submitted during the hearing. The Summary Report for Appeal discloses that this matter was heard over two full days as opposed to the half day that is normally scheduled for such hearings. It also reveals that at the conclusion of the hearing the appellant was permitted to provide his written argument, which effectively served as his written brief.

[42] Despite the appellant's protestations to the contrary, this was not a complex case. It must be remembered that small claims adjudicators, like judges, have an obligation to manage hearings and to shepherd scarce judicial resources. In my view, the appellant was provided with more than ample time and opportunity to present his case. There was no breach of the duty of procedural fairness. This ground of appeal is also dismissed.

III. CONCLUSION

[43] For the foregoing reasons, the appeal is dismissed.

[44] The respondent, Custom Carpentry, did not appear or participate in this appeal and therefore is not entitled to costs.

Terrence J. Morrison
Justice of the Court of King's Bench