

BY EMAIL

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February 7, 2025

BC LABOUR RELATIONS BOARD

Suite 600 – Oceanic Plaza
1066 West Hastings Street
Vancouver, BC V6E 3X1

Attn: Stephanie Drake, Registrar

Dear Ms. Drake:

Re: Jessie Bains -and- Hospital Employees' Union – Provincial Health Services Authority - Applications pursuant to Sections 10 and 12 of the *Labour Relations Code* (Case Nos. 2024-001334, 1437, 1478, 1491, and 1576)

I. INTRODUCTION

We are counsel for the Hospital Employees' Union (the "**Union**" or "**HEU**") and are authorized to file this response to the five applications and one additional email filed by Jessie Bains (the "**Applicant**") between October 22, 2024 and January 23, 2025 (collectively, the "**Applications**"). We thank the Board for the extension until today to reply to the Applications.

For the reasons set out in detail below, we submit that the Applications must be dismissed as there has been no violation of Section 10 or 12 of the *Labour Relations Code* (the "**Code**"). Additionally, the application concerning the Union's decision to advance the Applicant's harassment grievance is out of time and the applications concerning Section 10 are moot. These applications must be summarily dismissed.

A copy of this response will be served on the Applicant and the Provincial Health Services Authority ("**PHSA**" or the "**Employer**") by email.

II. FACTS

Background

Start of Employment with PHSA and Selection Grievances

1. On September 20, 2021, the Applicant was hired as a casual employee in the position of Warehouse Attendant at PHSA's Langley Fulfilment Centre. He held this casual position until March 4, 2024 when he was terminated.



2. The Applicant became an HEU member upon hiring.
3. After seven days of training/orientation, the Applicant's manager told him words to the effect that "he should never have been hired." Subsequently, the Employer did not give the Applicant access to shifts pursuant to the collective agreement. The Union grieved the lack of access to shifts, which grievance was settled with the Applicant being paid approximately \$3,000.
4. The Applicant had previously worked in IT positions for other health authorities for a lengthy period of time. After being hired by PHSA, the Applicant applied for IT positions within PHSA but was never selected by the Employer in any of these postings.
5. The Union filed several selection grievances on the Applicant's behalf regarding the IT postings (the "**Selection Grievances**"). Chrystal Latham was the Union staff representative who represented the Applicant for the Selection Grievances. The Union believed that the Applicant was qualified to perform the IT positions in question and that the Union could likely succeed on these grievances. In fact, two of the Selection Grievances had been referred to expedited arbitration prior to the Applicant's termination.

Facilities Bargaining Agreement

6. The collective agreement that determined the terms and conditions of the Applicant's employment was the Facilities Bargaining Agreement (the "**FBA**"). The FBA is attached as **Exhibit "A."**
7. Article 9.09 provides that an employer and union can refer a dispute about discipline of an employee to an Industry Troubleshooter. Chris Sullivan is listed as on Troubleshooter roster. The roles and responsibilities of a Troubleshooter are to investigate the difference, define the issue in the difference, and make written recommendations to resolve the difference: Article 9.09.03.

Harassment Grievance filed by the Applicant

Events leading to the Harassment Grievance

8. As set out at para 3 above, the Applicant was told by a manager that he never should have been hired right after PHSA hired him.
9. In May – June, 2023, the Applicant emailed Fraser Health Authority ("**FHA**") and the Premier of BC proposing to sell the domain name of a web address that included the name of the FHA (the "**Domain Name Email**").
10. PHSA learned about the Domain Name Email and on August 25, 2023, met with the Applicant and his Union representatives to discuss their concerns about this email. PHSA



then issued the Applicant a letter of expectation, which letter was grieved by the Union. The letter of expectation was then amended and placed on his personnel file.

Harassment Grievance

11. On August 25, 2023, the Applicant then filed a harassment grievance at Step 1 regarding the August 25, 2023 Domain Name Email meeting. The content of this Step 1 email is found at page 4 of the September 27, 2024, Industry Troubleshooter Report.¹
12. On September 8, 2023, the Applicant filed his harassment grievance at Step 2, claiming that PHSA as interfering with his private domain name negotiations, preventing his career progress, interfering with his privacy, and discriminating against him on the basis of belonging to a racialized group contrary to PHSA policy.
13. In discussion with the Applicant, the Union assessed the validity of the grievance and determined that it merited an investigation. Step 3 of the grievance procedure was completed on October 3, 2023, and the Union advanced the grievance on behalf of the Applicant (the “**Harassment Grievance**”).
14. The Employer began the Respectful Workplace investigation process and hired an external investigator (the “**Investigator**”) to consider the Harassment Complaint.
15. Before the investigation interview, Ms. Latham met with the Applicant and coached him about how to respond to questions during the interview. Ms. Latham attended the investigation interview with the Applicant and, when necessary, caucused with him to keep him on track.
16. The Investigator issued a “Summary of Conclusions” document on January 9, 2024. He ultimately concluded that all harassment allegations were unfounded, and that the Applicant’s allegation of racism constituted bad faith within the applicable Employer policy.

Termination & Termination Grievance

17. Based on the Investigator’s conclusions, PHSA terminated the Applicant’s employment on March 4, 2024, during a virtual meeting. Ms. Latham attended this meeting as the Applicant’s representative. The termination letter states that the Applicant made harassment complaints in bad faith and concludes that the trust required to maintain an employment relationship has been eroded.²
18. On March 8, 2024, the Applicant wrote to the Investigator in an email entitled ““Exposing the SHAM: Seeking Justice and Transparency in Employer-Paid/Conducted

¹ See Exhibit “S”, p. 9, referenced below.

² The termination letter is found at Exhibit 1 to the November 27, 2024 Application.



Investigations” setting out why he disagreed with the investigation conclusions reached. The Applicant copied union leaders, politicians and a member of the media on his email. The content of this email is found in the Industry Troubleshooter Report.³

19. On March 7, 2024, the Union grieved the Applicant’s termination the (“**Termination Grievance**”).⁴

Post-termination Communication between the Applicant and the Union

The Applicant sends many emails to the Union while Representatives Advance the Termination Grievance

20. The emails set out below do not reflect all of the emails sent by the Applicant or by Union representatives regarding the Applicant’s grievances and other issues he raised with various representatives.
21. On April 17, 2024, the Applicant wrote to Robbin Bennett, Director of Membership Services, asking what will happen to his selection grievances if the Termination Grievance were unsuccessful. Ms. Bennett replied, indicating that the Selections Grievances would be redundant if the Termination Grievance were dismissed. This email exchange is attached as **Exhibit “B.”**
22. On April 22, 2024, Ms. Bennett responded to several emails from the Applicant. She set out that the Union’s position was that the Termination Grievance needed to be dealt with before the Selection Grievances. She further noted that the Union would be referring the Termination Grievance to arbitration and set out a summary from a prior email updating him on the status of his grievances. This email exchange is attached as **Exhibit “C.”**
23. On April 27, 2024, the Applicant emailed Ms. Bennett about various matters, including his disagreement with the decision to put the Selection Grievances on hold. **He asserted his belief that the Union does not intend to pursue his reinstatement and “is not taking his termination seriously and diluting his defense, it amounts to pure negligence”.** This email exchange is attached as **Exhibit “D.”**
24. On April 29, 2024, Chris Dorais, HEU Coordinator of Public Sector Servicing, responded to the several emails from the Applicant.⁵ Mr. Dorais informed the Applicant that:
- i. the Union has conduct of his grievances and the Union decides how his grievances will be dealt with;

³ See Exhibit “S” referenced below.

⁴ The Termination Grievance form is found at Exhibit 2 to the November 27, 2024 Application.

⁵ Exhibit “D”.



- ii. Union members do not direct HEU representatives on the process and strategy for grievances or about what internal resources should be relied on; and
- iii. Mr. Dorais agrees to proceed with the Termination Grievance and place other grievances in abeyance.

25. In this same email, Mr. Dorais informed the Applicant that the Union was currently considering which forum to use to address the Termination Grievance. **Mr. Dorais also told the Applicant that HEU representatives will not continue to respond to his numerous emails.** He directed the Applicant to contact his representative for an update in three weeks if he had not heard from her.

26. Before the Union agreed to appoint an Industry Troubleshooter (“ITS”), Ms. Bennett spoke with the Applicant. She explained how long it would take to go to full arbitration and receive a decision compared with the much shorter time it would take to get before a Troubleshooter. Ms. Bennett asked the Applicant to consider these options while she discussed the same with Mr. Dorais, and recommended the ITS option. Within two weeks of that conversation, Chris Sullivan became available when a different Union representative settled a matter. The Union offered the Applicant the option of going before Chris Sullivan as an ITS as a quick option. The Applicant was very happy with this selection and indicated that he trusted Mr. Sullivan to do the right thing for him.

27. On May 9, 2024, Ms. Latham informed the Applicant that PHSA had contacted her regarding recent communications PHSA employees had received from him that the Employer deemed to be harassing in nature. She told the Applicant that members have told her that they are uncomfortable with some of his communications. Ms. Latham wrote:

As we have previously discussed your post termination behaviour will influence an Arbitrator's opinion on whether there is an ability to mend the severed relationship with your employer.

I caution you about sending any further communication to the employer. I would also advise you to be mindful of your communication with the members.

I will connect with you next week to discuss next steps for your termination grievance.

This email exchange is attached as **Exhibit “E.”**

28. On May 19, 2024, the Applicant wrote to Mr. Dorais requesting a representative from the HEU Legal Department be assigned to represent him. He set out his complaints about Ms. Latham's representation, including that she did not promptly call him after they both attended the virtual termination meeting on March 4, 2024, that she sided with the Employer on a number of his selection grievances, and that she knew that the Harassment Grievance investigator had predetermined the outcome of that investigation. The Applicant also told Mr. Dorais that Ms. Latham accepted the Employer's claim that he sent inappropriate emails to PHSA resulting in the Employer blocking his personal email



address. This email exchange is attached as **Exhibit “F.”**

29. On May 21, 2024, Brenda Van Der Meer, Coordinator of Public Sector Servicing, who was covering for Mr. Dorais, phoned the Applicant, informing him again that the Selection Grievances were placed in abeyance, that the ITS hearing was set for July 4, 2024, and that the Union has not yet received the Step 3 response from PHSA. She responded to the Applicant's concern about PHSA blocking his emails by explain that this issue was outside of the jurisdiction of the Union.
30. On May 21, 2024, the Applicant wrote to Ms. Van Der Meer thanking her for the phone call and noting that no Union representative had called him or agreed to an in-person meeting to discuss his grievance **despite his “nearly 20 emails”**. This email exchange is attached as **Exhibit “G.”**
31. On June 2, 2024, the Applicant wrote to Mr. Dorais claiming that Ms. Latham had “conducted herself in bad faith, demonstrated through personal hostility and political interference”. This email exchange is attached as **Exhibit “H.”**
32. On June 7, 2024, the Applicant wrote to Mr. Dorais stating that he did not get a reply to two prior emails in which he requested external legal counsel or another representative. He stated that the Union was providing him support in bad faith. This email exchange is attached as **Exhibit “I.-”**
33. On June 12, 2024, the Applicant attended a Zoom meeting with Ms. Latham, Mr. Dorais and Ms. Bennett.
34. On June 13, 2024, Mr. Dorais wrote to the Applicant summarizing the June 12 meeting including his recent email communications to HEU staff. Mr. Dorais confirmed that Ms. Latham would remain his representative and that Ms. Van Der Meer would assist at the ITS hearing. **Mr. Dorais informed the Applicant that he has instructed staff to stop responding to the Applicant's emails going forward.** He explained how the Union representatives will work with the Applicant to prepare for the July 4 ITS hearing.⁶
35. On June 13, 2024, **the Applicant wrote to Mr. Dorais claiming that HEU was not acting in good faith by telling Union representatives to avoid communicating with him.** He claimed that the last three emails he had sent in the last 24 hours related to evidence that were overlooked by his representatives.⁷

⁶ Exhibit “I.”

⁷ Exhibit “I.”



36. On June 14, 2024, Mr. Dorais responded to the Applicant indicating again that he could bring additional evidence to his representatives when they meet to review Employer disclosure.⁸
37. On June 28, 2024, the Applicant wrote to Ms. Latham, copying 30 others, including members of the Provincial Executive, disagreeing with the Union's strategy for the upcoming ITS hearing and asserting that his Termination Grievance was "handled with blatant malice and political inference."⁹
38. On June 28, 2024, Ms. Van Der Meer, who was covering for Mr. Dorais, wrote to Mr. Bains regarding his email communications. She referred the Applicant to Mr. Dorais' June 13, 2024 email regarding communication. Ms. Van Der Meer informed the Applicant that Ms. Latham will continue to represent him and confirmed that Mr. Dorais has assigned her (Ms. Van Der Meer) to assist at the ITS hearing. She reminded the Applicant to communicate in a courteous and respectful manner. This email is attached as **Exhibit "J."**

Industry Troubleshooter Hearing & Following

39. On July 4, 2024, the ITS hearing before Chris Sullivan took place. The parties initially attempted to mediate the dispute, which mediation was unsuccessful. The Union and the Employer then presented their positions. The parties committed to providing written submissions to Troubleshooter Sullivan.
40. After the ITS Hearing and on July 4, 2024, the Applicant wrote to Ms. Van Der Meer calling that day a "dark day." He stated that he had submissions that he wanted sent to Troubleshooter Sullivan. This email is attached as **Exhibit "K."**
41. On July 8, 2024, the Applicant wrote to Ms. Van Der Meer and Ms. Latham asking them to include a statement he drafted in the submissions to Troubleshooter Sullivan. This email is attached as **Exhibit "L."**
42. On July 8, 2024, Ms. Van Der Meer wrote to the Applicant asking that he reread her June 28, 2024 email regarding communication. She informed the Applicant that the Union would include his submissions to Troubleshooter Sullivan as an appendix to the Union's submissions.¹⁰
43. On July 15, 2024, the Applicant wrote to Mr. Dorais expressly his disagreement with the settlement offers made by the Union during the ITS mediation. He wrote, in part, that:

⁸ Exhibit "I."

⁹ Exhibit "F."

¹⁰ See Exhibit "K."



I am prepared to take my chances at a full arbitration hearing and potentially receive nothing, **but I expect genuine representation—not politically motivated or perfunctory representation.**

The employer terminated me in bad faith and is using my post-termination behavior to justify the termination, which is nonsensical. The worst part was my own union reps at the ITS hearing sat there in silence and provided no defense. The employer's claim that they lost trust in me, which they never had since the day I was hired, is unfounded. **Only a lawyer can mount a proper defense, and your denial of this is unjust and in bad faith.**

[...]

I strongly believe that my own union, more than the employer, for political and personal reasons, wants a financial settlement instead of reinstatement so that I am no longer a member.

I will not agree to a settlement unless I am reinstated or given a just financial settlement as outlined above, as I did nothing wrong to deserve an unjust termination.

This email is attached as **Exhibit “M.”**

44. On July 15, 2024, Mr. Dorais responded to the Applicant indicating that his requests have already received responses. Mr. Dorais disagreed with the Applicant's claim that he was not well represented at the ITS hearing. He clarified that the Applicants' two emails would be included with the Union's written submissions.¹¹
45. On July 25, 2024, the Applicant wrote to Mr. Dorais and copied others asking that his entire email be submitted without redactions to Troubleshooter Sullivan. This email is attached as **Exhibit “N.”**
46. On August 2, 2024, the Union filed its written submissions with Arbitrator Sullivan and included the Applicant's two submissions as an appendix.
47. On August 2, 2024, at 8:16 pm, the Applicant emailed Ms. Bueckert and others, noting the Union's refusal to assign him external legal counsel and expressing disappointment with the Union's “continued bad faith in my representation”.
48. On August 2, 2024, at 9:32 pm, the Applicant emailed Ms. Bueckert and Stephanie Smith (President of a different union) and copied dozens of others, complaining about not receiving external legal representation from HEU (as the different union supposedly did), and criticizing the Investigator again. These August 2, 2024 emails are attached as **Exhibit “O(1)”**.

¹¹ See Exhibit “M”.



49. On August 17, 2024, the Applicant emailed Ms. Bueckert and others about his continued request for external legal representation, the Union's mediation attempts, and his disagreement with Union grievance strategy. He wrote in part:

I did nothing wrong after being terminated, aside from informing members about what happens when you file a harassment grievance against HR—how they used a so-called independent investigator to turn the grievance against the member. This happened to two employees within a month, both represented by Chrystal, who, instead of advocating for us, merely checked off boxes, clearly disliking us for being outspoken.

This email is attached as **Exhibit "O(2)."**

September Emails

50. On September 21, 2024, the Applicant wrote Ms. Nederpel, copying dozens of others, about various issues and stating that:

I will be attending the convention without delegate status, regardless of the personal cost, not to witness democracy in action, but sadly, to witness hypocrisy in action.

This email is attached as **Exhibit "P."**

51. On September 22 and 23, 2024, the Applicant had an email exchange with Curtis Anshelm during which Mr. Anshelm asked not to be involved in the email chain and was not involved in the Applicant's issues.¹² The Applicant responded to Mr. Anshelm, stating:

Hi Curtis,

I never requested your involvement, but since you've stepped in, you'll be involved as needed. If that's not the plan, feel free to step aside—taking over for someone's role on vacation just for the paycheck doesn't quite cut it.

By the way, I'm curious—where in your job description does it say you can pick and choose which responsibilities to take on?

I'll continue including you in these emails, as Robbin's out-of-office reply directs to you. Looks like you are my designated contact for now!

52. In a September 24, 2024 email to the Applicant, Mr. Dorais wrote, in part

This e-mail is to advise **all communications** regarding your grievances or other issues related to your previous employment with PHSA must be directed to me for a response. Despite the Union's caution to you, your communications with HEU staff continue to be disrespectful and, in some cases, aggressive. Staff reporting to me will be advised not to respond to you.

This email is attached as **Exhibit "Q"**.

¹² See Exhibit "P".



53. On September 24, 2024, Mr. Dorais also wrote to the Applicant stating that his email to Mr. Anshelm was inappropriate and disrespectful. Mr. Dorais wrote further:

Part of my role is to ensure staff that report to me at HEU are treated with respect and have a safe work environment.

As I've just advised you, HEU staff reporting to me will not be responding to your e-mails or other communications. Any future communications you are sending to HEU servicing staff must be sent to me for you to receive a response.

This email is attached as **Exhibit "R"**.

Union Decision to Accept ITS Recommendations & Internal Union Appeal

54. On September 27, 2024, Troubleshooter Sullivan issues his report (the **"ITS Report"**). This report is found at **Exhibit "S"**. Among the statements and conclusions in the ITS Report are:

- In its grievances and submissions, **the Union and the Grievor seriously challenge the legitimacy of the harassment investigation and the validity its findings.**
- **In the present case, the evidence supports a conclusion that the Grievor's conduct did give rise to just cause for some form of discipline; however, discharge would likely be found to be excessive.** On the information before me, the discharge appears to be based on the investigator's finding that the Grievor violated the Employer's "Fostering a Culture of Respect Policy", which expressly contains a definition of a "bad faith" report as including where the complainant knows, ought to have known, or it is readily apparent upon review, that there is no foundation in fact that would suggest a breach of the policy.
- **This is not to say the Employer was without any cause whatsoever in relation to issuing discipline to the Grievor for filing his unsubstantiated complaints, which appear to be aimed at creating and leveraging some power to obtain his desired position in the Employer's IT department.**
- **Objectively, this case is about a casual warehouse employee with about two and one-half years of casual employment, who no longer trusts the Employer's human resources department, and who has given cause for it to no longer trust him. Nothing has happened since the Grievor's discharge to lend optimism to a renewed relationship. The chasm is too great and there is no magic wand to create a workable fix going forward.**
- While the Grievor's letter to Mr. Barager occurred after he was discharged and may or may not therefore be captured by any confidentiality provision, it is relevant insofar as it goes to the heart of the trust relationship between the parties, and it shows the Grievor is prepared to publicly go after individuals who he feels are treating him unfairly, whether or not he is in fact being treated unfairly. **To be clear, this manner of responding to individuals one does not agree with – i.e. sending an email to them and copying politicians, union officials and a media personality – appears to be a tactic by the Grievor, perhaps to deter people from making decisions against his interest or comments he does not agree with. In any event, this was not the first time he took this approach and will likely not be the last.** While the use of such tactic in any given case may or may not be inappropriate, in the present case the tactic has inflamed matters, and has



highlighted fundamental and irreconcilable trust issues between the Grievor and the Employer's Human Resources department.

- **I cannot help but point out that the Grievor is, to a great degree, author of his own misfortune in the way he has chosen to dispute actions or outcomes that he does agree with or believes is not fair from his standpoint.** Instead of letting his selection grievances run their course, which may have resulted in him obtaining the IT position he sought, **he appears to have unable to help himself from attacking those who he thought was behind the decisions against his interests.** His harassment grievance can be viewed as an example of such, and it appears he has taken this same general approach with Mr. Barager [the Investigator] and the Employer by disseminating the investigation report and his email of complaint to an external audience that included high ranking politicians and union officials, the law firm Mr. Barager works at, and to a local media personality.
- **I recommend the grievance be fully and finally resolved on the basis set out above: five months' pay plus any severance entitlement under the Collective Agreement and a 15% gross up for benefits.**

55. Upon receipt of the ITS Report, the Union reviewed Troubleshooter Sullivan's facts, conclusions and recommendations. The Union determined that these recommendations represented a reasonable settlement of the dispute.

56. On October 2, 2024, further to her meeting with the Applicant, Ms. Van Der Meer wrote to the Applicant to confirm that the Union would be accepting the ITS recommendations. This email is attached as **Exhibit "T"**.

57. On October 2, 2024, the Applicant wrote to Mr. Dorais and Ms. Bueckert appealing the Union's decision to accept the ITS' recommendations. The Applicant wrote, in part:

The current recommendation includes five months' income, plus 15% for benefits and severance. I also informed Brenda and Curtis that I have two external investigations pending against PHSA: one with the Office of the Privacy Commissioner for improper use of my personal information, and another with the BC Human Rights Commission for racial discrimination. PHSA falsely accused me of violating their anti-racism policy without acknowledging my lived experience as a visible minority. Additionally, I have a complaint with the BC Human Rights Commission against Barb Nederpel. Should I prevail in either of these complaints, HEU will be held accountable for failing to represent me adequately, as they did not ensure a safe work environment.

58. He expressed his disagreement with the ITS' recommendations and his view that:

I want to make it clear that I do not agree with Sullivan's recommendation. I expect the union to provide external representation and take my grievance to full arbitration. The union's actions have been arbitrary, discriminatory, and marked by conflicts of interest. They have failed to communicate in a timely manner, provided inadequate representation, lacked due diligence, and acted in bad faith.



59. On October 3, 2024, the Applicant sent a follow up email to Mr. Dorais and Ms. Bueckert, copying dozens of others, again expressing his disagreement with the Union accepting the recommendations. In part, he criticizes the Union for not considering negotiating with the Employer to classify his settlement as damages instead of income. The October 2 and 3 emails are attached as **Exhibit “U”**.
60. On October 7, 2024, the Applicant to Mr. Dorais, copying dozens of others, asking the Union not to accept the ITS Recommendations. This email is attached as **Exhibit “V.”**
61. On October 8, 2024, Mr. Dorais sent the Applicant an email attaching the Appeal Decision letter upholding the decision to settle his grievances. Mr. Dorais reviewed the ITS Report and relevant information about the Applicant’s grievances and concluded that an arbitrator would not likely award a greater amount than the sum found in the ITS Report. The email and attachments are attached as **Exhibit “W.”**
62. On October 9, 2024, Mr. Dorais responded to concerns in the Applicant’s October 2 – 7, 2024 emails that did not relate to the Union accepting the ITS recommendations. Mr. Dorais stated as follows regarding specific concerns:

Denied access to HEU local meetings

“Your employment with PHSA was terminated. I understand the HEU local meetings are held on employer property. It is appropriate for the HEU Representative to advise you not to attend a local meeting on employer property when your employment has been terminated. This is especially important while your grievances are being pursued through the grievance procedure. There is no mandatory requirement for an HEU local to provide remote access to local meetings.

Additionally, you mentioned the HEU Representative was influencing the election process for the Local executive and for delegates to convention. I’ve reviewed your e-mails and investigated the matter further. I’ve concluded the HEU Representative has conducted themselves appropriately in assisting the HEU local executive and there was no influence on the processes as you suggest.

Representation and handling of grievances

There have been several HEU staff who have advocated on your behalf through the grievance procedure. They have included HEU Representatives, an HEU Director, and an HEU Coordinator. This is well beyond the Union’s general approach to representing HEU members through the grievance procedure. This was done to provide you additional support as you had raised concerns.

I have no reservations about the representation you have received, and staff have acted diligently to represent you. You have continued to have criticisms of HEU staff by sending a barrage of e-mails over a long period of time to many individuals. In my assessment the criticisms are unfounded, and the tone is disappointing. It is these actions that resulted in my request you communicate with me only and discontinue copying several people on e-mails. Despite my request, the e-mails to several people have continued.

The email is attached as **Exhibit “X”**.



Article 19 Charges

63. Between May 10 – October 25, 2024, the Applicant filed 13 charges against various HEU executive members and staff (the “**Article 19 Charges**”).

64. Ms. Bueckert delegated conduct over the Article 19 Charges to Bill Pegler, Coordinator of Private Sector & Special Projects. Pursuant to Article 19(D), Mr. Pegler appointed an investigator to conduct a preliminary assessment of, ultimately, the 11 charges filed before October, 2024.

65. The HEU Constitution and Bylaws are attached as **Exhibit “Y”**. Article 2(H)(2) states:

Section H

MEMBERS IN GOOD STANDING: A Member in Good Standing shall have all rights and privileges of Membership in the Union. This shall include:

[...]

2) Have been suspended or terminated by their employer until they have exhausted all avenues of recourse,

66. Article 5 of the Bylaws concerns Conventions. Section C sets out the number of delegates a local can send to the HEU Convention. This section states that “delegates must be eligible pursuant to Article 4.”

67. Article 4 of the Bylaws sets out the rules for “Eligibility for Office”, and states that:

No Union Member shall be eligible to hold office in the Union or in a Local, nor act as a Delegate of a Local or of the Union, unless the member has attended a total number of meetings equal to at least fifty per cent (50%) of the regular Local meetings, held by the Local in the twelve (12) month period prior to nomination and has paid all Union fines, dues and temporary dues increases.

68. The preamble to Article 19 Charges, Trials & Penalties includes the following:

The purpose of Articles 19 and 20 is to provide members in good standing with an internal process to have charges dealt with in a fair and impartial manner. These procedures are intended to foster and maintain the solidarity necessary to further the interests of the Union through the ability to correct or address the behaviour of members who commit an offence under the Constitution. They are not intended to be used for political gain or to resolve interpersonal conflict which does not have foundation in one of the Offenses identified in this Article.

69. On October 31, 2024, Mr. Pegler, wrote to the Applicant stating that he was no longer an HEU member by virtue of Article 2(h)(2) of the Bylaws. Mr. Pegler wrote that, because Article 19 is intended to apply to Union members in good standing, since the Applicant



was no longer a member then his Article 19 charges would not longer proceed. He wrote further that charges filed against the Applicant will also no longer proceed.

Union Convention

70. The Applicant was not credentialed by his Local to attend Convention as a delegate.
71. In an October 11, 2024 letter, Lynn Bueckert, Secretary-Business Manager, HEU, which letter informed the Applicant that he is not authorized to attend the Union Convention or HEU events occurring in conjunction with the Convention (the **"October 11 Letter"**).¹³
72. The HEU Convention was held on October 20 - 25, 2024.
73. Despite being told not to attend the Convention, the Applicant was able to enter the Convention having obtained an observer pass. After it was discovered that the Applicant had entered Convention, Mr. Dorais went up to speak with the Applicant and explained that he had to leave the venue as he was not authorized to attend the event. The Applicant raised his voice with Mr. Dorais, had an aggressive demeanour and was swearing. Mr. Dorais explained that some members and staff felt harassed by the Applicant, and ensured that the Applicant left the Convention space.
74. After being escorted out of the Convention, venue security watched the Applicant as he tried to enter the Convention on different floors for approximately 1 – 2 hours.

Union Sends Cease and Desist Letter to the Applicant, then goes to RCMP

75. In November 2024, counsel for the Union wrote to the Applicant directing him to cease and desist from making defamatory emails, posts and other communications that he had been directing at the HEU, its management and its employees (the **"Cease and Desist Letter"**). A redacted copy of this letter is found at **Exhibit "Z"**.
76. The Applicant has created numerous fake email addresses using the names of HEU staff members and elected officials and then used these fakes addresses to email other Union staff and officials and others.
77. On January 23, 2025, the Union contacted the Burnaby RCMP about the Applicant's persistent and escalating harassing behaviour. The Union leadership was concerned that HEU staff members and elected officials had been adversely impacted by the Applicant's defamatory posts and also by his attendance at places where the impacted staff members work despite him being asked not to attend these locations (Union Convention and his prior worksite where representatives attended meetings). Additionally, Union leadership was concerned by the Applicant's emails where he impersonated Union officials.

¹³ This Letter is found at p. 10 of the October 22, 2024 application.



II. OVERVIEW OF THE APPLICATIONS FILED BY THE APPLICANT

78. The Applicant has filed five applications with the Labour Relations Board (the “**Board**”) as well as an email which we understand forms part of the applications to which the Union must respond. Below we set out our understanding of these applications.

79. We understand from the letter from the Board that the Union should consider Section 12 as well as Section 10 of the *Code* in our response.

i. November 27, 2024 Application¹⁴ and November 28, 2024 Application¹⁵ (together, the - the “**Termination Grievance Application**”)

80. This Application includes four complaints:

81. First, the Applicant complains about the representation he received from the Union before his Termination Grievance was settled, including his request for external legal representation, the communication he received from the Union, his concerns about Ms. Latham’s and other HEU representatives’ representation.

82. Second, the Applicant disputes the Union’s decision to settle his termination grievance without his agreement.

83. Third, the Applicant takes issue with the Union’s decision to deny his internal appeal regarding the settlement of his Termination Grievance.

84. Finally, the Applicant claims he has received no update about the status of his Selection Grievances.

85. This Application also includes complaints about the Union denying the Applicant access to the Convention and complaints set out in the Article 19 Charges, as well as the Union’s assessment of the Harassment Grievance. We address those complaints in our response to other applications.

86. The Union will consider Section 12 of the *Code* in relation to this complaint.

ii. December 19, 2024 Application¹⁶ - the “**Harassment Grievance Application**”

87. In this application, the Applicant claims that the Union did not fairly represent him when it agreed to advance his Harassment Grievance.

¹⁴ This application was 47 pages, include the email from the Applicant to the Board.

¹⁵ This application was 52 pages, include the email from the Applicant to the Board.

¹⁶ This application was 17 pages, include the email from the Applicant to the Board.



88. He further claims that the Union did not fairly represent him during the investigation of the Harassment Grievance.

89. This application includes complaints about the Union's representation of the Applicant with respect to his Termination Grievance, which complaints we respond to in other applications.

90. Union will consider Section 12 of the *Code* in relation to this complaint.

iii. November 14, 2024 Application¹⁷ - the "Union Charges Application"

91. The Applicant challenges the Union's decision to decline to proceed with the 13 charges filed under Article 19 of the Union Bylaws against HEU elected representatives and HEU staff members on the basis that he was no longer a member.

92. The Union submits that this application requires consideration of Section 10 only, but we will address Section 12 in our response.

93. The remedies sought by the Applicant are: directing the Union to proceed with the investigation and adjudication of the Article 19 Charges, and other remedies the Board deems appropriate.

iv. October 22, 2024 Application¹⁸ - the "Convention Application"

94. This Application includes two complaints.

95. First, the Applicant takes issue with the October 11 Letter informing him that he is not authorized to attend the Union Convention or HEU events occurring in conjunction with the Convention.

96. Second, the Applicant challenges the Union's decision to make the Applicant leave the Convention after he had entered the Convention despite the clear direction of the October 11 Letter.

The Union submits that this application requires consideration of Section 10 only, but we will address Section 12 in our response.

¹⁷ This application was 45 pages, include the email from the Applicant to the Board.

¹⁸ This application was 10 pages, include the email from the Applicant to the Board.



97. The remedies sought by the Applicant are: Board acknowledgement of the Union's violation; his membership status be recognized until his grievance is resolved; and other remedies the Board deems appropriate.

v. January 23, 2025 – the “RCMP Email”¹⁹

98. Here the Applicant asserts that the Union violated Section 12 by filing a criminal harassment complaint against him with the RCMP.

99. The Union considers this application to involve Section 12 of the *Code*.

III. LAW

101. The Applications concern the provisions of the *Code*:

Internal union affairs

10 (1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to

(a) matters in the constitution of the trade union,

(b) the person's membership in a trade union, or

(c) discipline by a trade union.

(2) A trade union must not expel, suspend or impose a penalty on a member or refuse membership in the trade union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the trade union or council of trade unions

(a) if in doing so the trade union acts in a discriminatory manner, or

(b) because that member or person has refused or failed to participate in activity prohibited by this Code.

[...]

Duty of fair representation

12 (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith

¹⁹ This email was 2 pages.



(a) in representing any of the employees in an appropriate bargaining unit, or

(b) in the referral of persons to employment

whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.

[...]

Section 12

Time Limit

100. While there are no time limits in the *Code* for filing a Section 12 complaint, the Board has required that duty of fair representation complaints be filed in a timely manner. Although there is no specific time limit on complaints, the appropriate time to file a complaint is usually measured in months, not years, from the date of the alleged breach (*Joe Frank*, [1999] BCLRBD No 236. A complainant is responsible for providing the Board with a persuasive explanation for delay in filing a Section 12 complaint: *Andre Henri*, BCLRB No B76/00 (Leave for Reconsideration denied, BCLRB No B144/00).

Arbitrary, Discriminatory, or Bad Faith

101. The Board's inquiry under Section 12 of the *Code* is limited to ascertaining whether the Union's actions were "arbitrary, discriminatory, or in bad faith". While the Complainant may not agree with the Union's ultimate decision not to pursue the grievance to arbitration, this does not make the Union's handling of his grievance a violation of its duty to fairly represent its members: *James W.D. Judd*, [2003] BCLRBD No 63 at para 95.
102. "Arbitrariness" under Section 12 essentially encompasses three requirements. The Union must: (i) ensure it is aware of the relevant information; (ii) make a reasoned decision; and (iii) not carry out representation with blatant or reckless disregard: *Judd* at para 61.
103. Bad faith is established where the union has acted with an improper purpose, such as personal hostility or with an intention to deceive: *Girard v IBEW, Local No 258*, BCLRB No B60/2018 (Leave for reconsideration denied in BCLRBD No. B71/2018). Allegations of bias cannot be based on speculation or conjecture: *HEU*, [2015] BCLRBD No 189 at para 33.

Union can settle a grievance after arriving at a reasoned decision



104. In *Judd*, the Board confirmed that the union has carriage of a grievance and it is the union, and not the grievor, that will decide whether to withdraw, settle or refer a grievance to arbitration. Unions have this ability to settle a grievance whether or not a grievor signs off on the settlement: *Fraser Health Authority (Re)*, [2021] BCLRBD No 65 at paras 25 – 26.
105. A union must show that in coming to its conclusion not to proceed further with the complainant's grievance, it took a reasoned view of the matter: *Roth*, [1998] BCLRBD No 24 at para 36.
106. While a Union is not required to obtain a legal opinion about whether to pursue a grievance, if one is obtained, the opinion may be considered some evidence that the union took a reasoned view of the grievance (*Judd* at para. 65; *UBC*, [2021] BCLRBD No 96 at para 37).
107. As long as the union's decision-making is based on proper considerations, the Board will not second-guess whether the union's decision is the right one. The Board further confirmed that "it is not the Board's role to decide if a union was right or wrong as long as the union has not acted in an arbitrary, discriminatory, or bad faith manner" (*Judd* at paras 30, 33-39, and 44).

Standard applied to Union representation

108. *British Columbia Public School Employers' Assn*, [2025] BCLRBD No 9, the Board stated as follows regarding the standard underlying the duty of fair representation:

20 This **standard does not require that a union be flawless** in its representation:

However, that does not mean it is a violation of Section 12 for a union to make a mistake or handle a matter poorly. Typically, unions must handle a large volume of employee issues with the limited resources provided by members' dues.

As well, **unions are not law firms. Unions are not expected to meet the standards required of a lawyer in respect to either procedural or substantive matters. It is only when the alleged carelessness of a union reaches the level of blatant or reckless disregard for the employee's interests that the union can be said to be misusing its exclusive bargaining agency and acting arbitrarily within the meaning of Section 12.**

(*Judd*, paras. 69-70)

Communication and the Duty of Fair Representation

109. The Board has considered the relationship between Union communication and Section 12. In *Burnaby (City)*, [2023] BCLRBD No 33, the Board stated at para 212:

In *Judd*, the Board noted that "poor communication is often the cause of many Section 12 complaints" (para. 92). However, the Board has also made clear that poor communication does not itself constitute a breach of Section 12. In the present case, I find the Union's



failure to respond to the Applicant's October 23, 2020 and November 9, 2020 emails was an imperfection which must be seen in the context of the Union's handling of the Grievance as a whole. Seen in that context, I find it does not disclose that the Union's representation of the Applicant or its handling of the Grievance contravened Section 12 [...]

110. In *Gunnebo Canada Inc.*, [2017] BCLRBD No 199, the applicant alleged a breach of Section 12 because the Union required them to write emails and they had to be put on hold during phone calls. The Board found that complaints of “poor service” did not fall within the Board’s jurisdiction under Section 12.

Duty of Fair Representation Relates to Employment Relationship Only

111. The Board has clearly stated that Section 12 concerns an employee’s representation with respect to their employment matters. In *Indian River Transport Ltd.*, [2025] BCLRBD 17, the Board set out this principle as follows:

8 The Section 12 duty is directed at a union's representation of bargaining unit members in terms of their employment relationship with their employer (*Navkarm Gill*, BCLRB No. B59/2013, BCLRB No. B59/2013 (“*Gill*”), para. 8). The Board's jurisprudence is clear that an application to review internal union matters is not within the scope of Section 12 (*Judith G. Thorne*, BCLRB No. 181/2012, para. 17). As the Board explained in *Linda Karpowich*, BCLRB No. B370/1998 at paragraph 24:

The duty of fair representation is confined to an individual's employment and does not extend to review of internal union matters: *Charles Johnston*, BCLRB No. 7/75 [1975] 1 Can LRBR 362, at p. 371. Section 12(1)(a) is designed to protect individuals as employees, rather than as union members: *Vancouver General Hospital*, BCLRB No. 31/78, [1978] 2 Can. LRBR 508, at p. 513; and *Charles Johnston*, BCLRB No. 14/76, [1976] 1 Can. LRBR 321, at p. 330. ...

Section 10

Limited Scope of Review

112. Section 10 prescribes that unions must adhere to the principles of natural justice regarding disputes **relating to matters in their constitution or discipline**. However, the Board’s inquiry under Section 10 is limited to ensuring that unions recognize the rights of their members and treat members in an even-handed manner: *Philip Bitz et al.*, BCLRBD No B73/2005 at para 71. **The focus of this inquiry is not on the substantive decisions made or the actions taken, but on the process leading to those decisions or actions:** *Pereira*, [1999] BCLRBD No 324 at para 27.
113. In *Marilyn Coleman*, BCLRBD No B282/95, the Board commented on the nature of natural justice and outlined the requirements underlying members’ rights under Section 10 of the Code:



There has long been a recognition by the courts that the rules of natural justice are context dependent. They will vary depending upon the circumstances of the case, the nature of the inquiry, the statutory provisions and the seriousness of the case: Pearlman, *supra*. Domestic tribunals, for instance, are not required to comply with the standards imposed upon judicial or quasi-judicial tribunals.

(para 116)

Ban on attending Union events is not a violation of Section 10

114. In *Anjum*, 2023 BCLRB 147 and *Coates*, 2021 BCLRB 127, the Board found that a ban from attending union events or a union convention was not a penalty, as that term is understood in Section 10(2) of the *Code*.

Board will not entertain moot claims

115. Recently, in *Bains -and- PIPSC*, 2024 BCLRB 69, the applicant alleged a violation of Section 10 when he was suspended from all union activities pending an investigation into a complaint against him. The union argued that the application was moot because the applicant had subsequently resigned from his employment and all positions within the union. PIPSC further noted that the investigation against the applicant was withdrawn as being moot (para 14). The Board set out the relevant law on mootness as follows at paras 21 - 25:

The Board's well-established policy is to decline to adjudicate moot or academic matters (*Health Labour Relations Association of B.C.*, BCLRB No. B69/93 (Leave for Reconsideration of IRC No. C43/92, IRC No. C64/92 and Interim Order dated March 11, 1992); *Dennis Talbot*, BCLRB No. B80/2006 ("*Talbot*"), para. 19; *Simon Fraser University*, BCLRB No. B20/2013 (Application for reconsideration granted, BCLRB No. B111/2013), para. 35; *Joseph Sircelj*, BCLRB No. B66/2019 ("*Sircelj*"), para. 21; *Pan Pacific Vancouver*, 2021 BCLRB 50 (Leave for Reconsideration of 2021 BCLRB 15) ("*Pan Pacific*"), para. 43).

The Board's mootness analysis follows that of the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 ("*Borowski*").

In *Borowski*, the Court identified a "moot" matter as one that does not involve a live controversy or concrete dispute affecting the parties' rights (p. 357). Accordingly, a matter is moot where a Board decision will not have a practical effect on the parties' rights (*Talbot*, para. 19; *Sircelj*, para. 22; *Pan Pacific*, para. 43).

Pursuant to the mootness analysis outlined in *Borowski*, the Court retains a discretion to adjudicate a moot matter, having regard to mootness principles, including "the preservation of scarce judicial resources" (*Borowski*, p. 345). The Court retains the discretion to expend



scarce judicial resources to adjudicate a moot matter "in cases of a recurring nature but brief duration" (*Borowski*, p. 360).

Following *Borowski*, the Board's mootness analysis is, therefore, a two-stage analysis. At the initial stage, the question is whether the parties' legal dispute is moot. If the parties' legal dispute is moot, the next question is whether the Board should nevertheless exercise its discretion to adjudicate the matter.

116. In *Bains*, the Board found that the application did not implicate a live controversy and thus was moot. The Board declined to exercise its discretion to allocate scarce Board resources based on bare assertions or bald allegations, and the application was dismissed (paras 30 – 42).²⁰

IV. RESPONSE SUBMISSIONS

Termination Grievance Application

Decision to Accept ITS Recommendations & Internal Appeal Decision

117. The Union satisfied its duty of fair representation when it decided to settle the Applicant's grievances based on the recommendations of Troubleshooter Sullivan. The Union reviewed the ITS Report, the facts laid out therein, the legal analysis, and the conclusions. The Union made a reasoned conclusion to accept the ITS recommendations after considering the ITS Report and its knowledge of the relevant grievance files. Just as a union may obtain a legal opinion and rely on that opinion as some evidence that it took a reasoned view, so too here can HEU rely on the thoroughly reasoned opinion of an esteemed arbitrator whose recommendations were found in the ITS Report: *Judd*; *UBC*.
118. The Union's October 8, 2024 internal appeal decision likewise satisfies Section 12. There again the Union examined relevant facts and law, and the ITS Report, and concluded that it was not likely that a better outcome could be achieved at arbitration.
119. One of the Applicant's chief complaints is that the Union did not seek to negotiate the characterization of the settlement funds as damages, which we understand to mean human rights damages which are non taxable. After termination, the Applicant argued that he never intended for his Harassment Grievance to include an allegation that PHSA was racist towards him.²¹ It is difficult to see how the Union could ask PHSA to

²⁰ In that decision, the Board found that the application was also properly dismissed for being premature or untimely.

²¹ See Exhibit "N", July 25, 2024 email, p. 3.



characterize the settlement funds as human rights damages when the Applicant was denying that he made an allegation of racist conduct against PHSA.

120. The Applicant also disputes the Union settling his grievances without his agreement. A union is entitled to settle a grievance without the grievor's consent: *FHA*.
121. In this application, the Applicant merely asks the Board to second-guess whether the Union's decision is the right one without pointing to any basis for his assertion that the decision was made in an arbitrary, discriminatory or in a bad faith manner. This is not the role of the Board: *Judd*.

Bad Faith Allegations

122. The Applicant alleges bad faith on the part of the Union in settling his grievances, and against Ms. Latham and against various other Union representatives. The Union denies that its representation of the Applicant was at all motivated by bad faith.
123. A review of the facts set out above show a clear pattern: once the Applicant learns that someone does not agree with him, he responds with intimidation and/or allegations of bad faith in an attempt to deter people from making decisions he does not agree with.²²
124. For example, in late April, 2024, once the Union told the Applicant that his Termination Grievance would proceed before the Selection Grievances, he asserted that the Union did not intend to pursue his reinstatement and was not taking his termination seriously.²³ The Applicant's unfounded theory that the Union was acting in bad faith and would not pursue his reinstatement appears to have started less than two months after termination and before the Union had even decided (with the Applicant's agreement) which forum to choose to advance his grievance.
125. In May 2024, the Applicant turned his focus towards Ms. Latham. After she informed the Applicant that PHSA deemed his communication with its employees to be harassing in nature and asked him to be mindful about his post-termination communications, the Applicant lodged a series of baseless complaints against Ms. Latham.
126. In June 2024, when, faced with a barrage of emails to the Union, Mr. Dorais placed restrictions on who and when the Applicant could communicate with at the Union, the Applicant claimed that the Union was acting in bad faith.²⁴

²² See also ITS Report, Exhibit "S".

²³ Exhibit "D".

²⁴ Exhibit "I".



127. In October 2024, after the Union informed the Applicant that it would accept the ITS recommendations, he stated that he did not agree with the recommendations, that he expected the Union to provide external representation and to advance his grievance to arbitration and that the Union's actions have been "arbitrary, discriminatory, and marked by conflicts of interest".
128. Simply put, there is no basis for any of the bad faith allegations brought by the Applicant. No Union representative acted with an improper purpose or personal hostility toward the Applicant. There is only the Applicant "attacking those who he thought was behind the decisions against his interest".²⁵

Other Representation Complaints

129. The Applicant also alleges a violation of the duty fair representation because the Union did not provide him with legal representation. While we dispute that there was any deficiency in the representation provided to the Applicant, we note that it is well established that unions are not expected to meet the standards required of a lawyer under Section 12: *BCPSEA*. The Applicant again complains that he did not get everything he wanted and again this disappointment motivates his allegations of unfair representation.
130. The Applicant claims that he is unaware of the status of his Selection Grievances. On April 17, 2024, Ms. Bennett informed the Applicant that the Selection Grievances would be redundant if the Termination Grievance were dismissed.²⁶ Once the Termination Grievance was settled, the Union followed through on its commitment to not proceed with the Selection Grievances.
131. Because the Applicant will not be returning to PHSA, the Selection Grievances are moot because he will not be awarded an IT position.
132. The Applicant takes issue with the communication he received from various Union representatives and from Ms. Bueckert in particular. As we have outlined in detail above, the Applicant began sending frequent, unnecessary, aggressive and impolite emails to Union representatives as soon as the Union did not agree with his grievance strategy. Mr. Dorais, and others, had to caution the Applicant to refrain from sending disrespectful emails to Union staff members. Mr. Dorais had to instruct the Applicant to cease sending emails to representatives, other than Mr. Dorais, on several occasions given the tone and frequency of his emails. The Union's communication approach toward the Applicant was reasonable in light of his behaviour.

²⁵ Exhibit "S".

²⁶ Exhibit "B".



133. In any event, complaints of “poor service” from a union fall outside the scope of Section 12: *Gunnebo Canada; Burnaby (City)*.

Harassment Grievance Application

Application is Untimely

134. This application must be summarily dismissed as it is untimely. Step 3 of the grievance process concluded on October 3, 2023. If, as the Applicant contends, the Union failed to properly investigate this grievance, that inadequate analysis was completed by October 2023, some 14 months before the Harassment Grievance Application was filed. The Applicant has provided no rationale for late filing this application.
135. Further, the potential prejudice to the union is a factor that is considered in dismissing a complaint as untimely (*Joe Frank*). In this case, there would be significant prejudice to the Union because of the delay, should the complaint be permitted to proceed. Many events have occurred over the course of time which may obscure the facts in this case. The Board has held that the unavailability of witnesses or the deterioration of evidence may potentially prejudice a Union and hamper a fair hearing of the dispute.
136. The Board should dismiss this complaint as untimely because of the length of the delay, the lack of a compelling explanation for the delay, and the prejudice to the Union should this matter proceed.

Section 12

137. We turn, in the alternative to the merits of this application. This is a novel Section 12 complaint. Normally, applicants complain that a union has refused to file or advance a grievance or has settled a grievance, contrary to the applicants' wishes. Here the Applicant complains that the Union choose to advance his Harassment Grievance as he wished, and now blames the Union for his termination. He claims that the Union's mishandling of this grievance was arbitrary and done in bad faith.
138. The Union's decision to pursue the Applicant's grievance does not violate Section 12. The Union obtained relevant information, made a reasoned decision to pursue the harassment allegations advanced by the applicant, and carried out its representation with due regard for the Applicant. Ms. Latham's representation provided to the Applicant during the investigation process also meets the Section 12 criteria.
139. The Applicant's argument that bad faith motivated the Union decision to advance his grievance is counterintuitive and based on mere speculation and conjecture.



Union Charges Application

Section 10(1)(a) and (b)

140. The Union's decision not to proceed with the 13 charges filed under Article 19 of the Bylaws does not violate Section 10. This application is also moot.

Application is Moot as the Applicant is no longer a member

141. First, we submit that this application must be dismissed based on the reasoning in *Bains*. In that case, the Board found that the Applicant's complaint was moot because he had resigned from his employment and from Union positions. The union investigation into the complaint against him (which had resulted in his suspension from all union activities) was withdrawn.
142. Similarly, here the Union Charges Application is moot. The Applicant is no longer a member because the Termination Grievance has been settled and he has exhausted all avenues of recourse.²⁷ HEU's investigation into his Article 19 Charges will not longer proceed because the Applicant is no longer a member and such investigations are intended to apply to active members. There is no live controversy remaining in the Article 19 Charges. This application is moot.
143. Also as in *Bains*, the Board should decline to exercise its discretion to accept this complaint. The Applicant's allegations are mere bare assertions (as with his other allegations against the Union). It is not appropriate for the Board to waste scarce resources on this complaint.

Section 10 review does not involve interpretation of a constitution

144. In this application, the Applicant disagrees with the Union's interpretation of Article 19 and Article 2(H)2, stating that refusing to proceed with the charges due to a change in his membership status is inconsistent with the HEU Constitution. The Union interpreted Article 2(H)2 to mean that the Applicant was no longer a member once his internal appeal was dismissed. The Union interpreted the Article 19 process as applying only to active members, which did not include the Applicant after October 8, 2024.
145. The Applicant disagrees with the Union's interpretation of its Constitution. If the real substance of the dispute involves the interpretation and application of a union's constitution and by-laws, it is a matter outside of the Board's jurisdiction. The Board

²⁷ Exhibit X, Article 2(H)(2).



does not have jurisdiction to decide this interpretative question and must dismiss this application.

Section 10(1): principles of natural justice followed

146. While the Union submits that the Applicant's complaint relates to the Union's substantive decision making and falls outside the scope of Section 10, we submit that the Union adhered to the principles of natural justice in deciding not to proceed with the Article 19 Charges. The Union followed the requisite procedure in the Constitution and Bylaws:
- a. pursuant to Article 19(A), Ms. Bueckert delegated conduct over the Applicant's charges to Mr. Pegler;
 - b. pursuant to Article 19(D), Mr. Pegler appointed an external lawyer to conduct a preliminary investigation into these charges.
 - c. the external investigator started his preliminary investigation into the charges filed before October 8, 2024;
 - d. pursuant to Section 2(H)2, after Mr. Dorais declined the Applicant's internal appeal on October 8, 2024, the Applicant ceased being a member; and
 - e. as noted above, Article 19 is intended for members in good standing. After October 8, 2024, the Article 19 process was not intended to apply to the Applicant as a non-member and the investigation into his charges was stopped.
147. On October 31, 2024, the Union notified the Applicant that his charges would not proceed. In this letter, the Union notified the Applicant that the charges filed against him by members still in good standing would also not proceed given the change in his membership status. There is no basis for the assertion that the Union failed to follow the rules set out in the Constitution and Bylaws or failed to apply the principles of natural justice to the Article 19 Charges.

Section 12

148. The Union submits that the Union Charges Application does not engage the duty of fair representation, which duty is confined to an individual's employment and does not concern internal union matters: *Indian River Transport*.



Convention Application

149. The Union did not violate Section 10 by notifying the Applicant that he was not credentialed to attend the Convention, nor by requiring him to leave the Convention after he had entered as an observer.

Application is Moot as the Applicant is no longer a member

150. This application should also be dismissed for mootness. The Convention has passed, the Applicant is no longer a member and, accordingly, there is no live controversy. The Board should decline to exercise its discretion with respect to this application as it should for the Article 19 Charges Application.

Section 10(1): Delegate Access to Convention

151. As regards Section 10(1), the Union submits that it did not deny the Applicant natural justice when he was not permitted to attend the Convention as a delegate. The Union followed the requisite procedure in the Constitution and Bylaws:
- a. article 5(C) of the Bylaws prescribes the number of delegates that each local can credential to send to Convention;
 - b. the Applicant's Local did not delegate him to attend the Convention as required;²⁸ and
 - c. on October 11, 2024, the Union informed the Applicant in writing that he was not credentialed to attend the Convention.
152. Access to the Convention as a delegate is not an automatic right possessed by each Union member. All members must obtain authorization from their Local to attend as a delegate. The Applicant was treated as were all other members. The Applicant failed to obtain the requisite credentials to attend the Convention as a delegate. The Union

²⁸ In Exhibit "P", the Applicant acknowledges that he lacks delegate status to attend the Convention.



did not violate Section 10(1) when it informed the Applicant that he is not authorized to attend Convention as a delegate.

Section 10(1): Observer Access to Convention

153. The Board's authority to review a union's decision-making for consistency with the rules of natural justice is confined to matters in the union's constitution. There is nothing in the Constitution and Bylaws about attending the convention as an observer. Accordingly, the Applicant's desired attendance as an observer falls outside the scope of Board's review under Section 10(1).

Section 10(2)

154. Section 10(2) prohibits a union from imposing a penalty on a member if, in doing so, the union acts in a discriminatory manner.
155. Pursuant to *Anjum* and *Coates*, being denied access to a Union convention is not a penalty within the meaning of Section 10(2) of the *Code*. Accordingly, the Union did not violate Section 10(2) by denying the Applicant access to the Convention.
156. Further, the Union did not act in a discriminatory manner by refusing the Applicant observer status at the Convention. The Union removed the Applicant from this event in part because he had been harassing HEU staff member and had made them uncomfortable. The Union has an obligation to ensure a safe workplace, and had legitimate reasons to ensure that the Applicant was not present at the Convention in light of his behaviour.

Section 12

157. The Union submits that the Union Charges Application does not engage the duty of fair representation, which duty is confined to an individual's employment and does not concern internal union matters: *Indian River Transport*.

RCMP Email

158. The Union submits that the RCMP Email does not engage the duty of fair representation as this complaint does not relate to the Applicant's employment.
159. We further submit that the Union went to the RCMP in January 2025, months after the Applicant ceased being a member. While the Applicant's Union membership may have



ended, his harassing conduct did not. The Union went to the RCMP after directing that the Cease and Desist Letter be sent to the Applicant and after the Applicant had started impersonating Union officials in emails. The Applicant gave the Union good reason to seek out police assistance. The Union's impugned conduct does not engage Section 12.

V. CONCLUSION & ORDERS SOUGHT

160. We respectfully request the Board to find that the Applications must be dismissed for the reasons set out above.
161. The Union respectfully requests that the Board issue its decision, once the submissions process is complete, as soon as reasonably practicable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Yours truly,

KOSKIE GLAVIN GORDON

Per:

KIRBY SMITH

Enclosures

cc: Union
Ivo Dimitrov (PHSA)
Emma Mccloughlin (LRB)