

Supplemental Grounds in Support of Leave and Reconsideration – BCLRB Decision 2025 BCLRB 96

To: Registrar, British Columbia Labour Relations Board

From: Jessie Bains

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Subject of Appeal:

Appeal of the entirety of Decision 2025 BCLRB 96 on the basis that Vice-Chair Andres Barker acted without jurisdiction, breached procedural fairness, failed to disclose reasons for refusing to recuse himself, and improperly consolidated seven distinct applications filed under Section 12(1) and Section 10(1) of the Labour Relations Code.

Grounds for Appeal:

1. Lack of Jurisdiction – Failure to Recuse Despite Formal Request

Vice-Chair Andres Barker acted without jurisdiction by refusing to recuse himself from ruling on my applications despite being formally placed on notice. On March 15, 2025, I submitted a written request seeking his recusal on the grounds of reasonable apprehension of bias. I further requested written reasons for his refusal. No such reasons were provided. This omission alone invalidates his authority to adjudicate, rendering the entire decision *ultra vires*. His continued involvement despite this clear conflict constitutes a breach of administrative law principles, Board policy, and the Code of Professional Conduct for BC Administrative Tribunals, which obliges decision-makers to maintain the appearance and reality of impartiality.

2. Improper Refusal to Strike Prejudicial Material

In paragraph 5 of his decision, Vice-Chair Barker wrote:

“The Applicant asked for this panel to ‘strike’ certain paragraphs of the Union’s response as being irrelevant. There is no specific process under the Board’s rules for striking portions of application submissions that is akin to the Supreme Court Civil Rules...”

This reasoning demonstrates a failure to uphold basic procedural safeguards. While the Board is not bound by civil court rules, the right to a fair hearing and protection from prejudicial submissions remain binding obligations. Barker’s refusal to strike inflammatory and irrelevant material—despite being alerted to its prejudicial nature—reflects procedural bias and a failure to exercise the discretion required of an impartial adjudicator.

3. Improper Consolidation of Seven Separate Applications

Each of my seven applications was filed with a separate \$100 filing fee, between October 22, 2024 and April 23, 2025, with explicit instructions that each be assessed on its own facts, merits, and evidence. Vice-Chair Barker improperly consolidated all seven into a single decision, resulting in:

- The erasure of distinct timelines, legal issues, and factual allegations;
- Procedural harm, as later applications were judged by evidence pertaining only to earlier ones;
- The mischaracterization of unrelated complaints as “duplicative.”

This act of consolidation undermined my right to individualized adjudication and strongly favoured the Respondent.

Arbitrary Merging of Third and Fourth Applications

My third and fourth applications raised unrelated claims submitted on different dates—November 20, 2024, and November 28, 2024, respectively. Barker’s decision to merge them—without notice, consent, or reasons—further indicates a procedural alignment with the Respondent rather than impartial adjudication. This deprived me of the right to have each matter fairly assessed on its own facts and legal basis, and contradicts the Board’s duty to avoid prejudicial process shortcuts.

4. Premature Dismissals Without Union Submissions

Applications 6 and 7 (filed April 4, 2025 and April 23, 2025) were dismissed with the last being within 7 days of filing without:

- The Union being given a chance to respond;
- Myself being allowed to reply to anticipated defences.

Despite acknowledging that no Union submissions had been received, Barker made assumptions on their behalf and dismissed both applications. This constitutes a textbook violation of natural justice.

5. Misapplication of Case Law and Misrepresentation of Material Facts

Each of my seven applications raised legally distinct claims that Vice-Chair Barker misrepresented or ignored:

- **Application 1 (Filed Oct 22, 2024):** Challenged my exclusion from the HEU Convention despite active grievance status and being a member in good standing. Barker ignored procedural fairness under Section 10(1) and reframed this as a constitutional interpretation issue.
- **Application 2 (Filed Nov 13, 2024):** Addressed the Union’s refusal to proceed with Article 19 charges after my membership was disputed. The Union’s inaction denied natural justice, but Barker treated the matter as moot rather than recognizing the jurisdictional standard in *UBCJA*.
- **Application 3 (Filed Nov 20, 2024):** Alleged the Union’s bad-faith handling of my grievance, refusal to communicate, and failure to represent me during key proceedings, all contrary to *Judd*.

- **Application 4 (Filed Nov 28, 2024):** Focused on unresolved grievances, denial of alternative representation, and internal conflicts of interest. Barker misapplied *Murphy* in claiming insufficient particularization, despite documented timelines and correspondence.
- **Application 5 (Filed Dec 18, 2024):** Dismissed as untimely despite clear evidence that the grievance process concluded only on October 8, 2024. *Judd* and *Karpowich* both affirm that timelines begin upon exhaustion of remedies—not before.
- **Application 6 (Filed Apr 4, 2025):** Concerned election interference and Ethics Commissioner inaction. Barker ruled prematurely without allowing submissions and incorrectly asserted the Board lacked jurisdiction—contradicting *UBCJA*, which affirms the Board’s oversight of internal union processes when natural justice is at issue.
- **Application 7 (Filed Apr 23, 2025):** Alleged constitutional overspending (\$470,000 vs. \$375,000 limit) by the HEU Provincial Executive, with no independent review. Barker dismissed the case within 7 days, claiming I lacked standing despite my status as a member in good standing during the period in question.

In each instance, Barker either distorted case law or applied it selectively to shield the Union from scrutiny, acted as an agent of the Union revealing a clear pattern of bias and a failure to uphold legal standards under the Code.

6. Systemic Failure of the Chair to Uphold Oversight Responsibilities

I have lost faith that this Board, under its current leadership, is capable of delivering a fair hearing or outcome. The Chair has failed to ensure that:

- Members of the Board meet high ethical and professional standards;
- Recusal and impartiality rules are respected;
- Natural justice is enforced consistently.

The persistent failure to enforce duties under the Labour Relations Code, the Board’s own Rules of Procedure, and administrative law obligations reflects a systemic breakdown in oversight.

Relief Requested:

- That Decision 2025 BCLRB 96 be declared *void ab initio* due to jurisdictional failure;
- That each of the seven applications be remitted to a new, independent Vice-Chair for separate reconsideration;
- That the Board issue written reasons justifying the original refusal to recuse;
- That the Board affirm the principle that no application can be dismissed without full submissions and procedural fairness;
- That complaints involving natural justice, fair representation, and fiduciary duties—even those related to internal Union elections or spending—fall within the Board’s jurisdiction under Sections 10(1)(a), 10(1)(c), and 12(1).

Respectfully submitted,
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