

BRITISH COLUMBIA LABOUR RELATIONS BOARD

JESSIE BAINS

(the “Applicant”)

-and-

HOSPITAL EMPLOYEES’ UNION

(the “Union”)

-and-

PROVINCIAL HEALTH SERVICES AUTHORITY

(the “Employer”)

PANEL: Jennifer Glougie, Chair
David Duncan Chesman, K.C., Vice-Chair
Jonathan Hanvelt, Vice-Chair

APPEARANCES: The Applicant, self-represented

CASE NO.: 2025-000570

DATE OF DECISION: June 18, 2025

DECISION OF THE BOARD

1 The Applicant applies under Section 141 of the *Labour Relations Code* (the “Code”) for leave and reconsideration of 2025 BCLRB 96 (the “Original Decision”). The Original Decision dismisses seven applications in which the Applicant says the Union breached its duty of fair representation and denied him natural justice in relation to internal union matters. The Applicant alleges the original panel lacked jurisdiction to hear the matter, was procedurally unfair in rendering the Original Decision, and improperly consolidated his seven applications.

2 The Applicant made submissions in support of his application for leave and reconsideration of the Original Decision dated May 1 and 5, 2025, which were filed with the Board on May 2 and 6, 2025, respectively. He also filed an Application to Dismiss the Original Decision, dated May 23, 2025, which was received by the Board on May 26, 2025. We have reviewed and considered all of these submissions as part of his application for leave and reconsideration.

3 An application for leave and reconsideration must demonstrate a good arguable case of sufficient merit that it may succeed on one of the established grounds for reconsideration (*Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93) (“*Brinco*)). Reconsideration is not an opportunity to reargue the case before a different panel in the hopes of achieving a different outcome. Rather, the applicant must show there is a serious question as to the correctness or fairness of the original decision.

4 The Applicant argues that “no officer, Vice-Chair, or adjudicator may preside over or continue in any proceeding involving [his] applications without first confirming, on the record, the existence and lawful filing of their oath of office”. Vice-chairs are appointed by Order-in-Council and are statutorily required to take an oath of office when they begin acting as members of the Board (Section 129). There is no requirement in the Code that a Board vice-chair provide an applicant with a copy of their sworn oath of office in order to prove their jurisdiction to decide the matter before them. In any event, the Applicant provides no explanation or justification for his suspicion that the original panel has not sworn the required oath of office and we find his suggestion that the original panel lacks jurisdiction to decide his applications to be entirely unfounded. Nonetheless, we confirm that every individual appointed to the Board, including the original panel and each member of the reconsideration panel, have sworn the oath of office required by Section 129 of the Code.

5 The Applicant says the original panel lacked jurisdiction to make the Original Decision because he failed to recuse himself and failed to provide written reasons for his refusal to recuse himself, despite being asked to do so. The Applicant says the original panel’s “prior affiliation with a respondent-aligned union (BCGEU)” created “a reasonable apprehension of bias”.

6 As noted in the Original Decision (para. 143), the British Columbia Court of Appeal confirmed that the question of whether there is a reasonable apprehension of bias should be considered with the following principles in mind:

- a) a judge's impartiality is presumed;
- b) a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified;
- c) the criterion of disqualification is the reasonable apprehension of bias;
- d) the question to be determined is what would an informed reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude;
- e) the test for disqualification is not satisfied unless it is proved that the informed, reasonable and right-minded person would think it more likely than not that the judge, whether consciously or unconsciously, not decide fairly;
- f) the test requires demonstration of serious grounds on which to base the apprehension; and
- g) each case must be examined contextually and the inquiry is fact-specific.

(*Taylor Ventures Ltd. (Trustee of) v. Taylor*, 2005 BCCA 350, para. 7)

7 In *Sean Parr*, BCLRB No. B211/96 (Leave for Reconsideration of BCLRB No. B81/96) ("*Parr*"), the Board acknowledged that, given the nature and functions of labour relations boards generally, vice-chairs are necessarily drawn from one side of the labour community or the other and are bound to have some prior association with the parties coming before the Board (*Parr*, para. 31; see also, *BCGEU v. Labour Relations Board of BC* (1986), 2 B.C.L.R. (2d) 66 (C.A.), p. 78)). Courts have found that after a suitable period of time, past professional or business relationships of a vice-chair of the Board with either party or its counsel will not be grounds for disqualification, provided those past relationships do not extend to the matter in issue before the decision-maker (*Parr*, para. 31; *Wire Rope Industries Ltd.*, IRC No. C19/88 (Leave for Reconsideration of BCLRB No. 203/87)).

8 In the present case, the Applicant does not suggest the original panel had any relationship whatsoever with the Union, let alone a relationship that extends to the matters decided in the Original Decision. We agree with the original panel that a reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, would conclude that the fact the original panel articulated with a different public sector union more than thirteen years ago, in and of itself,

does not provide a basis on which to find a reasonable apprehension of bias (para. 137). We find the Applicant has not established a serious question as to the correctness or fairness of the original panel's decision not to recuse himself in the circumstances (*RG Properties Ltd.*, BCLRB No. B378/2003 (Leave for Reconsideration of BCLRB No. B252/2003) ("*RG Properties*")).

9 The Applicant says the original panel lacked jurisdiction to adjudicate his applications because he failed to recuse himself after the Applicant made a formal request that he do so. Because we find the original panel did not err in refusing to recuse himself, we find no merit to the Applicant's argument that the original panel lacked jurisdiction to decide the applications.

10 The Applicant also asserts that the original panel was required to provide written reasons for refusing to recuse himself prior to issuing a decision in the matter, arguing that the Board "cannot exercise lawful jurisdiction while a jurisdictional challenge remains unresolved". We disagree. The Code does not require an original panel to produce, on request, full written reasons for a bottom-line decision made in the course of adjudicating an application. Subject to procedural fairness, the Board has a wide discretion to determine its own practice and procedure in a proceeding (Section 126 of the Code; *Norbord Inc.*, BCLRB No. B58/2016 (Leave for Reconsideration of BCLRB No. B42/2016), para. 18).

11 The original panel considered the Applicant's request that he recuse himself, provided a bottom-line decision dismissing the Applicant's request, and noted that written reasons would be provided in the decision. Those reasons were provided at paragraphs 136 to 144 of the Original Decision. In this case, the Applicant has had the opportunity to challenge the original panel's decision not to recuse himself in this application for leave and reconsideration. We are not persuaded there has been a breach of procedural fairness or natural justice.

12 The Applicant says the original panel erred by improperly consolidating seven separate applications, despite there being no request for him to do so. On the contrary, he says, he filed each of his seven applications "with explicit instructions that each be assessed on its own facts, merits, and evidence".

13 The Applicant's seven applications were assigned to the same panel for adjudication and the reasons for decision on each application were given in a single decision. We find no error in the decision to issue reasons for all seven of the applications in the Original Decision. The Applicant does not deny, and in any event we find, that the applications all arise out of related events flowing from the termination of his employment and the impact it had on his ongoing union membership. We find the decision to address all the applications in one decision makes good labour relations sense and is consistent with the Board's duty in Section 2(e) to promote conditions favourable to the orderly, constructive and expeditious settlement of disputes. We find that there was no requirement to request the parties' consent to proceed in this manner and we find that Section 126 of the Code provides the original panel with the authority to do so. We find, in the circumstances of this case, that there has been no breach of

natural justice or procedural fairness in addressing these seven applications in one decision.

14 The Applicant also says the original panel errs by arbitrarily merging the third and fourth applications, thereby denying him 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”. We disagree with the Applicant that the third and fourth applications were “merged”; rather, we find the original panel addressed the issues raised in the third and fourth application in a single sub-section of the Original Decision (paras. 85 to 119). The Applicant does not articulate, and we do not find, any error resulting from the original panel having done so.

15 The Applicant says the original panel errs by prematurely dismissing the sixth and seventh applications without seeking submissions from the Union. He says the original panel’s decision in this regard prevented him from “being allowed to reply to anticipated defences” and “constitutes a textbook violation of natural justice”.

16 The Board’s leading case on the duty of fair representation is *James W.D. Judd*, BCLRB No. B63/2003 (“*Judd*”). There, the Board explained that Section 13(1)(a) sets out a threshold test; it will only seek response submissions from the union and employer if the facts alleged in the application show an apparent breach of the duty of fair representation (para. 81). If the Board does not find that an apparent breach has been established, it will dismiss the application without seeking submissions in response (para. 101). For this reason, it is crucial that applicants set out all of the relevant facts as part of their application (*Judd*, para. 74).

17 In the present case, the Original Decision concludes that the allegations raised in the sixth and seventh applications are matters arising under the Union’s constitution and which fall outside of the scope of the Section 12 (paras. 131, 135). Therefore, the Original Decision finds they do not show an apparent breach of Section 12 and do not pass the threshold requirement for submissions set out in Section 13(1)(a).

18 Section 12 is not a forum to resolve every dispute between a union and its members; rather, the duty of fair representation only concerns matters arising out of the union’s exclusive bargaining agency (*Judd*, paras. 33-34; *Tom Smith*, BCLRB No. B15/2004 (Leave for Reconsideration of BCLRB No. B218/2003), para. 26). The Board has consistently held that disputes arising out of the union’s interpretation or application of its constitution do not fall within the scope of Sections 10 or 12 of the Code but rather are within the jurisdiction of the courts to decide (*Philip Bitz*, BCLRB No. B73/2005, para. 64; *Collins Njoroge*, BCLRB No. B187/2019, para. 55).

19 In the sixth application, the Applicant raises concerns about interference with an internal union election. In the seventh application, he raises issues of constitutional overspending. We agree with the Original Decision that these are issues arising under the Union’s constitution and fall outside of the scope of Section 12. Therefore, we agree that the sixth and seventh applications do not show an apparent breach of Section 12

and find the Original Decision does not err in dismissing them under Section 13 of the Code without first seeking response submissions from the Union or the Employer.

20 The Applicant says the original panel erred by denying his request to strike prejudicial material contained in the Union's response material, which were sought with respect to the first five applications, thereby failing to "uphold basic procedural safeguards". As the Original Decision notes, the Board's rules are unlike those of the BC Supreme Court and do not have a process to "strike" portions of submissions (para. 5). Additionally, the Code expressly provides that the Board may receive and accept evidence, even where that evidence might not be admissible in court (Section 124(1)). Here, the Applicant says the Union submitted "inflammatory and irrelevant material" as part of its response submission. The Applicant does not say that he has not had an opportunity to respond to the allegations, but rather that the original panel should not have considered it. We find the original panel did not err and was not procedurally unfair in refusing to strike portions of the Union's response. The fact that an original panel does not accede to a request to refuse to consider certain submissions, without more, does not amount to an error or a breach of natural justice.

21 The Board is entitled to determine its own practice and procedure, provided it gives the parties an opportunity to present evidence and make submissions (Section 126(1)). It was open to the Board to assign the seven applications to a single panel of the Board and for the original panel to issue his decision on all seven applications in a single document, to combine his discussion of the third and fourth applications under a single sub-heading, to issue a decision on the sixth and seventh applications without hearing the Union or Employer in response, and to refuse to strike certain material in the Union's submissions. The Applicant does not say that he was denied an opportunity to make submissions or provide evidence on any of the applications. Rather, he believes he should have been entitled to do so before seven different Board adjudicators and after receiving full response submissions from the Union on each of his applications. For all the reasons given, we disagree.

22 With respect to the substance of the Original Decision, the Applicant says the original panel misapplied the case law and misrepresented material facts specifically with respect to: his exclusion from Convention; the Union's refusal to proceed with Article 19 charges; the bad-faith handling of his grievance, which he says was contrary to *Judd*; the focus on unresolved grievances; and the dismissal of the fifth application on the basis of timeliness. We find the Applicant's arguments in this regard amount to an attempt to reargue the original case before a new panel in hopes of a better result, contrary to *Brinco*. We find the Applicant has not raised a serious question as to the fairness or correctness of the Original Decision and, accordingly, we dismiss the application for leave and reconsideration (*RG Properties*).

23 Finally, we note that in his application for leave and reconsideration, the Applicant attaches a "Formal Notice of Liability" that the Board's failure to intervene and "protect the integrity" of his proceedings has caused him undue harm. He has also sent the original panel and the Chair of the Board each a "Notice of Personal and Professional Liability", a "Second Notice of Liability – Procedural Negligence and

Jurisdictional Breach”, and a “Third and Final Notice of Liability” (collectively, the “Notices”). Among other things, the Notices demand that the Chair “review and make findings regarding the jurisdictional challenges raised” and “provide reasons for declining to intervene” in the original panel’s continued involvement in the matters leading to the Original Decision.

24 The Applicant’s recourse to challenge the Original Decision, including the original panel’s jurisdiction to make the Original Decision, is through the Board’s reconsideration process under Section 141 of the Code. The Applicant has now had his opportunity to seek reconsideration in relation to the Original Decision which decided his seven applications. Any further recourse to challenge the Board’s reconsideration decision is through the judicial review process. Neither the Board nor any individual associated with it will respond further to the Notices or any future documents of their kind.

25 For the reasons given above, the application for leave and reconsideration is denied.

LABOUR RELATIONS BOARD

“JENNIFER GLOUGIE”

JENNIFER GLOUGIE
CHAIR

“DAVID DUNCAN CHESMAN, K.C.”

DAVID DUNCAN CHESMAN, K.C.
VICE-CHAIR

“JONATHAN HANVELT”

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