

COURT OF APPEAL FILE NO. CA50788

Bains v. Barker

Vancouver

COURT OF APPEAL

ON APPEAL FROM the order of Justice Morishita of the Supreme Court of British Columbia pronounced on the 30th day of June 2025

BETWEEN:

Jessie Bains

APPELLANT

(Applicant)

AND:

Andres Barker

RESPONDENT

(Respondent)

LOWER COURT TRANSCRIPT
Supreme Court Proceedings in Chambers

Jessie Bains

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In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE JUSTICE MORISHITA)

Vancouver, B.C.
June 30, 2025

BETWEEN:

JESSIE BAINS

APPLICANT

AND:

ANDRES BARKER

RESPONDENT

PROCEEDINGS IN CHAMBERS

Appearing on his own behalf:

Jessie Bains

Counsel for the Respondent:

J. O'Rourke

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EXHIBITS ENTERED OR MARKED FOR IDENTIFICATION

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Proceedings

1 Vancouver, B.C.
2 June 30, 2025
3
4 (PROCEEDINGS COMMENCED AT 11:02:48 A.M.)
5
6 THE COURT: Madam Registrar, have you called the
7 matter? I may have missed it.
8 THE CLERK: Oh, my apologies.
9 THE COURT: That's all right.
10 THE CLERK: Calling the matter of -- it's -- they've
11 just got Bains here, but it's -- what is the
12 style?
13 THE COURT: I think it's Bains versus Barker?
14 CNSL J. O'ROURKE: Yes.
15 JESSIE BAINS: Yes.
16 THE CLERK: Oh, okay, they didn't set it down. Bains
17 versus Barker, thank you.
18 THE COURT: Thank you, Madam Registrar.
19 Yes.
20 JESSIE BAINS: Yes, Your Honour, my name is Jessie
21 Bains, the applicant. I made the application.
22 THE COURT: All right, I'm just going to let the -- the
23 other counsel introduce herself as well, and then
24 I'll give you a chance to speak.
25 CNSL J. O'ROURKE: Thank you. My name is Jennifer
26 O'Rourke, O apostrophe R-o-u-r-k-e, initial J.,
27 I'm counsel for the Labour Relations Board and
28 Andres Barker.
29 THE COURT: Okay.
30 CNSL J. O'ROURKE: Thank you.
31 THE COURT: All right, so -- so, Mr. Bains, both
32 parties have estimated 30 minutes, is that still
33 accurate from your perspective?
34 JESSIE BAINS: Yes, it is.
35 THE COURT: Okay. And, Ms. O'Rourke, is it accurate
36 from your perspective as well?
37 CNSL J. O'ROURKE: Yes, thank you, Justice. My view,
38 which I've expressed to Mr. Bains, is that I think
39 this issue could be dealt with -- the Board has
40 filed an application to strike the notice of civil
41 claim --
42 THE COURT: Yes.
43 CNSL J. O'ROURKE: -- my view is it could be heard at
44 the same time as that, but I'm happy to have it
45 heard today if -- if there's time to do that.
46 THE COURT: Okay. And what's your position on that,
47 Mr. Bains?

Proceedings

Submissions on his own behalf by Jessie Bains

1 JESSIE BAINS: My position is the Board has no
2 standing.
3 THE COURT: In terms of sequencing, Ms. O'Rourke has
4 said that this -- that the application today
5 should be heard -- or she feels it should be heard
6 when the -- the -- their application to strike,
7 she feels it should be heard at the same time,
8 what is your view on that?
9 JESSIE BAINS: Oh, definitely not, this is why I made
10 the application because the Board has no standing.
11 THE COURT: Okay.
12 JESSIE BAINS: The civil claim is against Andres
13 Barker, the man, not the Labour Relations
14 Board --
15 THE COURT: All right.
16 JESSIE BAINS: -- or not the respondents, or Andres
17 Barker, the vice-chair.
18 THE COURT: Okay, I'm prepared to hear your
19 application. So 30 minutes, that means you will
20 have 12 minutes, Ms. O'Rourke will have 12
21 minutes, and then you'll have about five minutes
22 to reply. Reply doesn't mean a second kick at the
23 can, you may or may not be aware of this, it just
24 means that if -- and it also doesn't mean that you
25 can save some of your submissions for reply, it
26 just means if there's stuff that comes out in
27 Ms. O'Rourke's argument that you couldn't have
28 reasonably have anticipated you can just address
29 that.
30 And so -- and if Ms. O'Rourke has an
31 objection and she stands up that -- when the other
32 person stands up, you sit down, I'll hear the
33 objection, but there generally shouldn't be, you
34 know, very many objections, if any, during a
35 chambers application.
36 Court, as you may or may not know, sits until
37 about 11:15, at that point we'll take about a 15
38 to 20-minute break, and so it may be that we might
39 sit a little bit into that so that you can get
40 your submissions done, and then we'll start with
41 Ms. O'Rourke afterwards.
42 All right, so go ahead.
43
44 **SUBMISSIONS ON HIS OWN BEHALF BY JESSIE BAINS:**
45
46 JESSIE BAINS: Yes. Well my -- my -- I hope I can
47 present this properly because my claim is very

Submissions on his own behalf by Jessie Bains

1 simple. My civil claim is against -- not against
2 the B.C. Relations -- B.C. Labour Relations Board
3 or Andres Barker, the vice-chair, it's against
4 Andres Barker, the man in his private capacity.
5 In other words, I -- this has nothing to do with
6 the decisions he made, this is strictly about his
7 conduct prior to making the decisions, and I don't
8 see how the B.C. Labour Relations Board has any
9 involved in -- this is a trespass, I consider it,
10 because it has nothing to do with them absolutely,
11 and for them to even have standing, they're trying
12 to argue that they should be allowed because he's
13 vice-chair, but I'm not even challenging his role
14 as vice-chair, I'm challenging him as an
15 individual, a tort claim that I'm making, and I
16 don't want to -- Ms. O'Rourke to make those
17 submissions today because they're not relevant in
18 the big picture because they can be argued by
19 Andres Barker or his attorney at trial or at the
20 time to strike the -- the notice of claim.

21 And -- and to -- to have the Labour Board
22 trespass on a civil matter to me is prejudicing my
23 case against the individual himself, and those --
24 I have -- like that evidence I feel will be
25 provided when it's due, but it has -- this whole
26 thing has absolutely nothing -- they're asking me
27 for judicial review, to follow that process, I'm
28 not even questioning the decisions he made at all,
29 this is strictly conduct -- he didn't have the
30 lawful authority to proceed, and he never provided
31 me evidence that he had the authority to make
32 those decisions, and that's something that I
33 believe can be argued when it's time to strike it,
34 but to have the B.C. Labour Relations Board there
35 when they're not even part of the -- they're not
36 even defendants in the claim, strictly at all, so
37 in other words I don't see how they can even
38 inject in this. Sure, they can argue statutory
39 limit -- immunity and all that, but that's to be
40 decided at a -- by Andres Barker and his attorney
41 at that time.

42 Now, I've asked Ms. O'Rourke several times to
43 provide me if -- if she is -- who she's
44 representing, the -- is it Andres Barker, the
45 vice-chair, or is it Andres Barker in his private
46 capacity? As -- has -- the question that I would
47 like Ms. O'Rourke to answer is has Andres Barker

Submissions on his own behalf by Jessie Bains

1 retained you to be his counsel? Because currently
2 right now she's representing the B.C. Labour
3 Relations Board and Andres Barker, the vice-chair,
4 which is public resources, and this is a private
5 matter. So, in other words, I don't -- I object
6 to her being even here today even to make any
7 submissions because those are to be made by Andres
8 Barker, the person, or his counsel. Not for the
9 counsel of Labour -- B.C. Labour Relations Board.

10 I'm not even arguing his authority or his
11 decisions or anything like that. So, in other
12 words, to me they're prejudicing my case by -- by
13 getting involved in a matter that doesn't involve
14 them. Is that going to be -- is that -- it has
15 absolutely zero to do with them.

16 Like I said, I'm not even questioning the
17 decisions he made, it's just -- there's a number
18 of things that happened prior to him -- him -- the
19 timing of it all, he combined my applications. I
20 filed five applications against the union that he
21 was supposed to decide on, and then I filed a
22 sixth one after he was appointed, and he took that
23 case, and he took my seventh application. In
24 other words, they're completely separate.

25 Now, the Board's arguing that all these -- I
26 paid a hundred dollars for each application to be
27 judged on its own merit, not to be combined, so
28 that was one of the issues, and I asked -- my
29 concern was his independence because the timing of
30 it all I felt was political interference, which
31 I -- like I say, I don't want to get into the
32 substance of the jurisdiction yet or not, but my
33 only thing is why is the Labour Relations Board
34 even involved in this matter?

35 It's -- I'm sure Mr. Barker will make that
36 statutory immunity case when it's time for him to
37 do that, or his counsel. For -- for B.C. La --
38 LRB to step in is -- is completely -- to me it --
39 it's procedural fairness to me in a sense, and if
40 I feel there's a problem with the decision I would
41 go through the judicial review process, and they
42 keep -- like I said, I'm not even disputing any of
43 that, and I'm not even challenging their position
44 if that comes to that. If Mr. Barker retains
45 counsel and they want to bring these issues up,
46 fine, let it -- you know, let them bring it up at
47 the -- when they want to strike the claim or at

Submissions on his own behalf by Jessie Bains

1 trial when I can provide further evidence, but
2 this is strictly to say why is the B.C. Labour
3 Relations Board involved? And why won't
4 Ms. O'Rourke clarify whether she's been retained
5 by Mr. Barker or not? So for her to even have
6 standing to even talk on this matter I feel is --
7 is -- goes against -- it goes -- prejudices my
8 case overall. That's it.

9 THE COURT: All right. Is there anything else that you
10 want me to know about?

11 JESSIE BAINS: No, I'm just -- that's the main thing
12 is -- is absolutely they're not part of this
13 application, and this is -- to me it's -- I see it
14 as a black and white issue as far as how I see it,
15 perceive it. I understand her -- what she's
16 trying to submit, all these submissions that she's
17 put in are irrelevant to the B.C. Labour Board,
18 they have nothing to do with this private claim,
19 civil claim. At that time Mr. Barker and his
20 counsel can bring in all this stuff that she's put
21 in right now, which actually makes no sense, to me
22 it's -- for the public trust it's really critical
23 that the B.C. Labour Relations Board stays out of
24 this private matter.

25 THE COURT: But why is it the court's business of who
26 is Mr. Barker's counsel in this case?

27 JESSIE BAINS: Who is it?

28 THE COURT: Well, I mean, you filed a -- a notice of
29 civil claim?

30 JESSIE BAINS: Yes.

31 THE COURT: And then -- and then there was a response
32 to notice of civil claim that was filed by --
33 Ms. O'Rourke filed it, and she in that lists that
34 she's counsel for the Labour Relations Board and
35 Mr. Barker. So I mean, I think you said that you
36 wanted proof that she was retained, I mean I think
37 you can infer the fact that she filed -- that as a
38 lawyer she filed the response to civil claim, I
39 mean, that -- that gives her authority under --
40 under the rules that she is counsel. So like, I
41 mean, similarly if you hired a lawyer and you
42 filed a notice of civil claim, and it was signed
43 by, you know, James Smith.

44 JESSIE BAINS: Mm-hmm.

45 THE COURT: What would give her the right to say, well,
46 James Smith can't act for -- for you, or the court
47 should remove James Smith as your lawyer?

Submissions on his own behalf by Jessie Bains

1 JESSIE BAINS: Because -- because she's paid by public
2 funds. The Labour -- B.C. Labour Board is a
3 public -- a public body that's funding a private
4 lawsuit, so if she's representing Mr. Barker in
5 his private matter it crosses a line.

6 THE COURT: I mean presumably, but you don't know that
7 for sure, but does the law give you the right to
8 know that --

9 JESSIE BAINS: Yeah, but she's re --

10 THE COURT: -- who's paying her bills?

11 JESSIE BAINS: If she -- but if she -- all she has to
12 say is she's retained by Mr. Barker, that's it.
13 She hasn't said that. She's -- all she's saying
14 is that she's representing the Labour Board --

15 THE COURT: Well, it's --

16 JESSIE BAINS: -- and Andres Barker.

17 THE COURT: -- it's -- she's listed as counsel so
18 that -- that -- I mean, that -- at least in this
19 court if somebody files a response, you know, a
20 response to an originating pleading, they're --
21 that is -- they are given authority to act for
22 that person. I'm not allowed to say well I --
23 like I as a judge -- I mean, there may be some
24 very narrow circumstances, but generally speaking
25 I'm not allowed to say to -- like if you hired a
26 lawyer I couldn't -- I couldn't say to you, you
27 know, Mr. Bains, I want to see the retain -- the
28 letter that you have between you and your lawyer,
29 because that's covered under solicitor-client
30 privilege.

31 JESSIE BAINS: So what right does the B.C. Labour Board
32 have to do in my claim though? That's -- that's
33 the other -- she's representing both, this is
34 where the problem lies, is either she's
35 representing Mr. Barker or the Labour Board.

36 THE COURT: Well, that's -- that's an issue between --
37 you know, that's generally an issue between the
38 Labour Relations Board and Mr. Barker, not
39 necessarily for the opposing party. I mean, there
40 are some circumstances --

41 JESSIE BAINS: But this is a --

42 THE COURT: -- where --

43 JESSIE BAINS: -- private civil matter which -- which
44 has nothing to do with the B.C. Labour Board, so
45 in other words how can she be representing a party
46 that's not part of the claim while representing
47 Mr. Barker too?

Submissions on his own behalf by Jessie Bains
Submissions for Respondent by Cnsl J. O'Rourke

1 THE COURT: All right. Is there anything else that you
2 want me to know or any other arguments that you
3 wish to make or -- or --

4 JESSIE BAINS: Well, the main one is the B.C. Labour
5 Relations Board is -- she's retained by B.C.
6 Labour Relations Board, not by Mr. Barker. This
7 is a private matter strictly, and the arguments
8 she's making, fine, she can make them when she
9 wants to strike my claim, Mr. -- as counsel for
10 Mr. Barker, but not for B.C. Labour Relations
11 Board. To me they have no standing in this, in a
12 civil private matter, because it doesn't involve
13 any of the applications that I've filed.

14 THE COURT: Okay, thank you --

15 JESSIE BAINS: Thank you.

16 THE COURT: -- Mr. Bains.
17 Yes, Ms. O'Rourke.
18

19 **SUBMISSIONS FOR RESPONDENT BY CNSL J. O'ROURKE:**
20

21 CNSL J. O'ROURKE: Thank you. Justice, I don't know if
22 you have a copy of the Board's response to this
23 application?

24 THE COURT: I do.

25 CNSL J. O'ROURKE: Do you? Thank you. Not just the
26 notice of civil claim, but the actual application
27 filed on June 26th?

28 THE COURT: The application to strike?

29 CNSL J. O'ROURKE: No, the application response.

30 THE COURT: Oh, the application response, yes, I do
31 have that.

32 CNSL J. O'ROURKE: Perfect, thank you.

33 So I am counsel for the Labour Relations
34 Board and Mr. Barker. I have in fact advised my
35 friend that I am counsel for Mr. Barker and the
36 Labour Relations Board several times. That is
37 found in an affidavit that I filed. I don't need
38 to take you to it.

39 THE COURT: I don't have the affidavit, but . . .

40 CNSL J. O'ROURKE: That's fine.

41 THE COURT: Yeah.

42 CNSL J. O'ROURKE: Yes. So Mr. Bains filed seven
43 applications with the Labour Relations Board. He
44 has subsequently filed a notice of civil claim
45 against Mr. Barker. So Mr. Andres Barker is a
46 vice-chair of the Labour Relations Board.

47 JESSIE BAINS: So I object.

Submissions for Respondent by Cnsl J. O'Rourke

THE COURT: All right, so if you have an objection --

1 JESSIE BAINS: Yes, sorry.

2 THE COURT: -- Mr. Bains, the procedure is you stand

3 up, and then you wait for your -- your -- counsel

4 to stop, and me to acknowledge you.

5 JESSIE BAINS: Yes.

6 THE COURT: So what is your objections?

7 JESSIE BAINS: The seven applications have nothing to

8 do with the civil matter. It doesn't involve the

9 Labour Relations Board, I'm not --

10 THE COURT: All right.

11 JESSIE BAINS: -- going to argue those seven

12 applications.

13 THE COURT: Well, you know, she didn't interrupt -- and

14 I understand, you can object if you feel that

15 there's something improper being said or something

16 that's --

17 JESSIE BAINS: Yes.

18 THE COURT: -- critically important that you must

19 clarify right away, but everybody has a right to

20 sort of argue, you know, their case in -- in front

21 of me the way that they want. I mean, if she

22 really strays I'll usually say, you know, I don't

23 really think I need to hear that, but -- but it's

24 okay for her to mention it. It's not necessarily

25 particularly relevant, but it could provide some

26 context so that I understand the standing

27 situation. I hear you, but I'm going to allow her

28 to proceed on that. All right, thank you.

29 All right.

30 CNSL J. O'ROURKE: Thank you.

31 So Mr. Barker is vice-chair of the Labour

32 Relations Board. He was the decision-maker who

33 adjudicated those seven applications. They were

34 all heard by Mr. Barker, and Mr. Bains filed

35 several requests that Mr. Barker recuse himself

36 from the case, and Mr. Barker declined to recuse

37 himself on the basis of -- the recusal was a

38 reasonable apprehension of bias. He also objected

39 to having all seven applications heard by the same

40 adjudicator.

41 He also had a concern that Mr. Barker, when

42 he articulated about 13 or so years ago, was -- he

43 articulated at the BCGEU, which is a different public

44 sector union. Mr. Bains is a member of the HEU,

45 which is --

46 THE COURT: Okay.

47 CNSL J. O'ROURKE: -- but his concern was that he had

Submissions for Respondent by Cnsl J. O'Rourke

been at the public sector.

1 So those were the applications for recusal
2 and reasonable apprehension of bias, which led to
3 these seven decisions.

4 JESSIE BAINS: I object.

5 THE COURT: All right, sir, what's your objection?

6 JESSIE BAINS: BCGEU, I was a member with them, had a
7 contentious relationship with the legal
8 department, even though this was an HEU
9 application, and again, we're arguing the merits
10 of the case instead of why the Labour Board -- I'm
11 not disputing any of the issues with my
12 applications or nothing to do with the vice-chair
13 responsibilities or the B.C. Labour Relations
14 Board --

15 THE COURT: All right.

16 JESSIE BAINS: -- this is strictly about Mr. Barker
17 himself.

18 THE COURT: Thank you.

19 Ms. O'Rourke, how much more time do you think
20 you need for your submissions?

21 CNSL J. O'ROURKE: I don't think I need --

22 THE COURT: Okay.

23 CNSL J. O'ROURKE: -- very much time, it's just --

24 THE COURT: I'm just --

25 CNSL J. O'ROURKE: Sorry, do you want to have the
26 break?

27 THE COURT: No, no, I'm -- Madam Registrar, are you
28 okay if we sit a little bit and then take our
29 break a little bit later, our full break?

30 THE CLERK: I'm okay just to sit through and get it
31 done.

32 THE COURT: All right. And we'll -- after submissions
33 we'll take our break, and I'll -- I can probably
34 reach a decision then, but go ahead, Ms. O'Rourke.

35 CNSL J. O'ROURKE: Thank you.

36 THE CLERK: Yes, I can wait.

37 THE COURT: Thank you. Thank you, Madam Registrar.

38 CNSL J. O'ROURKE: Thank you, Madam Registrar, yes.

39 So the -- Mr. Bains then filed a notice of
40 civil claim. The initial notice of civil claim
41 was against Andres Barker in his personal and
42 professional capacity as a vice-chair. He has
43 since amended --

44 THE COURT: Yes, I've seen that.

45 CNSL J. O'ROURKE: -- that civil claim, but
46 fundamentally what the civil claim relates to was
47 sort of an unauthorized and improper assumption of

Submissions for Respondent by Cnsl J. O'Rourke

jurisdiction. Mr. Bar -- Mr. Bains would like a
1 copy of the sworn oath of office in order for
2 Mr. Barker to prove his authority to act in this
3 matter. He alleges violations of the principles
4 of natural justice and procedural fairness and
5 breach --

6 THE COURT: So I have had a quick review, a very --
7 CNSL J. O'ROURKE: Oh, perfect.

8 THE COURT: -- quick scan, but perhaps you can maybe in
9 a -- if there's any additional context that you
10 think is critical for the decision of course tap
11 it, and then once you get to that perhaps you can
12 just get to addressing the specific items that --
13 that Mr. Bains seeks.

14 CNSL J. O'ROURKE: Yes. So Mr. Bains is seeking an
15 order removing -- sorry, I'm just going to move
16 back to the --

17 JESSIE BAINS: Sorry, counsel, is that
18 [indiscernible - voice too low]?

19 CNSL J. O'ROURKE: The notice of application. He'll
20 have the notice of application.

21 JESSIE BAINS: [Indiscernible - voice too low].

22 CNSL J. O'ROURKE: The orders sought in the notice of
23 application that --

24 JESSIE BAINS: Okay, sure, yes.

25 CNSL J. O'ROURKE: -- yes, that the Board lacks
26 standing to represent the respondent, Andres
27 Barker, in a civil proceeding. The Board's
28 position of course is that this is not a matter
29 that should proceed by way of a civil proceeding,
30 but rather through the judicial review process,
31 and it's in the Board's submissions appropriate
32 for the Board to appear and note its exclusive
33 jurisdiction to decide issues of natural justice,
34 procedural fairness, jurisdiction pursuant to the
35 *Labour Relations Code* and to bring these issues to
36 the court's attention.

37 Similarly, he's seeking that any filings made
38 by -- well, he refers to me, it's my role as
39 Labour Relations Board counsel that is the concern
40 that Mr. Bains has, that I am employed by the
41 Labour Relations Board and I am the Labour
42 Relations Board counsel. I have acknowledged I am
43 also counsel for Mr. Barker. So really standing
44 isn't an issue, but I do think it's appropriate
45 that the -- that the Board do appear to assert its
46 exclusive jurisdiction to decide issues of natural
47 justice, procedural fairness, and jurisdiction,

Submissions for Respondent by Cnsl J. O'Rourke

1 which are all issues that should be raised on
2 reconsideration, and then can be addressed on
3 judicial review pursuant to the *Judicial Review*
4 *Procedure Act*.
5 THE COURT: So again, you'll have to forgive my lack of
6 understanding, but -- so if this were brought
7 under the *Judicial Review Procedure Act* there's
8 specific provisions that say that even if the
9 decision-making -- you know, the Labour Relations
10 Board or Human Rights Tribunal is not named that
11 they -- they are a party.
12 CNSL J. O'ROURKE: That is s. 15 of the *Judicial Review*
13 *Procedure Act* --
14 THE COURT: Okay.
15 CNSL J. O'ROURKE: -- provides that the tribunal is a
16 party at its option when it does appear on
17 judicial reviews, whether it's named or not as a
18 party.
19 THE COURT: Yes. Now, in terms of the -- I mean, this
20 isn't formally -- you know, the style of cause
21 doesn't say brought under the *Judicial Review*
22 *Procedure Act*.
23 CNSL J. O'ROURKE: It's not. He's filed it not under
24 the -- he's specifically not --
25 THE COURT: Yes, and I've --
26 CNSL J. O'ROURKE: -- it's a notice of civil claim.
27 THE COURT: -- and I've heard -- sorry to cut you off,
28 and I've heard Mr. Bains' submissions on -- on,
29 you know, why he believes there's a distinction,
30 but is there -- is there a specific provision
31 either in the Rules of Court under the ATA or the
32 *Labour Relations Code* or the -- or the *Judicial*
33 *Review Procedure Act* that -- that says that the
34 LRB can be a party in a non-judicial review
35 proceeding?
36 CNSL J. O'ROURKE: No --
37 THE COURT: Okay.
38 CNSL J. O'ROURKE: -- not -- like in terms of a notice
39 of civil claim, no, but what the B.C. Court of
40 Appeal has said is where, you know, a party is
41 served and then -- and that's the case -- I've
42 cited the case --
43 JESSIE BAINS: I object.
44 THE COURT: All right, sir, what's your objection?
45 JESSIE BAINS: I never served the B.C. Labour Relations
46 Board at all, and that's the scenario in her
47 submissions that Ms. O'Rourke made. I never
 served the B.C. Labour Relations Board with any

Submissions for Respondent by Cnsl J. O'Rourke

documents, only Andres Barker.

1 THE COURT: I mean, was he served at the B.C. Labour
2 Relations Board office?

3 JESSIE BAINS: Yes, because that's the only address I
4 have for him.

5 THE COURT: All right, thank you.

6 JESSIE BAINS: Thank you.

7 CNSL J. O'ROURKE: Yes, so the -- so served through our
8 registry office, yes, so the Board was served with
9 a copy of it, and has provided a response, which
10 makes the Board a party of record is the -- what
11 the -- so Rule 1-1 defines party of record in our
12 court. So the case that the B.C. Court of Appeal
13 issued recently, it's this *Harun-ar-Rashid v.*
14 *British Columbia*, it's -- I've cited it at
15 paragraph 22, and it talks about the Board being a
16 party of rec -- or it talks about, sorry, somebody
17 being a party of record where they're, you know,
18 provided a notice of claim and provided a
19 response, and it refers to sort of the Rule 1-1.
20 If it's helpful, I can pass the case up to you,
21 but . . .

22 THE COURT: Sure, okay.

23 CNSL J. O'ROURKE: I don't think -- I mean, I don't
24 know that anything particularly turns on -- so
25 rather than a party it's kind of a -- it's --
26 party of record is the defined term in sub -- Rule
27 1-1 of the civil rules.

28 JESSIE BAINS: I object to that.

29 THE COURT: Give me one -- one moment.

30 JESSIE BAINS: Sorry, I object to that. Again, the
31 serving is not an issue, I had no other choice but
32 to go through the registrar to serve Mr. Barker.
33 That's just a formality, it's not -- no rules
34 should apply to that, somebody being served at his
35 place of work.

36 THE COURT: All right, thank you.

37 CNSL J. O'ROURKE: Yes, fair enough, and the Board has
38 filed a response regardless in this matter,
39 whether it was -- it -- in the Board's view it
40 should have been served, and quite properly
41 Mr. Bains did file -- did send it to the Board,
42 whether he intended it to be served on the Board
43 or not, the Board received notice of it.
44 Mr. Barker is of course an OAC appointment with
45 the Board so it -- it would make sense for him to
46 have provided it to the Board, I think that was
47 quite right to do.

Submissions for Respondent by Cnsl J. O'Rourke

THE COURT: Now, the Court of Appeal case you're
1 talking about, that's talking about a petition
2 though, right, where Rule -- it says here Rule
3 16-1 requires someone to serve a petition on all
4 persons whose interest may be affected by --
5 CNSL J. O'ROURKE: It would be the same --
6 THE COURT: -- the order sought.
7 CNSL J. O'ROURKE: -- with a notice of civil claim, but
8 not if it's --
9 THE COURT: Where is that in the rules?
10 CNSL J. O'ROURKE: I don't have that in the rules where
11 a notice of civil claim --
12 THE COURT: Okay.
13 CNSL J. O'ROURKE: -- needs to be served.
14 THE COURT: And then what about in caselaw?
15 CNSL J. O'ROURKE: I haven't searched on that issue.
16 THE COURT: Because certainly if somebody starts an
17 action and they bring an application, the rules
18 require you to serve not only parties but
19 interested parties.
20 CNSL J. O'ROURKE: But -- parties, yes.
21 THE COURT: So if -- if there was an app -- but if --
22 if -- but the question that I have, and maybe --
23 you know, this may be beyond the scope of what I
24 need to decide here --
25 CNSL J. O'ROURKE: I think, yeah.
26 THE COURT: -- but I'm not a hundred percent sure yet,
27 is that -- I mean, his point that LRB can't not --
28 can't insert itself into -- I mean, presumably I
29 mean, I -- the rules may allow Mr. -- the rules
30 may allow Mr. Barker to bring an application to --
31 to add a party, I'm not a hundred percent sure
32 about that, but I just wanted to -- yeah, I don't
33 know . . . okay.
34 CNSL J. O'ROURKE: Regardless, I'm counsel for
35 Mr. Barker as well --
36 THE COURT: Regardless you are counsel for Mr. Barker,
37 I agree --
38 CNSL J. O'ROURKE: -- so it doesn't matter in any
39 event --
40 THE COURT: -- yes, but --
41 CNSL J. O'ROURKE: -- so --
42 THE COURT: -- his point that the LRB can't necessarily
43 just insert itself into -- as a party into an
44 action, he may have a point.
45 CNSL J. O'ROURKE: Yeah, I disagree, because I think we
46 are a party whose interests are affected by this
47 because again this is --

Submissions for Respondent by Cnsl J. O'Rourke

THE COURT: But that's under Rule 16-1 --

1 CNSL J. O'ROURKE: Under 16 for the petitions, yes.

2 THE COURT: -- which relates to a petition, it's not

3 necessarily to --

4 CNSL J. O'ROURKE: And the notice -- --

5 THE COURT: -- an action.

6 CNSL J. O'ROURKE: Sorry. And because the Board

7 doesn't do a lot of notices of civil claim --

8 THE COURT: Sorry, I didn't mean to --

9 CNSL J. O'ROURKE: -- so --

10 THE COURT: Yeah, I . . .

11 CNSL J. O'ROURKE: -- for obvious reasons, would it not

12 be if your interests are affected or . . .

13 THE COURT: I mean, I know there are certain statutory

14 provisions, like, for example, under the *Insurance*

15 *Vehicle Act* ICBC can actually file a response and

16 become a party, a statutory third party, but in

17 terms of -- yeah, so, okay, I get your point

18 though that regardless for the purposes of this

19 application you are counsel for Mr. Barker, and it

20 could be that that issue of standing for the other

21 matters might be something that's, you know, a

22 fight for another day, but . . .

23 CNSL J. O'ROURKE: Yes.

24 THE COURT: Okay. But I just wanted to make clear if

25 there was a rule that you could point me to

26 that --

27 CNSL J. O'ROURKE: Not the rule.

28 THE COURT: Okay.

29 CNSL J. O'ROURKE: Just the party of record in Rule

30 1-1 --

31 THE COURT: Okay.

32 CNSL J. O'ROURKE: -- just the defined as a person who

33 has been provided with notice and has filed a

34 pleading, and of course the Board and Mr. Barker

35 have filed a response to the notice of civil

36 claim, as well as an application to strike, as

37 well as a response obviously in -- in this matter,

38 and for what it's worth, I think it is appropriate

39 that the Board do a -- rather than individual

40 adjudicators being required to appear in -- in --

41 for an application to strike where clearly

42 statutory immunity provisions are engaged in -- in

43 the questions that are being raised.

44 THE COURT: Okay. Was there anything else that you

45 wanted to draw my attention to?

46 CNSL J. O'ROURKE: As long as the -- if you've had an

47 opportunity to review the response materials in

Submissions for Respondent by Cnsl J. O'Rourke

terms of --

1 THE COURT: I briefly scanned it in the -- in the --
2 kind of the brief of time that [indiscernible -
3 voices overlapping] --

4 CNSL J. O'ROURKE: Yes, but I --

5 THE COURT: -- before this, but perhaps -- but I would
6 like you to take me to the parts that you --

7 CNSL J. O'ROURKE: Thank you, and so --

8 THE COURT: -- think I should focus on.

9 CNSL J. O'ROURKE: -- so the -- the point that I -- the
10 most important point is the claim -- and I'm at
11 paragraph 18 of the legal basis.

12 THE COURT: All right.

13 CNSL J. O'ROURKE: That -- the claims that Mr. Barker
14 in his role as vice-chair denied procedural
15 fairness, conduct unauthorized, jurisdictionally
16 invalid, personally motivated, are all matters the
17 Board has exclusive jurisdiction to decide under
18 the Code pursuant to their reconsideration
19 process.

20 JESSIE BAINS: I object.

21 CNSL J. O'ROURKE: Mr. --

22 THE COURT: You'll have your chance on reply so I'll
23 just --

24 JESSIE BAINS: Oh, okay.

25 THE COURT: Sorry, go ahead.

26 CNSL J. O'ROURKE: Mr. Bains has now -- he file -- he
27 did file an application for reconsideration under
28 s. 141 of the Code, so a reconsideration panel,
29 which is a different panel than Mr. Barker, has
30 issued a --

31 THE COURT: Yeah.

32 CNSL J. O'ROURKE: -- a reconsideration decision
33 now --

34 THE COURT: Okay.

35 CNSL J. O'ROURKE: -- subsequent to the filing of the
36 notice of civil claim. The -- yeah, so the
37 applicant has an opportunity to raise these issues
38 on reconsideration before the Board. The Board
39 issued the reconsideration, the forum now is
40 judicial review.

41 While Mr. Bains alleges this -- this is a
42 private matter, and tortious conduct, he hasn't
43 alleged any facts to support an allegation of bad
44 faith such that the statutory immunity provisions
45 would not apply. And I again say it's appropriate
46 I think for the Board to be bringing these
47 statutory immunity provisions to the attention of

Submissions for Respondent by Cnsl J. O'Rourke
Reply on his own behalf by Jessie Bains

1 the court.

2 I don't know if you need to address any -- I
3 need to address any other parts of the order,
4 they -- they're all kind of captured in that. If
5 there's any other questions the court has,
6 obviously any -- order number 3, that Mr. Barker
7 be compelled to file a sworn affidavit about
8 retainers is obviously something that is subject
9 to solicitor-client privilege, which I've already
10 addressed -- advised my friend of in previous
11 communications with him.

12 No further participation by the Board or its
13 counsel without the explicit written authority and
14 private retainer filed with the court, again
15 subject to solicitor-client privilege. And that
16 public funds not be used, I think that is beyond
17 the jurisdiction of the court.

18 THE COURT: All right, thank you, Ms. O'Rourke.

19 CNSL J. O'ROURKE: Thank you.

20 THE COURT: All right, Mr. Bains, your turn for reply,
21 I'll give you five minutes. We are running a bit
22 behind but I -- that's because I've been asking a
23 lot of questions so partially that's my fault.

24

25 **REPLY ON HIS OWN BEHALF BY JESSIE BAINS:**

26

27 JESSIE BAINS: Yes, Your Honour, since Ms. O'Rourke
28 brought it up, with all due respect may I ask you
29 to put your oath of office on record?

30 THE COURT: No, that's -- you can ask, but I -- it's
31 not something that I --

32 JESSIE BAINS: Could I get --

33 THE COURT: -- would --

34 JESSIE BAINS: -- that in writing that you're not --

35 THE COURT: I have authority to hear this, and that's
36 as much as I'm willing to -- to discuss about
37 that.

38 JESSIE BAINS: Okay. So yeah, Mr. -- so here's where
39 we -- so it's on record that you are not providing
40 me the oath of office which is --

41 THE COURT: Correct.

42 JESSIE BAINS: Thank you.

43 My thing is she keeps bringing up my judicial
44 review, and Mr. Barker's authority, that's going
45 to be -- the evidence will be provided at trial,
46 not -- that's something for Mr. -- you know,
47 that's kind of come down the road, I haven't even

17

Reply on his own behalf by Jessie Bains
Proceedings

1 got into that. There's legitimate concerns here,
2 and it's a private civil matter, which -- which
3 has like I said nothing to do with --
4 THE COURT: No, I hear you on that point, yeah.
5 JESSIE BAINS: Okay.
6 THE COURT: Yeah.
7 JESSIE BAINS: That's . . . thank you.
8 THE COURT: Okay, thank you. Okay, well let's take a
9 20-minute break, we'll return at 11:50, I guess
10 that's 19 minutes, and I will have a decision for
11 you folks.
12 JESSIE BAINS: Thank you.
13 CNSL J. O'ROURKE: Thank you.
14 THE CLERK: Order in court. Court is stood down.
15
16 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
17 (11:31:38 A.M.)
18 (PROCEEDINGS RECONVENED) (11:53:55 A.M.)
19
20 THE COURT: We're back on the -- the DARS is good,
21 we're back on record?
22 THE CLERK: Oh, yeah --
23 THE COURT: All right.
24 THE CLERK: -- we are reconvened.
25 THE COURT: Thank you, all right.
26 Just for clarification is -- the application
27 to strike is that still scheduled to proceed on
28 July 21st?
29 CNSL J. O'ROURKE: Yes, it is.
30 THE COURT: Okay. All right, these are my oral reasons
31 for judgment. If any party decides to order a
32 transcript of these reasons, I reserve the right
33 to edit for grammar, clarity, and to add
34 citations. If I do make any edits the substance
35 of the decision will not change.
36
37 [REASONS FOR JUDGMENT FROM 11:54:55 A.M. TO
38 12:15:43 P.M.]
39
40 THE COURT: Are there any ancillary matters,
41 Ms. O'Rourke, or Mr. -- how about signature?
42 Yes, Mr. Bains?
43
44 **SUBMISSIONS RE CLARIFICATION OF REASONS FOR JUDGMENT**
45 **BY JESSIE BAINS:**
46
47 JESSIE BAINS: How are the costs awarded when you --

18
Submissions re clarification of reasons for judgment
by Jessie Bains

1 you said that my -- it was legitimate to hear this
2 matter today? Like . . .
3 THE COURT: Well, that had to do with sequencing,
4 whether -- whether -- you know, the options were I
5 don't hear your app -- this application and it's
6 heard at the same time as the application to
7 strike, or I do hear it, so I -- in my view it was
8 appropriate for me to hear this in advance of the
9 21st, but in terms of your application you were
10 not successful in it so the -- the --
11 JESSIE BAINS: And the other thing I need to get a
12 clar -- get clarity on is does LRB have standing
13 in this case or not? You -- it's not quite clear
14 whether --
15 THE COURT: Well, they're not a party.
16 JESSIE BAINS: Okay.
17 THE COURT: And that's my -- my -- in my view they are
18 not a party yet --
19 JESSIE BAINS: So --
20 THE COURT: -- so it depends on -- on what the issue
21 is. I mean, if -- if it's an application that's
22 brought --
23 JESSIE BAINS: But they haven't yet, so would -- they
24 don't have standing as of now, am I correct?
25 THE COURT: Well, it -- standing is -- it's not black
26 or white so certainly on -- on the application
27 that has been brought by -- by -- for the 21st, I
28 mean that -- they're arguably an interested party
29 so Mr. Barker arguably is required to serve them,
30 and they can file a response to that, and -- and
31 they would have standing for that application.
32 JESSIE BAINS: But they don't as of today.
33 THE COURT: They may not, but . . .
34 JESSIE BAINS: Well, this is why I'm here, and this is
35 why I'm --
36 THE COURT: Yeah, but she still acts for Mr. Barker.
37 JESSIE BAINS: Yeah, but she -- so I just need
38 clarification whether the LRB has standing or not
39 because that's pretty clear that they don't,
40 they're not part of the civil claim, am I correct?
41 THE COURT: Well, your order does not -- your order
42 does not specifically ask whether the LRB has
43 standing so I have not made -- your -- your notice
44 of application does not ask for a declaration that
45 they do or do not have standing so I have not
46 made -- I have not addressed that because you have
47 not sought that in your order.

19
Submissions re clarification of reasons for judgment
by Jessie Bains
Proceedings

1 Ms. O'Rourke, do you -- signature dispensed
2 with?

3 CNSL J. O'ROURKE: Yes, please.
4

5 [REASONS FOR JUDGMENT CONTINUING FROM
6 12:17:59 P.M. TO 12:18:10 P.M.]
7

8 THE COURT: Is there anything else that I could assist
9 the parties with in order to make the 21st, you
10 know, be -- hopefully go ahead and if there's any
11 issues that can be clarified, I mean, or . . .

12 JESSIE BAINS: I would ask for an adjournment because
13 of what's happened, I mean I need to prepare now.

14 THE COURT: All right, well, you're going to have to
15 bring an application for that.

16 JESSIE BAINS: Yeah.

17 THE COURT: What I can say is if there's any
18 preliminary matters that need to be dealt with in
19 advance of that, for example if you are deciding
20 to -- if you decide that you may bring an
21 application under 6-2 to add the LRB as a party,
22 you can -- the parties can -- I'm not going to
23 seize myself of anything, but the parties can make
24 a request to appear if it's a short matter that
25 could be a 9:00 a.m. hearing by Teams, because I'm
26 not -- I'm not solely sitting in Vancouver in the
27 next couple of weeks, you can make a request, and
28 if it's something that I can accommodate I would
29 be willing to.

30 CNSL J. O'ROURKE: Thank you very much.

31 THE COURT: All right.

32 CNSL J. O'ROURKE: Thank you.

33 THE COURT: Okay, thank you, Mr. Bains, thank you,
34 Ms. O'Rourke, I appreciate your submissions and
35 your cooperation, and I wish you -- you both to
36 have a good holiday tomorrow.

37 CNSL J. O'ROURKE: Thank you, you too.

38 THE COURT: Thank you. We're adjourned.
39

40 (PROCEEDINGS ADJOURNED GENERALLY)
41 (12:19:24 P.M.)
42
43
44
45
46
47

Certification
S-254074 Bains v. Barker
June 30, 2025

I certify that the proceedings from timestamp
11:02:48 a.m. to timestamp 12:19:24 p.m.
inclusive are a true and accurate transcript
of these proceedings recorded on a sound
recording apparatus, transcribed to the best
of my skill and ability in accordance with
applicable standards.

A handwritten signature in blue ink that reads "Anita Castle". The signature is fluid and cursive, with the first name "Anita" and last name "Castle" clearly distinguishable.

Anita Castle
Authorized Reporter, BCSRA 392