



SECTION 12 APPLICATION FORM

Read this
section before
you complete
the form.

It is strongly recommended that you read the information on our website about Section 12, the *Judd* decision, and the Privacy and Access to Information Policy on our website before completing this form.

Grievance in process

If your application concerns a grievance that has been filed by your union, please note that the Board will not normally proceed with an application about matters that are still in the grievance/arbitration process.

Internal appeals

In most cases, you must complete any internal appeal process through your union before filing a Section 12 application. You must attach any letters you have from your Union with the outcome of your appeal or indicating that the union has no appeal process.

Timeliness

Applications must be filed in a timely manner. (For example, an application should be filed within months of when the union advised you that they are not taking your grievance to arbitration.) If it has been more than 3 months since the event you are complaining about occurred, you must explain the reason for the delay.

Scope of Section 12

Section 12 concerns the union's duties to the employees it represents. It is not about a complaint against the employer. Just because you disagree with your union does not necessarily mean that the union has violated Section 12. You must describe what the union has done or not done that is **arbitrary, discriminatory**, or in **bad faith** in representing you.

Completing This Form

This form can be completed either electronically (online), or on paper. The answers to some questions may require more space than you see on the form (for example, question 8). On the electronic version of the form, there is extra space on page 6 for more answer space. If you are completing the paper version of the form, you should attach extra pages wherever necessary.



* = Required Answer

Form 12

APPLICANT INFORMATION

* Name:	Jessie Bains		
* Address:	5961 129 Street		
* City:	Surrey	Postal Code:	V3X 0B9
* Home/Cell Telephone No:	604-365-3400		
E-mail:	bainsj@gmail.com	What pronouns should the Board use to address you?	He
If you are represented by a legal or other representative, their name: _____			
Address: _____			
Telephone number: _____			
E-mail: _____			

WHO IS THE RESPONDENT TRADE UNION?

Trade Union (or Council of Trade Unions)			
* Name:	Hospital Employees Union	Local:	_____
* Address:	5000 North Fraser Way		
* City:	Burnaby	Postal Code:	V5J 5M3
* Telephone Number:	604-438-5000	Fax:	_____
Cell No.:	_____	E-mail:	_____
Representative to be contacted: Barb Nederpel			
Position: President			
Telephone Number (if different from above):		604-456-7004	Cell No.: 250-689-0208
E-mail: bnederpel@heu.org			

EMPLOYER INFORMATION

* Company Name:	Provincial Health Services Authority (PHSA)		
* Address:	1200-1333 W. Broadway		
* City:	Vancouver	Postal Code:	V6H 4C1
* Business Tel:	604-675-7400	Fax:	_____
Name of Contact Person:	Ivo Dimitrov	E-mail:	ivo.dimitrov@phsa



If your application is about something other than a grievance, skip Questions 1-4.

1. Did you ask the Union to file a grievance (yes/no)?

☒

Yes

☐

No

If yes, when? August 25, 2023

2. Did the Union file a grievance (yes/no)?

☒

Yes

☐

No

If yes, when? September 19, 2023

3. Did the union provide you with a copy of the grievance filed on your behalf (yes/no)?

☒

Yes

☐

No

If yes, please include a copy with your application.

4. If the Union decided not to proceed with your grievance you must include a copy of their explanation letter or describe here the reasons the union gave to you.

The union advanced the grievance but failed to fulfill its duty to properly investigate or represent the member. The grievance was later used by the employer to allege "bad faith," leading to my termination without justification.

5. Did you attempt to appeal the Union's decision through the Union's internal appeal procedure (yes/no)?

☐

Yes

☒

No

If no, why not?

There was no opportunity to appeal because the employer had already weaponized the harassment grievance, alleging "bad faith" and unjustly terminating my employment. Pursuing an internal union appeal would have been futile, as the root issue lay in the union's failure to conduct a timely and thorough investigation into the harassment grievance. This lack of due diligence left me unprotected and ultimately enabled the employer's actions.

If yes, what happened?



6. If the Union proceeded with your grievance what was the outcome.

The grievance resulted in termination based on the employer's claim of "bad faith," which should have been addressed by the union during its handling of the grievance.

* 7. Give all relevant details of your application (e.g., what happened and when)

I am filing this Section 12 complaint against my union, the Hospital Employees' Union, for failing to fulfill its duty of fair representation under the BC Labour Relations Code. Specifically, the union's mishandling of my harassment grievance led to severe consequences, including my unjust termination, with the employer alleging that the grievance was filed in "bad faith."

Upon accepting my harassment grievance, it became the union's responsibility to evaluate its validity and protect me as a member. Instead, the union allowed the employer to appoint their own investigator without challenging the fairness or independence of the investigation. This negligence directly contributed to my termination and the unfounded accusation that I had filed the grievance in "bad faith."

Grievances, once accepted, are legally the property of the union. It is their duty to thoroughly evaluate the validity of a grievance before advancing it. In this case, the union failed to fulfill this obligation, neglecting to act with due diligence or provide adequate representation. As a result, I was left unprotected, and the employer's allegations went unchallenged, culminating in significant harm to my employment and reputation.



* 8. Explain why you say the Union's representation or response was **arbitrary, discriminatory** or in **bad faith**. (See Section 12 Guide.)

See Attached page for Question 8 - not enough room here

9. You must include copies of all documents and letters that are relevant to your application. Please put them in date order (oldest first) and list the documents below. For example

1. Letter from employer to me dated December 5, 2012
2. Grievance form filed December 12, 2012
3. Letter from union representative to me dated February 15, 2013

1. Harassment Grievance

2. Summary Report of the Employer's Investigator

3. Termination Grievance

4.

5.

6.

7.

8.

9.

10.

10. What remedies are you asking the Labour Relations Board to order if the LRB grants your application? For example, are you asking the Labour Relations Board to order that your grievance proceed to arbitration?

I request the following:

1. An independent investigation into the unions handling of my grievance.
2. A formal acknowledgment of the union's failure to represent me.
3. Disciplinary measures against responsible union representatives.
4. Restitution for lost wages, benefits, and reputational harm caused by the unions negligence.
5. A directive for the union to reform its grievance handling processes to prevent similar failures.

11. Have you attempted to resolve this matter elsewhere? (For example another tribunal, government agency or the courts)

Yes



No

If yes please provide details (Who to? When? What Happened?)

Additional space for answering questions if needed.

Signature of Applicant: _____
(can be omitted if filing electronically)

Print name: **Jessie Bains**

Date of signing: **DEC 18, 2024**

COMPLETE AND DELIVER TO:

Registrar
Labour Relations Board
600 - 1066 West Hastings Street
Vancouver, BC V6E 3X1
Tel: 604-660-1300
Fax: 604-660-1892
Email: registrar@lrb.bc.ca

Application Check List (click box to check off/acknowledge)

- * ☒ Have all required fields been filled in?
- * ☒ Have all documents listed in the application been attached?
- * ☒ Have arrangements been made to pay the \$100 application fee as per the next page of the application form?
- * ☒ You understand that once your application has been reviewed for completeness and has been accepted for filing, you will be required to deliver a copy of the completed application (including all attached documents) to the union and the employer.
- * ☒ Note that if your application is incomplete, it may not be accepted for filing by the Board.



LABOUR RELATIONS BOARD FEES

This application is subject to a \$100.00 filing fee. The fee is due when you submit the application to the Labour Relations Board. Your application may not be accepted for filing until you have paid the fee.

Are you filing by mail?

You **must** pay by cheque or money order. The cheque/money order **must** be included with your application.

Make the cheque/money order out to: Labour Relations Board c/o Ministry of Finance.

Are you filing by email?

You can pay by one of the following methods (check one):

- ☐ Charge to my organization's pre-approved account
- ☐ Debit/credit card in-person at the Board's office
- ☒ Debit/credit card using BC Expresspay. Send the secure payment link to this email address:

The Board does not accept credit card payments by email, fax, or over the phone

Question 8 of the Section 12 Form

The union acted in bad faith by failing to fulfill its duty of fair representation during the grievance process. This failure is demonstrated through the following points:

1. **Neglecting to Protect My Interests:**

The union neglected to protect my interests during the investigation of my harassment grievance. Upon accepting the grievance, it became the union's responsibility to evaluate its validity and ensure my protection as a member. Instead, the union allowed the employer to appoint their own investigator without challenging the fairness or independence of the investigation. This critical failure left me vulnerable to the employer's unfounded accusations.

2. **Employer's Allegation of "Bad Faith":**

The employer weaponized the harassment grievance, alleging that it was filed in "bad faith," which led to my unjust termination. As the grievance became the union's responsibility upon acceptance, any alleged "bad faith" should reflect on the union's mishandling of the grievance, not on me as the individual who raised it. The union's negligence in evaluating the grievance and ensuring fair representation directly enabled the employer's baseless allegation.

3. **Failure to Act in Good Faith:**

The union's acceptance and subsequent handling of my grievance were both negligent and conducted in bad faith. It advanced the grievance without proper review or consultation with legal advisors, failed to insist on a union-led investigation, and neglected to challenge the employer's actions. Had the union acted with due diligence, this situation could have been avoided. Instead, its lack of action has caused me significant harm.

4. **Violation of Duty of Fair Representation:**

Grievances are the property of the union once accepted, and it is the union's duty to thoroughly evaluate their validity before proceeding. In this case, the union failed to meet this obligation, acting in a manner that was arbitrary and unreasonable. This failure has resulted in severe consequences for me, including my termination, damage to my reputation, and loss of employment.

The union's actions—or lack thereof—constitute a clear disregard for its duty of fair representation under Section 12. Its failure to act in a manner that was fair, reasonable and in good faith has caused me undue harm, both professionally and personally.



GRIEVANCE

Hospital Employees' Union

To be completed by provincial/regional office

MEMBERSHIP # _____
GRIEVANCE # 2123 - LFC
KEYWORD 1 _____
KEYWORD 2 _____

BETWEEN: Hospital Employees' Union (FTHASSF) LOCAL _____

AND: PITSA LFC
EMPLOYER SITE

Name of Grievor: Jessie Bains

Mailing Address: 5864 123A St.

Home Tel: 604-365-3400 Work Tel: _____ Email: BAINS@gmail.ca

Job Title/Desc: warehouse attendant Wage Rate/Grid: \$23.08

Employee Status Full-Time ☐ Part-Time ☐ Casual ☒ Seniority Date: _____

Work Area: Warehouse Department: Operations

NATURE OF GRIEVANCE:

Harassment impeding progression of grievors career

Article Violated (and any other article relevant to the grievance)

4.03

Remedy Sought: award IT Position
make whole

Grievor Signature: [Signature] Date: _____

I CONFIRM I HAVE PERMISSION TO SIGN ON BEHALF OF THE GRIEVOR: ☐

HEU OFFICER/SHOP STEWARD SIGNATURE: _____

DATE GRIEVANCE FILED: _____ LOCAL GRIEVANCE # _____

RECEIVED BY SUPERVISOR/MANAGER (signature) Cone Brown DATE: Sept 18/23

MANAGEMENT RESPONSE:

No violation of Article 4.03, no violation of the collective agreement, grievance denied

DATE MANAGEMENT RESPONSE: Oct 3, 2023 SIGNATURE: Lance Brown

NOTE: Management Representative must give copy of written reply to shop steward within seven days

* Important: Do not digitally sign until you have filled out all fields as you will not be able to edit after signing.

Summary of Evidence

A. Witness – Lance Brown

- Lance Brown is a Warehouse Lead Shift Manager at the LFC and the direct manager for the Complainant in his employment as a warehouse attendant.
- The Complainant began at the LFC on September 20, 2021. There was a 7-day training period which the Complainant completed.
- Once the training is completed, a casual employee will be provided with a PHSA email address, which will then allow the employee to access the 'Workforce Management' system to book shifts. This usually takes a day or two although Mr. Brown has seen it taken in excess of a week on occasion.
- When he inquired about the Complainant's email access, he was told by either Gus Estrada, the LFC Warehouse Manager or Dean Wilkes, the Warehouse & Logistics Lead Manager, "[h]e should not have been hired".
- The Complainant did finally receive his PHSA email and access to the system nearing the end of October which in Mr. Brown's experience was an excessive delay.

B. Respondent – Jim Tait

Background

- Mr. Tait, Director of HR Services, started at PHSA in July of 2022.
- He had no involvement or awareness of the Complainant until the emails that were the subject of the August 25 meeting were brought to his attention.

The August 25 Meeting

- He became aware of emails sent by the Complainant to Michael McMillan, President and CEO, HEABC and to the Premier's office, which were attempting to solicit the sale of domain names.
- The emails appeared to be leveraging information security risks for personal financial gain, and were considered to undermine the of PHSA's reputation and to be a possible breach of the Standards of Conduct Policy .
- A meeting was arranged for August 25, 2023, to discuss the matter with the Complainant.

- He commenced the meeting by stating that the emails had come to PHSA's attention and had caused concern to those in senior management.
- The Complainant became upset. He was concerned that his privacy had been breached and wanted to know how the emails had come into the possession of PHSA.
- The Complainant stated that this matter was unrelated to his work and refused to answer any questions about it.
- Union representative, Triffani Benedict, had not seen the emails so Mr. Tait forwarded them to her with the permission of the Complainant.
- Triffani called for a caucus, and upon return from caucus the meeting was concluded
- On September 5, 2023 he sent a letter to the Complainant outlining PHSA's position regarding the emails and expectations of the Complainant's behaviour going forwards, the letter was drafted by Jeff Ng
- On September 8 the Complainant responded via email disputing the assertions made in the letter and alleging PHSA was in breach of its policy respecting anti-racism

C. Respondent – Jeff Ng

Background

- Mr. Ng joined PHSA in January of 2022, as an HR Business Partner for the IT group. He was not involved with the hiring of Complainant or the subsequent grievance concerning his access to shifts in October of 2021.
- He first involvement with the Complainant was in 2022 when the Complainant initiated three selection grievances within his portfolio. Those grievances and the issue of the domain names are the only touch points he has had with the Complainant.
- NTT Data provides contracted services to PHSA but Mr. Ng does not know anyone who works for NTT Data or for Fraser Health IT, and he has no idea about the Complainant's allegation regarding known associates.

The Selection Grievances

- Job postings are posted internally for 7 days as per the collective agreement and then posted externally after that, although sometimes internal and external posting are posted simultaneously with different closing dates.

- If an internal candidate applied after the internal closing date, they are considered an external candidate, but if they meet the qualifications, they will be given an interview.
- Job postings are posted through Brain Hunter. Brain Hunter can be accessed externally by setting up an account with an email address, or internally by signing in with a PHSA employee ID.
- Once posted, the postings cannot be altered, and Mr. Ng denies altering any postings to change them from internal to external.
- When an internal posting closes, the system automatically generates a list of internal applicants.
- The Complainant has a history of applying on external postings only, which may be because he had set up his brain hunter account with his personal email address and so was being recognized as an external applicant by the system.
- For positions 122990 and 122994 (both IT Analyst, Output Management positions) the internal posting closed on March 3, 2022
- The Complainant did not appear on the automatically generated lists of internal candidates, but he did appear on the external candidate list, which is also automatically generated.
- The successful applicants for these positions were internal applicants, who had applied by March 3, 2022, and who were both already working on the teams into which they were hired.
- The Complainant's grievance on those two positions was denied for those reasons.
- The Complainant applied on posting 121407, Enrollment Support Analyst. That posting was cancelled due to an administrative error and reposted as posting 124405.
- On March 23, 2022 the Complainant was sent an email informing him of the posting cancellation and reposting.
- On April 5, 2022, the Complainant wrote to Internal Jobs Help (PHSA HR) asking why he had not been granted an interview for posting 121407. Branden Keefer, Talent Acquisition Associate, wrote back explaining the reporting and asking the complainant if he wanted his application submitted as a late internal applicant to 124405.a
- On July 26, 2022 the Complainant wrote again to Internal Jobs Help (PHSA HR) asking whether posting 124405 had been filled internally or externally
- Jaspreet Moore, Talent Acquisition Associate directed the inquiry to Mr. Ng, and he responded stating the position had been filled internally.

- The Complainant then inquired as to who got the position, their seniority and why he had not been given an interview given his 22 years of experience.
- On August 22, 2022 Mr. Ng responded outlining the reasons the hiring manager had deemed him not qualified for the position, specifically:
 - Requirement for graduation from a recognized 2 year computer systems technology diploma program not met.
 - No experience with provisioning and de-provisioning users in a Clinical Information System (e.g. PCIS, SCM, Legacy Cerner, CST Cerner, etc.)
 - No experience with troubleshooting security access/provisioning issues and technical/end user support with a Clinical Information System.
 - He has technical end-user support experience as a deskside/onsite technician but it's not related to access and provisioning. We did account for the general end-user support experience.
 - No experience with pulling and reporting on user access and maintaining security within any applications or any Clinical Information System.
 - No experience with Peoplesoft, Rise, PLR, Cactus. Has MS office experience which we accounted for.
- The Complainant disagreed with this assessment and Mr. Ng advised him that the grievance process was his best recourse.
- A grievance was launched, and during the grievance the union took the position that the Complainant had considerable relevant experience so while he may not have met the exact language of the qualification statement, his experience would be enough to consider him qualified.
- Mr. Ng accepted that there was merit to the union's argument and that the Complainant should have been offered an opportunity for an interview.
- Posting 124405 had already been filled but PHSA had a vacancy for another Enrolment Support Analyst that had been posted under 142734. That posting was closed, but no applicants had been assessed and the selection process had not commenced. In order to resolve all 3 grievances, the Complainant was accepted as a late applicant and granted an interview for posting 142734.

The August 25 Meeting

- The Complainant had sent an email on August 8, 2023, to Michael McMillan, the President and CEO of HEABC, soliciting the sale of his domain names.
- Shannon Malovec, Executive Vice President, Provincial and Digital Health Information Services PHSA was forwarded the email from either Mr. McMillan or the Deputy Minister of Health.
- PHSA provides cybersecurity for the health authorities on a provincial basis and PHSA works hand-in-hand with HEABC on cybersecurity.
- Shannon Malovec, Executive Vice President, Executive Vice President, Provincial and Digital Health Information Services PHSA is in regular meetings with the Minister and Deputy Minister of Health. In that capacity, any emails sent to the Premier regarding IT in health care would be directed to PHSA.
- The August 25 meeting was attended by himself, Jim Tait, Director, HR Services, the Complainant, and HEU representatives, Amy Bryan and Triffini Benedict.
- After Mr. Tait advised that the meeting was being held to discuss the emails the Complainant had sent to the Premier, Ms. Benedict asked to read them.
- The Complainant asserted the emails were not related to his work and it was within his rights as a private citizen to send them to his elected representatives.
- Mr. Tait asked the Complainant if he could show them to Ms. Benedict and Ms. Bryan
- Ms. Benedict seemed taken aback as she read the emails and asked to caucus.
- After the meeting Mr. Ng drafted a non-disciplinary letter of expectation that was signed by Mr. Tait
- At no time in his communications with the Complainant had there been any mention of race or section 2.1.2 of the Standards of Conduct Policy, nor had it been raised in the August 25th meeting.



GRIEVANCE

Hospital Employees' Union

#3

"C"

To be completed by provincial/regional office

MEMBERSHIP # 222552
 GRIEVANCE # 136965
 KEYWORD 1 Termination
 KEYWORD 2 Dismissal

BETWEEN: Hospital Employees' Union (SSF - PHA) LOCAL

AND: PHSA EMPLOYER LFC SITE

PRINT ALL NAMES

Name of Grievor: JESSIE BAINS

Mailing Address: 5264 123A STREET, CURRY, BC V3X 1Y3
STREET/PO BOX/RR CITY POSTAL CODE

Home Tel: 604 265 7400 Work Tel: Email: bairsj@gmail.com

Job Title/Desc: WAREHOUSE ATTENDANT Wage Rate/Grid:

Employee Status Full-Time ☐ Part-Time ☐ Casual ☐ Seniority Date: 23.38

Work Area: WAREHOUSE Department: WAREHOUSE OPERATION

NATURE OF GRIEVANCE:

WARRANT TERMINATION

Article Violated (and any other article relevant to the grievance) ARTICLE 9, and any other

Remedy Sought: GRIEVANCE SETTLEMENT AND SERVICE OF LETTER OF TERMINATION AND HAVE WHOLE

Grievor Signature: [Signature] Date: 11/07/2024

HEU OFFICER/SHOP STEWARD SIGNATURE: [Signature]

DATE GRIEVANCE FILED: 11/07/2024 LOCAL GRIEVANCE #: 12-2024 LFC

RECEIVED BY SUPERVISOR/MANAGER (signature): [Signature] Date: 7/11/2024

MANAGEMENT REPRESENTATIVE RESPONSE: There is just cause for termination, grievance denied.

DATE MANAGEMENT REPRESENTATIVE RESPONSE: 3/7/2024 SIGNATURE MANAGEMENT REPRESENTATIVE: [Signature] Wesley Brown

NOTE: Management Representative must give copy of written reply to shop steward within seven days