



No. VLC-S-S-261188
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

Shannon Calhoun, Kim Parkinson, and Courtney Parobec

Plaintiffs

and

Hospital Employees' Union and Simply Voting Inc

Defendants

NOTICE OF APPLICATION

Applicant: Hospital Employees' Union (the "HEU")

To: Shannon Calhoun, Kim Parkinson, and Courtney Parobec (the "Plaintiffs")

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge in person at the courthouse at 800 Smithe Street, Vancouver, BC, on **May 14, 2026** at 9:45 am for the orders set out in Part 1 below.

The applicants estimate that the application will take **1 hours**.

This matter is within the jurisdiction of a **Judge**.

Part 1: ORDERS SOUGHT

1. A declaration that the Court is without jurisdiction over the Action as pleaded in the Notice of Civil Claim, as it relates to facts and circumstances subject to the exclusive jurisdiction of the Labour Relations Board, pursuant to the *Labour Relations Code*, RSBC 1996, c 244.
2. An Order that the Notice of Civil Claim should be struck in its entirety without leave to amend as it is outside of the jurisdiction of the Court and therefore discloses no reasonable claim and is embarrassing.
3. In the alternate, an Order declining jurisdiction on the issue of the ratification vote and staying the claims in negligence on the basis that proper jurisdiction to determine if a collective agreement has been entered into lies with the Labour Relations Board.
4. Costs and special costs of this application; and

5. Such other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

Background

1. The collective agreement (the “Collective Agreement”) at issue in this matter was negotiated between the Facilities Bargaining Association (“FBA”) and the Health Employers Association of British Columbia (“HEABC”). The Defendant Hospital Employees’ Union (“HEU”) is the largest union in the FBA.
2. On December 19, 2025, the union members represented by the FBA voted to ratify a renewal Collective Agreement.
3. On December 19, 2025, an HEU electoral officer downloaded the results of the ratification vote from Simply Voting Inc in spreadsheet form. The electoral officer reported that 107 of 161 Locals had voted in favour of ratification, and that this met the two-thirds majority required to ratify the Collective Agreement.¹
4. On December 19, 2025, the Bargaining Committee communicated to all FBA members that the new Collective Agreement had been ratified.²
5. On December 20, 2025, HEU union members questioned whether 107 of 161 Locals (66.45%) met the “two-thirds (2/3)” threshold for ratification.³
6. On December 20, 2025, members of the HEU staff leadership investigated the issue of the “two-thirds (2/3)” threshold being met, and discovered that there had been two errors made by the HEU electoral officer:⁴
 - (a) The electoral officer had mistakenly calculated that 107 of 161 Locals voting in favour of ratification met the “two-thirds (2/3)” threshold; and
 - (b) The electoral officer had mistakenly failed to count South Delta Local as voting in favour of ratification because they mistakenly applied a threshold of “50% +1” rather than simple majority.
7. The corrected results of the ratification vote, now including South Delta Local, were 108 of 161 Locals in favour of ratification (67.08%).⁵ This met the two-thirds threshold.
8. The Plaintiffs allege that there are “irregularities” in the vote that require a re-vote.

¹ Affidavit No 1 of W Pegler, para 3 – 5 and Ex A

² Affidavit No 1 of W Pegler, para 5 and Ex B

³ Affidavit No 1 of C Frampton, para 10 - 11 and Ex E and F

⁴ Affidavit No 1 of C Frampton, para 12 - 13 and Ex G; Affidavit No 1 of W Pegler, para 7 - 9 and Ex C

⁵ Affidavit No 1 of W Pegler, para 10; Affidavit No 1 of C Frampton, para 6 – 9 and Ex C and D

Procedural Overview

9. In January of 2026 the parties engaged in without prejudice discussions to determine if litigation could be avoided.
10. On February 4, 2026, the Plaintiffs informed the HEU that they intended to file a Notice of Civil Claim, and to seek an interlocutory injunction to halt implementation of the Collective Agreement on short leave.
11. On February 17, 2026, the Plaintiffs served the Notice of Civil Claim and delivered an unfiled application for injunction without affidavits. The Notice of Civil Claim seeks:
 - (a) An injunction halting the implementation of the Tentative Agreement; and
 - (b) Damages against the HEU for failing to properly document voting procedure.
12. On February 27, 2026, the HEU delivered a filed Form 108, Jurisdictional Response, to the Plaintiffs.
13. On March 10, 2026, the Plaintiffs served a Notice of Application and related affidavits seeking:
 - (a) An injunction prohibiting implementation of the Collective Agreement pending verification of the ratification vote;
 - (b) A declaration that the ratification vote did not comply with the HEU Constitution and Bylaws;
 - (c) An order overturning the ratification vote and requiring a new ratification vote;
 - (d) The appointment of a third-party auditor to oversee the new vote; and
 - (e) Premature document discovery.
14. On March 26, 2026, the parties entered into an agreement for the consent dismissal of the order seeking injunction, and abandoning the orders seeking to declare the ratification vote invalid, overturning the ratification vote, and requiring a new ratification vote, in favour of including that relief as an amendment to the Notice of Civil Claim.

Part 3: LEGAL BASIS

15. The Applicant relies on Rules 8-1, 9-5, 14-1, and 21-8 of the *Supreme Court Civil Rules*; sections 133, 136, 137, and 139 of the *Labour Relations Code*, RSBC 1996, c 244; section 10 of the *Law and Equity Act*, RSBC 1996, c 253; and the inherent jurisdiction of this Court.

The Labour Relations Board Has Exclusive Jurisdiction

16. Section 136 of the *Labour Relations Code*, RSBC 1996, c 244 (the “Code”) provides the Labour Relations Board (the “Board”) with exclusive jurisdiction to hear any issue under the *Code*, and requires the Board to determine complaints under the *Code*. Section 136 further empowers the Board to craft a remedy if appropriate.⁶
17. For clarity, section 139 of the *Code* sets out a non-exhaustive list of issues over which the Board has exclusive jurisdiction, including section 139(c) “to determine whether a collective agreement has been entered into”, and section 139(g) “whether a collective agreement is in full force and effect”.⁷
18. Section 133 of the *Code* establishes the Board’s complaint jurisdiction. It authorizes the Board, on application by an interested person or on its own motion, to determine whether a person has contravened the *Code* and to grant broad remedial relief. Such relief includes ordering any party to do any thing for the purpose of complying with the *Code*; to order any party to refrain from doing any act, thing or omission in contravention of the *Code*; ordering a party to rectify a contravention of the *Code*; award damages for a contravention of the *Code*; or to “make another order or proceed in another manner under this Code [...] that the board considers appropriate”.⁸
19. Section 137 provides that a Court does not have and must not exercise any jurisdiction in respect of a matter that is, or may be, subject to a complaint under section 133 or a matter referred to in section 136.⁹ The only exception is where the act or omission complained of “causes immediate danger of serious injury to an individual or causes actual obstruction or physical damage to property”, which is not the case in this action.

The Labour Relations Board Has Assumed Jurisdiction in Similar Cases

20. The Labour Relations Board has assumed jurisdiction in similar circumstances to the current action, following the same provisions of section 139 of the *Code* as set out above.
21. In *PERI Formwork Systems* the plaintiffs brought a complaint under sections 139(c) and (g) of the *Code*, seeking a declaration that a collective agreement had not been entered into and that no collective agreement was in force following alleged irregularities in the ratification process.¹⁰ At issue was whether the employer could rely on the union’s representation that a collective agreement had been reached after the ratification vote was contested due to errors in communicating what was being voted on.¹¹

⁶ *Labour Relation Code*, RSBC 1996, c 244, section 136

⁷ *Labour Relation Code*, RSBC 1996, c 244, section 139(a) and (g)

⁸ *Labour Relation Code*, RSBC 1996, c 244, section 133(a), (b), (d), and (f)

⁹ *Labour Relation Code*, RSBC 1996, c 244, section 137

¹⁰ *PERI Formwork Systems Inc (Re)*, 2020 BCLRB 104 at para 1

¹¹ *PERI Formwork Systems Inc (Re)*, 2020 BCLRB 104 at para 10 - 14

22. As part of the reconsideration decision in *PERI Formwork Systems*, the Labour Relations Board held that “once a union confirms to an employer that ratification has occurred, a collective agreement is presumptively in force”, and that:¹²

51 In the face of this presumption, however, a party may apply to the Board for a declaration that no collective agreement is in force, including on the grounds that the condition of ratification has not been met. In doing so, the party applying must establish that the particular circumstances justify the relief sought: *Canex*, p. 136. In this sense, we agree with the statement in *Canex* that a union and the employees are not “automatically” held to the result of a vote, whether for or against the agreement. [emphasis added]

23. This is exactly what the Plaintiffs seek in the current case: a declaration that the Collective Agreement is not in force, based on alleged “irregularities” in the ratification vote that mean the condition of ratification has not been met.

24. Similarly, in *Canex* the Board was required to deal with a situation where only 4 votes separated ratification, with 131 votes against, 127 in favour, and 25 spoiled ballots. The crux of the dispute was how the scrutineers interpreted the instructions on how to mark the ballots, which would have shifted the spoiled ballots towards ratification.¹³ After a judicial re-count and a second vote, the Board assumed jurisdiction and ruled on whether the results of the ratification vote were valid, and whether ratification had taken place.¹⁴

25. In the current case, the essential substance of the matter is whether the Collective Agreement was properly ratified, and so jurisdiction lies with the Board.

No Concurrent Jurisdiction

26. There is no concurrent jurisdiction between the Board and the Courts. The leading case on the jurisdiction granted by a labour code and the jurisdiction of the Courts is *Weber v Ontario Hydro*, [1995] 2 SCR 929. In a concurring opinion MacLachlin J (as she then was) rejected both concurrent jurisdiction,¹⁵ and “overlapping” jurisdiction,¹⁶ in favour of exclusive jurisdiction.¹⁷

27. The Courts retain only a discretionary residual jurisdiction where the remedies sought are not within the power of a board, tribunal, or arbitrator to grant.¹⁸ As noted in *Bagri v Quesnel (City)*:¹⁹

¹² *PERI Formwork Systems Inc (Re)*, 2021 BCLRB 31 (recon of 2020 BCLRBD 104) at para 50 - 51

¹³ *Canex Placer, Endako Mines Division (Re)*, [1974] BCLRBD No 129 at para 4

¹⁴ *Canex Placer, Endako Mines Division (Re)*, [1974] BCLRBD No 129 at para 23

¹⁵ *Weber v Ontario Hydro*, [1995] 2 SCR 929 at para 39 - 46

¹⁶ *Weber v Ontario Hydro*, [1995] 2 SCR 929 at para 47 49

¹⁷ *Weber v Ontario Hydro*, [1995] 2 SCR 929 at para 50 - 58

¹⁸ *Weber v Ontario Hydro*, [1995] 2 SCR 929 at para 67

¹⁹ *Bagri v Quesnel (City)*, 2022 BCSC 2003 at para 47

The residual jurisdiction referred to in *Weber* and other cases relates to available remedies. If the dispute, in its essential character, falls within the jurisdiction of a tribunal that has the power to grant an effective remedy, the court cannot assume jurisdiction simply because the plaintiff has chosen to raise additional issues that the tribunal does not need to consider and may be beyond its jurisdiction.

28. As set out above, the Board has the power to grant remedies in response to all of the relief sought by the Plaintiffs. The Board is also empowered to compel oral or written evidence on oath, and the production of documents, in the same manner as a court of record in civil cases.²⁰
29. None of the cases set out at paragraph 6 of Part 3 of the Notice of Civil Claim stand for the proposition that the Courts have concurrent jurisdiction where statute confers exclusive jurisdiction on a board or tribunal. Instead, each of those cases deals with the concurrency of jurisdiction between provincial Superior Courts and the Federal Court.

The Essential Character of the Dispute is Whether Ratification Has Been Achieved

30. Where jurisdiction is disputed it is necessary to examine the "essential character" of the dispute. Merely characterizing a lawsuit and/or framing the issues as outside of the jurisdiction of the Board is not determinative. If the substance of the matter is within the jurisdiction of the Board then the Court will not have jurisdiction over it.²¹
31. In the current case, the essential nature of the dispute is whether the results of the ratification vote are valid, and whether a collective agreement has been entered into and is in full force and effect.
32. Resolving jurisdictional disputes between a labour board and the Courts is typically accomplished by applying the test set out in *Weber v Ontario Hydro*, [1995] 2 SCR 929. Where a jurisdictional dispute does not arise out of a collective agreement, but instead arises from jurisdiction set out in statute, the Court will apply a modified Weber Test to:²²
 - (a) Determine the essential character of the dispute;
 - (b) Consider the ambit of the legislative scheme to determine whether the claimant's complaints fall within the exclusive jurisdiction of the Labour Relations Board; and
 - (c) Consider whether the process favoured by the legislature is able to provide effective redress for the alleged wrong.

²⁰ *Labour Relation Code*, RSBC 1996, c 244, section 125

²¹ *Janik v Ironworkers Local 97 Apprenticeship and Training Society*, 2025 BCSC 2130 at para 39 - 43

²² *Goldman v Fraser Valley Aboriginal Children and Family Services*, 2020 BCCA 300 at para 4 - 5 and 42 - 53

Essential Character of the Dispute

33. When assessing the essential character of the dispute "...the judge must not rely on the legal characterization of the claim as set out in the pleadings, but rather to the facts giving rise to the dispute".²³
34. While the Plaintiffs have framed their pleadings in negligence, the crux of the matter is that they seek to have the ratification vote overturned.²⁴
35. The Plaintiffs' factual basis focuses exclusively on the alleged "irregularities" in the voting process in support of an injunction halting ratification of the Collective Agreement.²⁵
36. Further, the Plaintiffs have amended, or are in the process of amending, their Notice of Civil Claim to seek a declaration that the ratification vote failed to comply with the HEU Constitution and Bylaws, and an order that a new ratification vote be conducted.
37. In contrast, the pleadings fail to set out the legal elements of negligence, including any material facts supporting the basic elements required to be pleaded (such as causation and harm). The pleadings in negligence are *pro forma* and appear to exist only to provide a justification for bringing this action in Court rather than before the Board.
38. The real matter at hand is whether the results of the ratification vote are valid or not, and whether a further vote should be ordered. All of this is within the exclusive jurisdiction of the Board.

Ambit of the Legislative Scheme

39. As set out above, section 139 the *Code* grants the Board exclusive jurisdiction to determine whether a collective agreement has been entered into, and whether a collective agreement is in full force and effect. Where a dispute falls into one of the areas set out under section 139 of the *Code*, the legislative scheme is clear that the dispute falls within the exclusive jurisdiction of the Board.

Ability to Provide Effective Redress

40. As set out above, Section 133 of the *Code* provides the Board with broad remedial powers, including ordering a new ratification vote to be conducted, to award damages for a contravention of the *Code*, or to "make another order or proceed in another manner under this Code [...] that the board considers appropriate".²⁶ The Board has the power to order every remedy which the Plaintiffs seek.

²³ *Masjoody v Trotignon*, 2021 BCSC 1502 (aff'd 2022 BCCA 135) at para 44, citing *Weber v Ontario Hydro*, [1995] 2 SCR 929

²⁴ Notice of Civil Claim, S-261188, Part 2, para (a)

²⁵ Notice of Civil Claim, S-261188, Part 1, para 21 – 26, and Part 3, para 4 - 5

²⁶ *Labour Relation Code*, RSBC 1996, c 244, section 133(a), (b), (d), and (f)

The Pleadings Should be Struck for Jurisdiction

41. The Court is empowered by Rule 21-8(1)(b) "... to dismiss or stay the proceeding on the ground that the court does not have jurisdiction over that party in respect of the claim made against that party in the proceeding".
42. A challenge to a pleading on the grounds that the Court lacks subject matter jurisdiction is appropriately brought as an application to strike under Rule 9-5(1)(a) for failure to disclose a reasonable cause of action, and/or under Rule 9-5(1)(c) as embarrassing.²⁷
43. In *Nagra v Coast Mountain Bus Co*, the Court struck the entirety of the Notice of Civil Claim, in part on the basis that the issues advanced were properly the jurisdiction of the Board, the Worker's Compensation Board, and/or the Human Rights Tribunal.²⁸ The Court held that there would be no utility in allowing the plaintiff to amend the pleadings on the basis that the issues fell outside of the subject matter jurisdiction of the Court.²⁹
44. As set out above, the essential elements of the Plaintiffs' claim are whether or not the ratification vote was valid, and whether or not a collective agreement was entered into and is in full force and effect. This is exclusive subject matter of the Board.
45. The HEU submits that the pleadings cannot be saved by amendment, because no amendment will bring the core issues in dispute out of the exclusive jurisdiction of the Labour Relations Board, and into the jurisdiction of the Court.

Alternately the Pleadings Should be Stayed Pending the Results of a Labour Relations Board Decision

46. In the alternate, the resolution of the damages sought and the claims in negligence should be stayed pending a decision of the Board on whether, as a result of the ratification vote, the collective agreement has been entered into and whether the collective agreement is in full force and effect.
47. Where territorial jurisdiction is not disputed, but a party makes a *forum non conveniens* argument based on a tribunal or board's exclusive jurisdiction, Rule 21-8(2) empowers the Court to decline jurisdiction and stay the action.³⁰ Rule 9-5(1) further empowers the Court to stay an action on the same grounds as striking the pleadings.

²⁷ *McGregor v Holyrood Manor*, 2014 BCSC 679 (aff'd 2015 BCCA 157) at para 114

Nagra v Coast Mountain Bus Co (TransLink), 2023 BCSC 2312 at para 19

²⁸ *Nagra v Coast Mountain Bus Co (TransLink)*, 2023 BCSC 2312 at para 41 – 45, 50 – 57, and 58 - 62

²⁹ *Nagra v Coast Mountain Bus Co (TransLink)*, 2023 BCSC 2312 at para 63

³⁰ *Hui v Strata Plan BCS3702*, 2025 BCSC 1209 at 40

48. Typically, on an application for a stay of proceedings, the applicant must satisfy the test for injunction stated in *RJR-MacDonald* that there is a serious issue to be tried, that any harm would be irreparable, and that the balance of convenience lies with the applicant.³¹
49. The "relatively low threshold" for the first branch of the test will be met if the claim is not frivolous or vexatious.³² There are strong grounds for contending that the core aspects of the action are within the exclusive jurisdiction of the Board, which meets the test.
50. The second and third branches of the test will be met if the applicant can show that they will suffer irreparable harm, and the balance of convenience favours granting the stay.³³
51. The issue of damages cannot be determined absent a Board ruling as to whether the ratification vote is valid. If a stay is not granted, the HEU will incur costs for discoveries and pre-trial preparation that, at least in part, will be wasted in the event the Board rules that the ratification vote is valid. The resulting harm or prejudice would not be fully ameliorated by an award of costs.
52. Any inconvenience to the Plaintiffs in the form of delay or an adjournment does not weigh strongly against a stay. The balance of convenience favours having the issues which are within the exclusive jurisdiction of the Board determined first, before the Court hears any claim for damages arising from the alleged misconduct.

Conclusion

53. The BC Labour Relations Board has exclusive jurisdiction over the core issue of whether the collective agreement was properly ratified, or whether the ratification vote should be overturned in favour of a second vote. The Board has exercised jurisdiction over this issue in the past. This Court should decline jurisdiction and strike the pleadings herein.

Costs

54. If a party is successful in having pleadings struck under Rule 9-5, the Court has the jurisdiction to award special costs. Special costs are generally awarded where a litigant has engaged in conduct deserving of rebuke.³⁴ In the current case, the Plaintiffs have pursued a claim without evidentiary foundation on pleadings that are manifestly deficient. As such, the HEU seeks special damages for this application.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit No 1 of Caelie Frampton, made 16 March 2026;

³¹ *Hutchingame v Johnstone*, 2006 BCCA 353 at para 6

³² *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] SCJ No 17 at para 78

³³ *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] SCJ No 17 at para 79 - 80

³⁴ *Ossudallah v Swiss Consulting Management Ltd*, 2020 BCSC 567 at para 49

2. Affidavit No 1 of William Pegler, made 16 March 2026;
3. The pleadings and materials filed in this matter; and
4. Such further and other materials as counsel may advise and the Honourable Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: March 30, 2026



Signature of Ryan T. Matheuszik
Lawyer for the applicant
Hospital Employees' Union

Koskie Glavin Gordon
1630 - 1177 W Hastings St
Vancouver, BC, V6E 2K3

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

.....
.....
.....

Date:

.....
Signature of Judge Associate Judge

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above