

CANADA / JUDGMENT

Bains v. Barker

2025 BCSC 2563

COURT

Supreme Court of British Columbia

DECIDED

27 November 2025

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2025 BCSC 2563 Bains v. Barker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bains v. Barker,

2025 BCSC 2563

Date: 20251127

Docket: S254074

Registry: Vancouver

Between:

Jessie Bains

Applicant

(Plaintiff)

And

Andres Barker

Respondent

(Defendant)

Before: The Honourable Justice Basran

Oral Reasons for Judgment

In Chambers

The Applicant (Plaintiff), appearing in person:

J. Bains

Counsel for Respondent (Defendant), Andres Barker and in his professional Capacity as Vice-Chair of the British Columbia Labour Relations Board:

J. O'Rourke

Place and Date of Hearing:

Vancouver, B.C.

November 27, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 27, 2025

- [1] THE COURT: The British Columbia Labour Relations Board (the "Board") brings two applications before the court.
- [2] The first one I will deal with seeks an order pursuant to Rules 6-2(7)(b) and (c) of the Supreme Court Civil Rules that it be added as a party to this matter.
- [3] The underlying claim is a civil suit brought by the plaintiff, Jessie Bains, against Andres Barker as the defendant. Mr. Barker is vice-chair at the Board.
- [4] Mr. Bains filed seven applications with the Board alleging breaches of the Labour Relations Code, R.S.B.C. 1996, c. 244. All of these applications were assigned to the Board's Associate Chair, Mr. Barker.
- [5] On several occasions, Mr. Bains requested that Mr. Barker recuse himself, alleging a reasonable apprehension of bias. By letters dated March 12, 2025, and March 13, 2025, Mr. Barker denied the requests to recuse himself and indicated that the reasons for his decision not to recuse would be provided in his decision on the applications.
- [6] On April 30, 2025, Associate Chair Barker issued a decision dismissing the seven applications. In that decision, Mr. Barker provided reasons for his refusal to recuse himself.
- [7] On May 1, 2025, Mr. Bains filed an application for reconsideration of the original decision. On June 18, 2025 the Board dismissed the reconsideration application.
- [8] Pursuant to Rule 6-2(7)(b) of the Rules, the court may order that a person may be added as a party if that person ought to have been joined as a party or that person's participation in the proceeding is necessary to ensure all matters in the proceeding may be effectually adjudicated on.

- [9] The Board's position on standing is somewhat bifurcated. Its main position is that it is not required to be a party in this matter in order to make this application striking the notice of civil claim because it is an interested party. However, based on a previous application before Justice Morishita, with oral reasons delivered on June 30, 2025 (indexed as *Bains v. Barker* (30 June 2025), Vancouver S254074 (B.C.S.C.)), there was some question as to whether or not the Board had standing to make these submissions. Therefore, out of an abundance of caution, in the alternative, the Board is making its application for standing in this matter.
- [10] The Board's position on that application is that Mr. Bains' claim is against Associate Chair Barker, who, as the decision-maker of the Board, is protected by statutory immunity. Furthermore, Mr. Bains takes issue with the Board's decisions that were made subject to the Board's exclusive jurisdictions. Therefore, for that reason, Mr. Bains' claim cannot be brought against an individual decision-maker, and the Board has an interest in asserting immunity.
- [11] The immunity provision is set out in s. 56 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA]:

Immunity protection for tribunal and members

56 (1) In this section, "decision maker" includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a facilitated settlement process.

- (2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a decision maker, the tribunal or the government because of anything done or omitted
- (a) in the performance or intended performance of any duty under an enactment governing an application, or
- (b) in the exercise or intended exercise of any power under an enactment governing an application.
- (3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.
- [12] Mr. Bains' position is that in his amended notice of civil claim, dated June 16, 2025, he is only suing Andres Barker as a natural person in his private capacity for torts committed outside of lawful authority, and that he is not suing the Board, and he is not seeking any relief against the Board. Mr. Bains asserts that this private tort action can be decided between himself and Mr. Barker without the need for the Board to be added as a party. He asks that the Board's application to be added as a party be dismissed and that, in the alternative, it be deferred until after pending appeals are decided. Those are appeals from the aforementioned decisions of Morishita J., as well as a subsequent decision of Justice Tucker dated August 13, 2025 (indexed as *Bains v. Barker* (13 August 2025), Vancouver S254074

(B.C.S.C.)).

- [13] Mr. Bains' central contention is that despite repeated requests, no oath of office for Mr. Barker has been filed, and that there is no proof that Mr. Barker had lawful authority or confirmed impartiality to make the decisions in issue. This failure to provide oaths of office, combined with Mr. Barker's refusal to recuse himself, is the essence of Mr. Bains' position. He contends that this is a private tort action, he is not doing a judicial review, and so there is no reason for the Board to interject in this matter.
- [14] I disagree with Mr. Bains' characterization of this matter. This is because in his amended notice of civil claim, Mr. Bains concedes that at all material times Andres Barker was employed as a vice-chair of the Board. Now, strictly speaking, that is not accurate, he is not employed as a vice-chair, he is appointed as a vice-chair, but nevertheless the role he performed was inextricably bound with his role as a member of the Board.
- [15] Specifically, Associate Chair Barker's decision on Mr. Bains' requests for recusal were made within his role as vice-chair of the Board and therefore were protected by s. 56 of the ATA. On the authority in *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCSC 399 at para. 6, I note that a bare allegation of bad faith is not sufficient to overcome statutory immunity.
- [16] The Board is an independent statutory tribunal with exclusive jurisdiction to hear and determine applications under the Labour Relations Code. Decisions of the Board are subject to significant privative clauses, and a court does not have jurisdiction in respect of a matter that is within the Board's exclusive jurisdiction.
- [17] In applying Rule 6-2(7)(c) of the Rules, the applicant, must establish that there is a question or issue between Mr. Bains and the proposed defendant, the Board, that relates to or is connected with the relief, remedy, or subject-matter of the proceeding. This is a low threshold. There is clearly a question or issue between the Board and Mr. Bains that relates to or is connected with the relief sought by Mr. Bains in his proceeding because Mr. Barker was functioning in his role with the Board when he made his decisions. Therefore, there is a real issue between Mr. Bains and the Board. The subject matter of this proceeding is inextricably linked to the Board's exclusive jurisdiction.
- [18] I, therefore, am satisfied that the Board ought to be added as a party to this matter.
- [19] I do wish, however, to comment on the necessity of this order. In my view, the Board does not actually need to be added as a party to this litigation, notwithstanding my finding that it meets the test for being added because it has a sufficient interest in this matter justifying it making submissions on the issues before the court. I refer in this regard to the decision in *Song v. Westwood Plateau*, 2015 BCSC 1884, in which Justice Myers found, at paras. 9 and 16, that the tribunal in that case has standing to make the application without being a party on the basis that it is an interested person with a sufficient interest to be heard. In my view the same applies in this case. The Board has a substantial interest in asserting the immunity

provision in s. 56 of the ATA in order to ensure that its Board members are protected from private tort actions in respect of decisions they make in their roles as tribunal members.

[20] I turn next to the second application brought by the Board, which seeks an order pursuant to Rule 9-5(1) of the Rules and the court's inherent jurisdiction, that the notice of civil claim filed in this matter be struck in its entirety. The factual background previously described applies to this application as well.

[21] The legal basis upon which the Board relies is Rule 9-5(1) of the Rules:

Scandalous, frivolous or vexatious matters

- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
 - (a) it discloses no reasonable claim or defence, as the case may be,
 - (b) it is unnecessary, scandalous, frivolous or vexatious,
 - (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
 - (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[22] The Board submits that Mr. Bains' claim should be dismissed pursuant to Rule 9-5(1)(a) because there is no reasonable foundation for the claim; pursuant to Rule 9-5(1)(b) because the claim is unnecessary; and/or pursuant to Rule 9-5(1)(d) because the claim is an abuse of process.

[23] Mr. Bains' position on this application is that his notice of civil claim is a private tort claim as between himself and Mr. Barker, and it does not implicate or in any way affect the Board. His main point is that there is no evidence that Mr. Barker made his decision in his role as a vice-chair as opposed to in his capacity as a private citizen. This is the basis upon which he characterizes the underlying litigation as a private tort claim. Mr. Bains relies on his repeated requests that Mr. Barker furnish him with his oaths of office and contends that Mr. Barker and the Board's refusal to provide the oaths of office suggest that Mr. Barker rendered his decisions in some form of private capacity as opposed to his role as an Associate Chair of the Board.

[24] The failure to provide the oaths of office, combined with the refusal to recuse himself, constitute the core allegations made by Mr. Bains that his notice of civil claim should continue as a private matter as between him and Mr. Barker.

[25] Mr. Bains asserts that he is deliberately not doing a judicial review, and that he is suing Mr. Barker for misfeasance and related torts.

- [26] In my view, the underlying notices of civil claim must be struck. There is no reasonable foundation for the claim. This is because, in my view, it is plain and obvious that there is no cause of action, and no reasonable prospect of success in an action specifically targeting Mr. Barker. This is because the Board's decision-makers are protected from exactly this kind of claim by the statutory immunity set out in s. 56 of the ATA.
- [27] Furthermore, the kind of relief sought by Mr. Bains in this matter cannot be achieved in this type of action. On several occasions during the course of Mr. Bains' submissions, I asked him if he was pleading any facts regarding the alleged bad faith or misfeasance of Mr. Barker beyond mere bald allegations. Mr. Bains was unable to point to any particular facts, aside from Mr. Barker's refusal to provide his oaths of office, which, in my view, is wholly unnecessary, and Mr. Barker's refusal to recuse himself, for which he provided reasons in his decision. The bare allegation of bad faith is not sufficient to overcome statutory immunity. Furthermore, Mr. Bains' disagreement with Mr. Barker's decision not to recuse himself is not a sufficient basis to strip Mr. Barker of his immunity under s. 56 of the ATA.
- [28] All of the matters for which Mr. Bains is seeking relief are within the Board's exclusive jurisdiction. To the extent that he wishes to take any further steps in respect of the Board's decision, it is open to him to do so by way of judicial review, but there is no cause of action available in tort against Mr. Barker.
- [29] Accordingly, I am satisfied that pursuant to Rule 9-5(1)(a) there is no reasonable foundation for the claim. I am also convinced that under Rule 9-5(1)(b), the claim is unnecessary because it serves no useful purpose, and it would be a waste of the court's time and the public's resources to continue to expend energy on a matter that has no prospect of success. It is obvious that this action cannot succeed because of the aforementioned exclusive jurisdiction of the Board.
- [30] I am not going to make a finding that this claim is an abuse of process pursuant to Rule 9-5(1)(d) because I note that Mr. Bains is a self-represented litigant, and he may have simply erred in bringing this as a notice of civil claim as opposed to bringing a judicial review, but I will note that he is collaterally challenging decisions of an administrative tribunal that are subject to judicial review, and that this court has no jurisdiction to hear a substantive appeal from a decision of an administrative tribunal.
- [31] I note also when Mr. Bains applied for a reconsideration of the original decision, the decision that has been issued, he had 60 days to file a judicial review, and he has chosen not to. That was the avenue available to him to challenge the decision made by Mr. Barker in his role as an associate chair of the Board.
- [32] I am granting the orders sought in both applications by the Board, first in respect of standing, subject to my comment that it may not have been necessary; and I am granting the application seeking that the notice of civil claim, originally filed on May 29, 2025, and purported to have been amended on June 16, 2025, are struck.

- [33] I note that the purported amendment does not comply with the Rules. Again, Mr. Bains is a self-represented litigant. In the amendment, he sought to specifically direct his allegations at Mr. Barker without implicating to any significant degree the Board, but nevertheless that claim has to be struck because Mr. Barker is protected by s. 56 of the ATA, and as I have described there is no reasonable foundation for the claim, and it is unnecessary.
- [34] The orders sought in the applications by the Board are granted.
- [35] [SUBMISSIONS ON COSTS]
- [36] The Board has been entirely successful on its applications and, accordingly, is entitled to one-half day's costs at Scale B, payable, but not payable forthwith.
- [37] Is there anything further required at this time?
- [38] CNSL J. O'ROURKE: Just perhaps dispensing with the signature on the order. I have vetted orders, but they might not be quite exactly what you've ordered today.
- [39] THE COURT: I am going to dispense with Mr. Bains' signature on the orders on the condition, Ms. O'Rourke, that you draft the orders, have them entered, and provide Mr. Bains with copies of the entered orders.
- [40] CNSL J. O'ROURKE: I will.
- [41] THE COURT: Thank you.
- "Basran J."

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