BRITISH COLUMBIA LABOUR RELATIONS BOARD

2024 BCLRB 69 (CanLII)

JESSIE BAINS

(the "Applicant")

-and-

THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

(the "Union")

PANEL:	David Duncan Chesman, K.C.
APPEARANCES:	The Applicant, self-represented Tony Micallef-Jones, for the Union
CASE NO.:	2023-001698
DATE OF DECISION:	May 2, 2024

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Applicant says the Union acted in contravention of Section 10 of the *Labour Relations Code* (the "Code") by suspending the Applicant from all Union activities without natural justice, pending its internal investigation of a complaint against him (the "Application").

2 The Union says the Application is without merit.

3 The Union also objects to the Application as moot and/or premature. I understand such objections constitute separate preliminary objections to the Application (the "Preliminary Objections").

4 This decision concerns the Preliminary Objections and does not address the merits of the Application.

5 The pronouns assigned to the Applicant in this decision are those the Applicant has identified to the Board as appropriate.

II. BACKGROUND

6 I have read and considered the parties' submissions and attached documents. I set out below the undisputed, alleged facts material to the Preliminary Objections.

7 All documents quoted below are quoted on a "reproduced-as-written" basis, meaning without the correction or identification of errors.

8 By a letter dated October 25, 2023, the Union advised the Applicant it had initiated the investigation of a complaint against him and confirmed an October 11, 2023 motion adopted by the Union's Board of Directors "to immediately suspend you from all your elected and named positions…and from all PIPSC [Union] activities and meetings, including the AGM, pending an investigation and until they have reached a decision".

9 By an email to the Union dated October 25, 2023, the Applicant provided responses to the complaint against him.

10 By an email to the Union dated November 3, 2023, the Applicant advised: "I am writing to formally notify you that I have resigned from my position at BCFNHA [British Columbia First Nations Health Authority] and have severed ties with PIPSC [the Union]."

11 Following the Union's receipt of the Applicant's November 3, 2023 email, the complaint against the Applicant was withdrawn and the Union's investigation of it was discontinued.

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12 The Application was filed on the Board's Section 10 online form (the "Form"). Paragraph 5 of the Form asks: "Did you appeal the Union's decision through the Union's internal appeal procedure? In response, the Applicant says: "There was no hearing scheduled and I was given a chance to appeal".

13 Paragraph 7 of the Form says: "If you did not appeal the Union's actions, explain why". In response, the Applicant says: "After receiving the suspension letter from the union president on October 12th I resigned fearing the union".

III. POSITIONS OF THE PARTIES

14 Having regard to its objection to the Application as moot, the Union says:

> The Applicant claims that the Institute breached Section 10(1) of the Code when it investigated the harassment Complaint against him and when it temporarily suspended him from all his elected and named positions with the BCFNHA Group and from all PIPSC activities in meetings without a hearing scheduled.
>
> On October 25, the Institute advised the Applicant that an investigation had been launched into the Complaint and the appropriateness of the temporary suspension under Bylaw 24.4. PIPSC informed the Applicant that he could make submissions which would be shared with the third-party neutral investigator and the Panel of Peers as evidence for their consideration.
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> On October 25, the Applicant provided the Institute his submissions in response.
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> However, two (2) days later, the Applicant resigned his employment with the Health Authority and all positions within PIPSC. As such, the investigation was discontinued, and the complaint was withdrawn as being moot.
>
> Similarly, the instant Application is also moot. The Applicant had access to an internal appeal process under the POC. However, given the Applicant's resignation from the Health Authority and the Institute, the investigation was discontinued, and the complaint was withdrawn. As such, there is no live dispute to be adjudicated by this Board.
>
> Further, the Applicant seeks an apology and damages. The Board, in Lalli v. BCTF, 2021 BCLRB 180 (CanLII), indicated that the Board does not have the jurisdiction to award damages of this nature. This further militates towards summarily dismissing this complaint as moot.
>
> Given his resignation and discontinuance of the POC investigation process, and in light of the remedies requested by the Applicant,

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> the Board should exercise its discretion to summarily dismiss the Application as academic or moot.
>
> ("First Preliminary Objection")

15 Having regard to its objection to the Application as premature or untimely, the Union says:

> In the alternative, the Institute submits that the Application is premature because it raises a hypothetical issue that has not yet crystallized.
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> The Applicant declares he was not afforded an opportunity to appeal the decision to investigate the Complaint and his temporary suspension. This is inaccurate.
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> The Applicant did file several responses to the Complaint on August 21 & 24, 2023, and to the issue of the temporary suspension on October 25, 2023.
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> A Section 10 Application should be dismissed as premature if the internal union process is at an early stage. (see e.g., Lawyor v. Ambulance Paramedics of British Columbia – CUPE Local 873, 2015 CanLII 56866 (BCLRB)).
>
> Pursuant to the POC, the Applicant would have been afforded an opportunity:
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> a. to meet with an investigator to present evidence;
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> b. to make submissions on the investigator's report for consideration by the Panel of Peers; and,
>
> c. to appeal any negative decisions or findings to an internal union appellate body.
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> However, the POC process was discontinued following his resignation.
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> Pursuant to the POC process, the Applicant would have been provided ample opportunity to appeal the temporary suspension. However, the instant Application was filed in advance of arriving at those steps in the process. As such, the Board should summarily dismiss the Application as premature.
>
> ("Second Preliminary Objection")

16 In response to the First Preliminary Objection, the Applicant says:

> The current status of the dispute between the parties is immaterial. The remedy sought is essential for proving my innocence, which could lead to potential damages for the harm suffered to my

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> reputation as a labor activist spanning over three decades, as well as the pain and suffering that precipitated my resignation. Furthermore, this remedy is not only for my benefit but also ensures that other members within PIPSC are afforded natural justice. Additionally, it would provide me with the necessary closure.

17 In response to the Second Preliminary Objection, the Applicant says:

> Prior to my resignation, I diligently pursued every available internal process within PIPSC. My decision to resign was driven by the significant pain and suffering caused by the organization, which had reached a point where it adversely affected my ability to function effectively at work.

IV. ANALYSIS AND DECISION

Law: Section 10 / Natural Justice

18 Section 10(1) of the Code states:

> (1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to
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> a) matters in the constitution of the trade union,
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> b) the person's membership in a trade union, or
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> c) (c) discipline by a trade union.

19 The Board has a limited jurisdiction under Section 10(1), to supervise and regulate a trade union's internal affairs (*Marilyn Coleman and Doug Leaney*, BCLRB No. B282/95 ("*Coleman*"), para. 117; *Philip Bitz, et al.*, BCLRB No. B73/2005, para. 63; *Collins Njoroge*, BCLRB No. B187/2019 ("*Collins Njoroge*"), para. 53).

20 The Board's jurisdiction under Section 10(1) is specifically limited to a consideration of a trade union's observation of natural justice principles (*Coleman*, para. 117; *Collins Njoroge*, paras. 53-55).

Law: Moot or Academic Matters

21 The Board's well-established policy is to decline to adjudicate moot or academic matters (*Health Labour Relations Association of B.C.*, BCLRB No. B69/93 (Leave for Reconsideration of IRC No. C43/92, IRC No. C64/92 and Interim Order dated March 11, 1992); *Dennis Talbot*, BCLRB No. B80/2006 ("*Talbot*"), para. 19; *Simon Fraser University*, BCLRB No. B20/2013 (Application for reconsideration granted, BCLRB No. B111/2013), para. 35; *Joseph Sircelj*, BCLRB No. B66/2019 ("*Sircelj*"), para. 21; *Pan Pacific Vancouver*, 2021 BCLRB 50 (Leave for Reconsideration of 2021 BCLRB 15) ("*Pan Pacific*"), para. 43).

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22 The Board's mootness analysis follows that of the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 ("*Borowski*").

23 In *Borowski*, the Court identified a "moot" matter as one that does not involve a live controversy or concrete dispute affecting the parties' rights (p. 357). Accordingly, a matter is moot where a Board decision will not have a practical effect on the parties' rights (*Talbot*, para. 19; *Sircelj*, para. 22; *Pan Pacific*, para. 43).

24 Pursuant to the mootness analysis outlined in *Borowski*, the Court retains a discretion to adjudicate a moot matter, having regard to mootness principles, including "the preservation of scarce judicial resources" (*Borowski*, p. 345). The Court retains the discretion to expend scarce judicial resources to adjudicate a moot matter "in cases of a recurring nature but brief duration" (*Borowski*, p. 360).

25 Following *Borowski*, the Board's mootness analysis is, therefore, a two-stage analysis. At the initial stage, the question is whether the parties' legal dispute is moot. If the parties' legal dispute is moot, the next question is whether the Board should nevertheless exercise its discretion to adjudicate the matter.

Law: Untimely/Premature Applications

26 Internal trade union appeal procedures afford trade unions the opportunity to correct original union decisions, including original trade union decisions in contravention of Section 10 of the Code, without Board involvement (*Sarbrinder Lalli*, 2021 BCLRB 180 ("*Lalli*"), para. 71).

27 Board policy requires the exhaustion of available internal trade union appeal procedures prior to the filing of applications alleging trade union contraventions of the Code (*James W.D. Judd,* BCLRB No. B63/2003, para. 97; *Lalli*, para. 73). The exhaustion of such internal trade union appeal procedures is a requirement and not an option (*Debbie Meyers*, 2023 BCLRB 159 (Leave for reconsideration dismissed, 2023 BCLRB 203), para. 38).

28 Pursuant to its policy, the Board does not allow an application alleging a trade union's contravention of the Code to proceed absent the applicant's prior exhaustion of the trade union's internal appeal procedure(s) (*Lalli*, para. 73).

Law: General

29 Particulars are allegations of fact in support of an application under the Code. The Board has the discretion under Section 133(4) of the Code to dismiss an application that fails to provide sufficient particulars to establish or disclose a *prima facie* case (*Best Facilities Services Ltd.*, BCLRB No. B133/2013 ("*Best Facilities*"), paras. 14-17; *Glen William Fraser*, 2021 BCLRB 19 ("*Fraser*"), para. 10).

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Analysis: First Preliminary Objection - Moot Application?

30 Applying the Board's two-stage mootness analysis, the initial question is whether the Application is moot and, more specifically, whether the remedies sought by the Applicant would have a practical effect on the parties' rights. A requested remedy would have a practical effect on the parties' rights if legally available and sufficiently consequential. A requested remedy is available if it falls within the Board's remedial jurisdiction under the Code and is consistent with the Board's exercise of that jurisdiction.

31 The undisputed alleged facts upon which I rely are that after his suspension, and before filing the Application with the Board, the Applicant resigned from his employment with BCFNHA and severed ties with the Union, following which the complaint against the Applicant was withdrawn and the Union's investigation of it was discontinued.

32 In final reply, the Applicant says: "[t]he current status of the dispute between the parties is immaterial". I disagree. The status of the dispute between the parties materially affects the remedies available to the Board for the Union's alleged contravention of Section 10.

33 For example, given the Applicant's formal severance of ties with the Union, a Board order setting aside the Union's suspension of the Applicant and/or returning the Applicant to the Union positions and/or offices from which he had "severed ties" is not an available remedy, nor does the Applicant seek such a remedy.

34 The specific, express remedies sought by the Application are an "apology from the union" and "compensation for defamation from the 3 staff members". Further, the Applicant's final reply submission references "potential damages for harm suffered to my reputation as a labor activist spanning over three decades".

35 In the exercise of its remedial jurisdiction, the Board does not order apologies. In the result, and to the extent it seeks an apology from the Union, the Application does not implicate a live controversy affecting the parties' rights.

36 In the exercise of its remedial jurisdiction, the Board does not order damages against non-parties. The Union is the sole respondent to the Application. In the result, and to the extent it seeks damages from "3 staff members" for defamation, the Application does not implicate a live controversy affecting the parties' rights.

37 Further, and in any event, defamation falls outside the jurisdiction of this Board under the Code, and within the jurisdiction of the Courts. Accordingly, this Board lacks the remedial jurisdiction to remedy defamation or award damages for reputational harm.

38 For the above reasons, the remedies expressly sought by the Applicant do not implicate live controversies affecting the parties' rights.

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39 On a sympathetic reading, I infer from the Applicant's reference to "the pain and suffering that precipitated my resignation" in the final reply submission, an application for damages for pain and suffering.

40 The Board lacks the remedial jurisdiction to award such damages (*Tillicum Haus Society*, BCLRB No. B278/2000 (Leave for Reconsideration of BCLRB No. B424/97), paras. 41-54; *Samuel Son & Co. Limited*, BCLRB No. B114/2016, paras. 229-230; *Lalli,* para. 48).

41 In the result, and to the extent the Applicant seeks damages for "pain and suffering", the Application does not implicate a live controversy affecting the parties' rights.

42 In any event of the above-considered remedies, the Board has the remedial jurisdiction to order declaratory relief, including a declaration that a trade union has acted in contravention of Section 10.

43 While declaratory relief is within the Board's remedial jurisdiction, it is not a remedy of sufficient independent consequence for the Board to treat an otherwise moot application as other than moot (*Talbot,* para. 19; *Sircelj,* para. 31). In *Talbot*, the Board reasoned as follows:

> The Board has a well established policy of not adjudicating academic [moot] matters: *Health Labour Relations Association of B.C.*, BCLRB No. B69/93 (Reconsideration of IRC No. C43/92, IRC No. C64/92 and Interim Order dated March 11, 1992). The Board will regard a matter as academic if a decision of the Board will have no practical effect on the rights of the parties. The possibility that a party may receive an order of costs and/or a declaration of a violation of the Code is not sufficient for the Board to treat an otherwise academic complaint as not academic: *Mejor Das and Balbir Khaira*, BCLRB No. B232/93, *Wayne Macdonald*, BCLRB No. B312/93.
>
> (para. 19)

44 Consistent with the Board's jurisprudence, I find the possibility of a Board declaration in this case insufficient to consider the Application other than moot.

45 For the above reasons, I find the Application does not implicate a live controversy affecting the parties' rights and is, therefore, moot.

46 Having found the Application moot, the second question arising under the Board's mootness analysis is whether I should nevertheless exercise my discretion to adjudicate the Application, having regard to an applicable mootness principle.

47 In final reply, the Applicant says the Application "is not only for my benefit but also ensures that other members within PIPSC [the Union] are afforded natural justice".

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48 On a perhaps overly sympathetic reading of the foregoing, I infer the Applicant to say the Union's alleged denial of natural justice is of a "recurring nature" (*Borowski*, p. 360), being the recurring denial of natural justice to Union members. Such an allegation implicates the second mootness principle, "the conservation of scarce judicial resources" (*Borowski*, p.345), because the expenditure of judicial resources may be warranted in cases "of a recurring nature but brief duration" (*Borowski*, p. 360).

49 To the extent the Application inferentially says the Union's alleged denial of natural justice is of a recurring nature, I find it is an inferred allegation without particulars. More specifically, the Application provides no particulars of the Union's alleged denial of natural justice to other Union members so as to establish a *prima facie* case of a recurring denial of natural justice.

50 In the result, to the extent the Application inferentially alleges that the Union's alleged denial of natural justice to its members is of a recurring nature, such is a bare assertion or bald allegation, and the Board does not adjudicate applications based on bare assertions or bald allegations (*Best Facilities*, paras. 14-17; *Fraser*, para. 10).

51 Consistent with the Board's jurisprudence, I decline to exercise my discretion to allocate scarce Board resources to the adjudication of an inferred, bald allegation that the Application is of a "recurring nature".

52 For the above reasons, I find the Application is moot and I decline to exercise my discretion to adjudicate it.

53 In the result, I allow the First Preliminary Objection and dismiss the Application as moot.

Analysis: Second Preliminary Objection - Premature Application?

54 In any event of the above, the Applicant expressly acknowledges that he did not appeal the Union's suspension pursuant to the Union's internal appeal procedure(s) because he "severed ties" with the Union.

55 Accordingly, I find the Application is premature or untimely because it has been brought without the Applicant's prior exhaustion of the Union's internal appeal procedure(s), as the Board requires.

56 In the result, I allow the Second Preliminary Objection and dismiss the Application as premature.

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V. CONCLUSION

57 For the above reasons, I allow both the First Preliminary Objection and the Second Preliminary Objection and dismiss the Application as both moot and premature.

LABOUR RELATIONS BOARD

"DAVID DUNCAN CHESMAN, K.C."

DAVID DUNCAN CHESMAN, K.C
VICE-CHAIR

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