BC Court of Appeal tosses out appeals by former union member who sued BC labour board adjudicator

The appellant said public funds can't be used to defend the adjudicator, whom he sued as an individual



By Jessica Mach

Feb 12, 2026 / Share

The British Columbia Court of Appeal has dismissed two appeals by a former Hospital Employees' Union member who sued a BC labour board adjudicator after receiving an unfavourable ruling in a dispute with his union.

The adjudicator, Andres Barker, dismissed Jessie Bains' complaints against HEU in April 2025. The following month, Bains sued Barker, alleging misfeasance in public office, negligence, and abuse of process. He also sought an order that would void Barker's labour board decisions.

Barker's response to the claim was filed on behalf of himself and the BC Labour Relations Board. Jennifer O'Rourke, who was listed as counsel for both Barker and the board, signed the response, as well as another notice Barker and the board filed in the litigation.

However, Bains took issue with O'Rourke's role in the case. He told the BC Supreme Court that because he had brought a private tort claim against Barker as an individual, and not as a public official, public funds should not be used for his defence. He also argued that because O'Rourke was employed by the labour board, she could not represent Barker in the matter.

BC Supreme Court Justice Scott Morishita dismissed Bains' application, prompting Bains to sue Morishita. That case has since been dismissed.

In its decision in *Bains v. Barker* on Thursday, the BC Court of Appeal sided with Morishita. Bains had taken issue with O'Rourke's alleged refusal to clarify whether she represented Barker in his capacity as a labour board official or as an individual. This lack of clarity, he argued, created "unauthorized and conflicted representation that undermines the integrity of these proceedings".

But the BCCA said that O'Rourke was a member of the Law Society of BC and therefore entitled to file court documents on behalf of clients. The appellate court added that "the purported distinction between Andres Barker, in his capacity as Vice Chair of the Board, and Andres Barker, in his private capacity, is of no moment to his ability to instruct counsel of his choice to represent him in responding to an action naming Andres Barker.

"Andres Barker has, through Ms. O'Rourke, responded to a civil action that was served on him in his capacity as Andres Barker," the appellate court added.

The BCCA also tossed out Bains' argument that the labour board did not have standing to participate in the litigation against Barker. Noting Bains' request for an order to void Barker's labour board decisions, the appellate court said, "It is difficult to understand why the Board would not have standing to make submissions on an application seeking an order that would set terms on its participation in litigation or restrict its decisions about resource allocation."

The appellate court upheld a second decision by another lower court judge. That judge had dismissed Bains' application for a default judgment against Barker for failing to file a response to the civil claim.

Bains, who represented himself in the proceedings, told *Canadian Lawyer* on Thursday that he was "shocked" by how the court responded to his case. He claimed that after he made his submissions to the appellate court at a hearing, the court delivered an oral judgment without hearing O'Rourke's arguments.

He argued the system was stacked against self-represented litigants. "They're here to provide justice, and yet they don't want to," he says. "They have no respect for the common person."

O'Rourke did not respond to a request for comment.

Related stories

BC Court of Appeal denies TELUS appeal alleging judge exceeded jurisdiction in labour case

Justice minister announces new appointments to BC courts: Peter Edelmann and Scott Morishita

Free newsletter

The Canadian Legal Newswire is a FREE newsletter that keeps you up to date on news and analysis about the Canadian legal scene, providing targeted news and information of interest to Canadian Lawyers.

Please enter your email address below to subscribe.

Enter your email address here

SIGN UP

LATEST NEWS



Report highlights legal regulators' efforts to enhance AMLTF



SCC fall session: high court to hear appeals on firearms, Ontario redevelopment law, inmates' rights



Don't miss your chance to shape Ontario's Top 10 regional firms

Free newsletter

The Canadian Legal Newswire is a FREE newsletter that keeps you up to date on news and analysis about the Canadian legal scene, providing targeted news and information of interest to Canadian Lawyers.

Please enter your email address below to subscribe.

Enter your email address here

SIGN UP

Copyright © 2026 KM Business Information Canada Ltd.