

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bains v. Barker*,
2026 BCCA 65

Date: 20260129
Dockets: CA50788; CA50913

Between:

Jessie Bains

Appellant
(Applicant)

And

Andres Barker

Respondent
(Respondent)

Before: The Honourable Mr. Justice Willcock
The Honourable Justice Edelman
The Honourable Justice Warren

On appeal from: Orders of the Supreme Court of British Columbia, dated
June 30, 2025 and August 13, 2025 (*Bains v. Barker*, Vancouver Docket S254074).

Oral Reasons for Judgment

The Appellant, appearing in person:

J. Bains

Counsel for the Respondent, and
Proposed Respondent, British Columbia
Labour Relations Board:

J.M. O'Rourke

Place and Date of Hearing:

Vancouver, British Columbia
January 29, 2026

Place and Date of Judgment:

Vancouver, British Columbia
January 29, 2026

Summary:

The appellant filed a notice of civil claim against the respondent, Mr. Barker, who is an adjudicator with the British Columbia Labour Relations Board (the “Board”). The response to civil claim was filed by Mr. Barker and the Board. It was signed by Ms. O’Rourke, who is listed as counsel for both Mr. Barker and the Board. This decision involves two interrelated appeals in which the appellant challenges Ms. O’Rourke’s role as counsel. The appellant argues that he is suing Mr. Barker in his private capacity and that, as counsel for the Board, Ms. O’Rourke lacks standing to also represent Mr. Barker in his private capacity.

Held: Appeals dismissed. The question of whether Mr. Barker is acting in his private or public capacity is of no moment to his ability to retain counsel. The appellant has also not identified any prejudice arising from Ms. O’Rourke acting as counsel for both Mr. Barker and the Board.

[1] **EDELMANN J.A.:** There are two interrelated appeals before us. The first is of a decision of Justice Morishita dismissing the appellant’s application challenging Ms. O’Rourke’s role as counsel for the respondent, Mr. Barker. The second appeal is of a decision of Justice Tucker dismissing the appellant’s application for default judgment in the underlying civil claim and again challenging Ms. O’Rourke’s role as counsel for Mr. Barker.

[2] The respondent, Mr. Barker, is an adjudicator with the British Columbia Labour Relations Board (the “Board”). In April 2025, he issued a decision dismissing the appellant’s complaints against his trade union. During the proceedings, the appellant alleged that Mr. Barker was biased and sought his recusal. The application was dismissed, as was a reconsideration of the decision.

[3] In May 2025, the appellant filed a notice of civil claim against Mr. Barker. Among other things, the appellant sought general damages for misfeasance in public office, negligence, and abuse of process. He also sought to have the decisions made by Mr. Barker declared “void ab initio”.

[4] Mr. Barker’s response to civil claim indicates that it was filed by both Mr. Barker and the Board. The document was signed by Ms. O’Rourke, who is listed as counsel for both Mr. Barker and the Board. Mr. Barker and the Board also jointly filed a notice of application signed by Ms. O’Rourke seeking an order under Rule 9-5 that the appellant’s claim be struck.

Appeal (CA50788) – Order of Morishita J.

[5] The first appeal relates to the dismissal of an application by the appellant that sought the following relief:

1. That Jennifer O’Rourke, legal counsel employed by the British Columbia Labour Relations Board, lacks standing to represent the respondent, Andres Barker, in this civil proceeding brought against him in his private capacity.
2. That any and all filings, appearances, or representations made by Ms. O’Rourke or the Labour Relations Board in this matter be declared unauthorized and struck from the record.

3. That the respondent, Andres Barker, be compelled to file a sworn affidavit within 10 days confirming:
 - a. That he is appearing in this matter solely in his private capacity; and
 - b. Whether he has retained Ms. O'Rourke or any other legal representative in his private capacity.
4. That no further participation by the Labour Relations Board or its counsel occur unless explicit written authority and private retainer are filed with the court establishing standing to act on behalf of Mr. Barker in his private capacity.
5. That public funds not be used to defend a private tort claim brought against Mr. Barker in his individual, non-official capacity, unless lawfully authorized and disclosed.
6. That costs of this application be awarded to the applicant.
7. Such further and other relief as this Honourable Court may deem just.

[6] The application was heard and dismissed by Morishita J. on June 30, 2025. The appellant alleges Morishita J. erred in several respects.

[7] The appellant primarily frames his appeal in terms of Ms. O'Rourke's "refusal to clarify who she represents in the civil claim, creating unauthorized and conflicted representation that undermines the integrity of these proceedings". In particular, he says Ms. O'Rourke "has refused to clarify in which capacity she represents Andres Barker—whether as Vice-Chair of the [Board] or as Andres Barker the Man".

[8] Ms. O'Rourke is a member of the Law Society of British Columbia and, therefore, permitted under the *Supreme Court Civil Rules* to make filings on behalf of clients from whom she has received instructions. There is no suggestion that Mr. Barker did not instruct Ms. O'Rourke or authorize the filings and representations made on his behalf.

[9] The question of whether Mr. Barker was acting in his capacity as a member of the Board may be relevant to the underlying litigation. In particular, there may be specific immunities that apply to some or all of the allegations if Mr. Barker was acting in his capacity as Vice Chair. However, 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.

[10] In my view, Morishita J. did not err in concluding that Ms. O'Rourke was counsel for Mr. Barker and was authorized to file responding materials on his behalf.

[11] The appellant also seeks an order that Ms. O'Rourke not represent Mr. Barker in this action "until clear evidence is provided that she has been privately retained by Mr. Barker and not as counsel for the Board".

[12] A litigant should not be deprived of counsel of his or her choice without good cause: *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235, 1990 CanLII 32 (S.C.C.). Courts of inherent jurisdiction have supervisory power over litigation before them, including the power to determine whether a lawyer may act for a particular client. The court's purpose in exercising supervisory power over lawyers has traditionally been to protect clients from prejudice and to preserve the repute of the administration of justice: *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39.

[13] In his materials, the appellant makes a bare assertion that Ms. O'Rourke's simultaneous representation of both the Board and Mr. Barker created an "inherent conflict of interest". He does not set out the nature of the conflict in his application, his factum, nor did he do so in his oral submissions.

[14] The law of conflicts is mainly concerned with two types of prejudice: (1) that caused by a lawyer's misuse of confidential information; and (2) that arising where a lawyer's representation is compromised by his or her own interests or the interests of another client or third person: *Sandhu v. Mangat*, 2018 BCCA 454, citing *McKercher*. The appellant has not identified any such prejudice arising from Ms. O'Rourke's role as counsel for both Mr. Barker and the Board. In my view, Morishita J. did not err in declining to remove Ms. O'Rourke as counsel of record for Mr. Barker.

[15] Finally, the appellant takes issue with the Board’s role in the application before Morishita J., and in this appeal. As noted by Morishita J., the Board was not a party to the action. However, in both the action and the application at issue before us, the appellant seeks orders that directly affect the Board. As noted earlier, the civil claim seeks an order declaring the decisions Mr. Barker purported to make in his capacity as Vice Chair of the Board “void ab initio”. The application at issue before us sought conditions on the Board’s participation in the litigation (at para. 4) and that “public funds not be used to defend a private tort claim” (at para. 5). 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. I am not persuaded that Morishita J. erred in hearing from the Board.

[16] As I would not accede to any of the grounds of appeal, it follows that I would dismiss the appeal in CA50788.

Appeal CA50913 – Order of Tucker J.

[17] The second appeal is of an order of Tucker J. dismissing an application filed by the appellant on July 29, 2025. The application sought default judgment against Mr. Barker for failing to file a response to civil claim and a declaration that Ms. O’Rourke had no standing to represent Mr. Barker in his private capacity in the proceeding.

[18] Justice Tucker dismissed the application as Mr. Barker had filed a response to civil claim. She also concluded that the declaration sought was *res judicata* (a thing already decided) because Morishita J. had decided the issue.

[19] The appellant argues that Tucker J. erred in concluding that the question of whether Ms. O’Rourke was acting for Andres Barker “the Vice Chair of the Board” or Andres Barker “the man” was not decided by Morishita J. I disagree. For the reasons set out above, this argument had no merit and was properly dismissed by Morishita J. It had even less merit before Tucker J. as the issue had already been decided.

[20] I would dismiss the appeal in CA50913 as well.

[21] **WILLCOCK J.A.:** I agree.

[22] **WARREN J.A.:** I agree.

[23] **WILLCOCK J.A.:** The appeals in CA50788 and CA50913 are dismissed.

“The Honourable Justice Edelman”