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Complaint to the Canadian Judicial Council

Dear Mr. Sabourin,

This is a formal submission to the CJC's complaints process; however it is of an unusual nature. While it cites the conduct of a number of judges in the hearing of several related actions and alleges that they acted in bad faith, there are larger issues that the CJC should acknowledge by committing to a full public inquiry.

A crucial issue that must be raised at the outset is that the CJC itself is in an egregious conflict of interest with respect to the substance of this complaint. I suggest that if the Council acknowledges that, then it must ask Parliament to assume responsibility for the inquiry. The conflict of interest results essentially from my status as a self-represented litigant and the fact that the Council is composed entirely of members of the legal establishment. Perhaps in some cases self-represented litigants may reasonably expect a fair hearing before a superior court judge. If both (or all) parties are self-represented and the issues are not of interest to the presiding judge(s) or to the judiciary generally then I will concede that there is a reasonable expectation of a fair hearing.

My situation has always been the opposite of that. Despite persistent efforts to secure professional representation I have been at all times compelled to proceed as a self-represented litigant. A well known CBC television journalist said to me that if I cannot secure any professional representation then my case must have no merit. The truth is that no one in the legal profession wants to represent the kind of client who is typically unrepresented and who is facing respondents / defendants who include senior members of the legal establishment. The Roncarelli v. Duplessis case demonstrates just how exceptional such courage is. In the decades since the Supreme Court of Canada decided that case it has been one of the most cited precedents in Canadian jurisprudence.

The British Columbia superior court judgments that have resulted from my efforts as a self-represented petitioner or plaintiff are:

2003 BCSC 119 – 2003/01/24 http://courts.gov.bc.ca/jdb-txt/sc/03/01/2003bcsc0119.htm

2003 BCCA 605 – 2003/11/05 http://courts.gov.bc.ca/jdb-txt/ca/03/06/2003bcca0605.htm

2005 BCSC 407 – 2005/04/05 http://courts.gov.bc.ca/jdb-txt/sc/05/04/2005bcsc0487.htm

2007 BCSC 991 – 2007/07/06 http://courts.gov.bc.ca/jdb-txt/sc/07/09/2007bcsc0991.htm

2008 BCCA 349 – 2008/09/08 http://courts.gov.bc.ca/Jdb-txt/CA/08/03/2008BCCA0349.htm

In this complaint I am saying that the judges who concurred in all but the first judgment were acting in bad faith. They are Justices Huddart, Saunders, Low, Ryan, Smith and Groberman of the B.C. Court of Appeal, and Justices Rogers and Ross of the B.C. Supreme Court. Another judge whose conduct must be examined is Justice Miriam Gropper, who I believe is implicated in the conspiracy that I say impacted my litigation, because in 1998 she signed a document[1] that proposed to the government a complete rewrite of the impugned Section 13 of the Labour Relations Code, and I believe that was an attempt at a cover up of the unlawful amendment that had been effected through the RSBC 1996 revision exercise.

An obvious implication of this complaint is that other people besides superior court judges acted in bad faith; most notably the Vice Chairs (adjudicators) of the B.C. Labour Relations Board with whom I had to contend over several years. For the record those Vice Chairs were (in chronological order) Barbara Junker, Lisa Hansen, Mark Brown, Jan O'Brien, Ken Saunders, Michael Fleming, Sharon Kearney, Najeeb Hassan and Catherine McCreary.

I am also alleging that the "order" of the Office of Information and Privacy Commissioner issued by adjudicator Michael McEvoy on February, 10, 2010[2] was written in bad faith and that B.C.'s (then) Chief Legislative Counsel, Janet Erasmus committed perjury in the affidavit that was part of the Ministry of Attorney General's submission for that inquiry, by claiming that she and her colleagues were working, as solicitors, for "Her Majesty the Queen in Right of the Province of British Columbia", when in fact they were working as legislative drafters for the Legislature.

In the first of the superior court hearings that I say were conducted in bad faith, I faced in the B.C. Court of Appeal counsel for three powerful institutional adversaries: the B.C. Labour Relations Board, the City of Vancouver, and the Canadian Union of Public Employees. The issue was of interest to the entire legal establishment, in part because I, a self-represented litigant, had prevailed in the lower court against counsel for those three parties.

The CJC first heard from me in the fall of 2008, when I addressed to the Chair a short letter expressing my concerns in more general terms. I would like that letter to be part of the record of this complaint. In September 2008 I appeared for the second time before three judges of the B.C. Court of Appeal. The opposing counsel were two lawyers employed by the Ministry of Attorney General. The hearing was an appeal of a Supreme Court judgment that had summarily dismissed my tort action against several named government parties, including the Attorney General. Thus, I, a self-represented person, was dealing with opposing parties, their counsel, and a bench that were all members of the same privileged community. In this instance, of the three presiding judges, Justice Harvey Groberman had been employed by the Ministry of Attorney General before his appointment to the bench, while Justice Daphne Smith was, and is, married to a former Attorney General.

It is my contention that both the superior court bench and the CJC itself are in a conflict of interest when dealing with self-represented persons because of their mutually beneficial relationships with the Bar, as specifically demonstrated by the Canadian Bar Association's express assistance in the last federal government review of judicial compensation, when the President of the CBA, J. Parker MacCarthy, QC, of Nanaimo B.C. wrote to the managing partners of major law firms asking them to cooperate in an income survey being conducted by Navigant Consulting for the CJC and the Canadian

1 http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/318916/reviews_labrev_1998.pdf - Pages 73, 74
2 http://www.oipc.bc.ca/orders/2010/OrderF10-04.pdf

Superior Courts Judges Association [3]. Canada's superior court judges are obviously in a position to reciprocate by, for example, ensuring that clients represented by counsel receive preferential treatment. That is more likely to happen when the clients themselves are members of the legal establishment.

I am calling what I have assembled not just a complaint, but an indictment. If this indictment was put before a jury I have no doubt that the jury would convict. I have assembled compelling evidence of a conspiracy of both a civil and criminal nature and I want an inquiry to determine to what extent members of the B.C. judiciary have participated in that conspiracy and/or the ongoing cover up, including the conduct that denied me due process.

I have already summarized the chronology of that conspiracy in various postings on the Internet and in emails, including one that was sent on August 26 to an international community that is well qualified to understand it (Exhibit A). I intend to create an Internet web site dedicated to sharing with the public the entire story of this conspiracy and the cover up. Therefore the matter is not going to go away regardless of what the CJC decides to do. If any of the individuals I am naming should wish to respond by bringing an action for defamation against me I would welcome the opportunity that I have thus far been denied, to put the facts, the evidence, and my arguments to a jury.

I am including as part of this complaint my August 26, 2010 email to the Commonwealth Association of Legislative Counsel. This email, with links to the three letters I had previously sent to the Chair of the Canada Industrial Relations Board, comprehensively summarizes the chronology of the conspiracy I uncovered. I believe this provides the context that is essential for understanding the conduct of the judiciary.

The first superior court judge before whom I appeared, in 2002, was Robert Goepel. I have never contemplated bringing a complaint against Justice Goepel, even though his judgment, nominally in my favour, simply condemned me to more abuse at the hands of the B.C. Labour Relations Board. I do not wish to argue that he knew what would result from his judgment, and I recall that I perceived in the courtroom no bias in favour of the other parties. I believe the Supreme Court registry will still have a recording of what transpired in that hearing and it will likely be of assistance to the inquiry to review it. However, I will add that there is an issue that first came to my attention last year that raises doubts about every adjudicator before whom I appeared, including Justice Goepel. That is the matter of the comprehensive discussion of the term "*prima facie* case" in "The Law of Evidence in Canada", the first edition of which was published in 1992, the same year that the B.C. Legislature enacted the impugned Section 13 of the Labour Relations Code. I must ask how it is possible, throughout the time I pursued the question of what "*prima facie* case" really meant, that not one of the many barristers and adjudicators with whom I dealt ever alerted me to the existence of this crucial text.

I believe that there was and is, within the B.C. legal establishment, including the judicial community, an awareness of the essence of what I am calling a conspiracy, the key step of which was the unlawful and surreptitious amendment of Section 13 of the Labour Relations Code. It is not reasonable to conclude that the judicial community had never asked the simple questions that led me, a self-represented litigant with no training in law, to eventually piece together the entire chronology of a conspiracy that was clearly conceived and executed by members of the legal establishment. In fact, a key piece of evidence from 1998 was signed by, among others, Miriam Gropper, who is today a judge of the Supreme Court of B.C. A former Chair of the Labour Relations Board, Stephen Kelleher, is also

3 http://www.quadcom.gc.ca/Media/Pdf/2007/Resources/CommentsNavigant%20Report.pdf - Appendix F-1

a Supreme Court judge. The conspiracy of which I speak appears to have been instigated by the Labour Relations Board at the time when Mr. Kelleher's former colleague Stan Lanyon was Chair. When I first perceived a problem with the Labour Relations Board's treatment of my case I wrote a letter addressed to the Chair, Mr. Kelleher and copied to Mr. Lanyon and to Vince Ready. Mr. Kelleher and Mr. Lanyon were at that time employed at Vince Ready and Associates (its premises located just one block away from the offices of the Labour Relations Board). I received no reply from anyone. The inquiry I am seeking should determine, among other things, the extent to which all of these people were aware of or involved in the conspiracy.

It is also my contention that the B.C. Labour Relations Board, the Canadian Union of Public Employees, and the City of Vancouver conspired to deny me due process following Justice Goepel's judgment, and that the three judges of the Court of Appeal who heard the appeal of Justice Goepel's judgment acted in bad faith to assist them in that agenda. Those three judges were Justices Carol Huddart, Mary Saunders, and Richard Low.

My understanding is that there was no recording of what transpired during that hearing. The CJC should verify that because I must recall from memory what I experienced in the courtroom almost seven years ago.

Justice Goepel's judgment remitted my Duty of Fair Representation complaint back to the Labour Relations Board where it was assigned to Vice Chair Ken Saunders. From the outset, Mr. Saunders colluded with counsel for the union, David Tarisoff, and counsel for the City of Vancouver, Marylee Davies, to frustrate the intent of Justice Goepel's judgment with an array of tactics principally calculated to effect delay. No stay was sought from the courts when the union's counsel initiated the appeal process. A result was that I, an inexperienced self-represented litigant, was forced to contend with these lawyers in two forums simultaneously. They made that experience as onerous for me as possible. Eventually, the union was "invited" to file with the Labour Relations Board a reply to my original DFR complaint. In response to defamatory remarks about me that appeared in that reply and that were ascribed to CUPE's staff lawyer Conni Kilfoil (e.g., that the outcome of the arbitration was inevitable because of "his extraordinary contempt for his managers and coworkers") I filed a complaint with the Law Society of B.C., which was of course summarily dismissed. The Law Society simply said that Ms. Kilfoil owed no duty to me because her client was the union.

The Vice Chair's strategy was to continue stonewalling and delaying until the Court of Appeal hearing. He could have made a decision based on the written submissions (the Board's usual course of action). He could have chosen to invite or compel a mediation process. He chose to do nothing because he expected a Court of Appeal outcome that would allow him to again summarily dismiss my DFR complaint. Under more pressure from me he finally scheduled an oral hearing, to which I responded by providing a list of witnesses I intended to call. There was however no preparation for this purported hearing by the Board or the other parties. The date was set to ensure that the Board would by then have in hand the outcome of the appeal hearing.

The Court of Appeal hearing was an extremely onerous experience for me. I was contending with six people dressed in their ceremonial robes. I had no one to assist me and no idea what to expect. The first thing that happened after the judges were seated was that the three opposing counsel formally identified themselves to the bench. Justice Huddart then proceeded to some opening remarks which were immediately interrupted by Justice Saunders, who whispered something to her and gestured towards me. Justice Huddart then acknowledged my presence in a condescending manner. I later

realized this was a practiced ritual because they did exactly the same thing when we reconvened for the rendering of the oral judgment.

As I have since learned from attending other hearings, counsel for the Labour Board are not active participants in these affairs and in this case counsel for the employer also had little to say. Counsel for the union presented his argument first, which I recall was largely about various theories of labour relations, labour law, and the "standards of review". His argument introduced a term new to me – "polycentricity" – to which the judges responded very positively. In fact throughout Mr. Tarasoff's argument there was much nodding and smiling from the bench.

When it was my turn I received a quite different reception. I recall admitting how nervous I was. That was my first mistake. I also recall commenting to the judges that the term "polycentricity" was new to me. Justice Saunders immediately replied that it was new to her too.

I later realized that Justice Saunders must have been lying because I learned that "polycentricity" is one of those metaphysical terms that are used to construct the Canadian legal establishment's mythology. At another point I raised the issue that the lawyer retained by the union at the last possible moment to attend the arbitration hearing that ended my career had been terminally ill at the time and that I had learned about that much later when another lawyer told me he had died. I had then found a death notice that said he had died of ALS fourteen months after the arbitration hearing, which was significant to me because I felt it helped to explain the behaviour I had witnessed when I met him and his decision to proceed with the hearing without requesting an adjournment that would have allowed time to make adequate preparations. When I tried to raise this point, Ms. Saunders cut me off with, "I don't want to hear about that!" She also commented that the arbitrator, Robert Diebolt, had been one of her professors in law school and that I had no business alleging criticism of his conduct of the arbitration hearing. Another remark by Justice Saunders that was calculated to offend me was that she felt, given the obvious weakness (in her opinion) of my grievance, that I had no right to expect more than one day's preparation as that is often what persons charged with criminal offenses get when they are given legal representation by the state.

Justice Low said only one thing in the hearing: "If you didn't think the union did a good enough investigation why didn't you do one yourself?" I don't recall making any reply to that comment, which was also obviously calculated to offend.

In sum the conduct of the three judges throughout that hearing was intended to confound, confuse and intimidate me. And it was very effective. In fact, it appeared to me that all three judges were intent on causing me as much discomfort as possible. Also, in view of the fact that the outcome was clearly determined before the hearing, there was no reason for them to reserve judgment and force us to return another day.

While my reaction to the Supreme Court judgment had been mixed, I had no doubt that what I had endured at the hands of Justices Huddart, Saunders and Low was a kangaroo court, an ambush. Another term I am going to use is "courtroom bullying". My termination from employment at the City of Vancouver had been the culmination of an escalating campaign of workplace bullying at the hands of two people – one a manager, the other a union member. By the time of the Court of Appeal hearing I had done some research into the phenomenon of workplace bullying[4], so I recognized the tactics.

4 http://www.workplacebullying.org/

As I had approached every action to that point in good faith, I was frankly devastated by my experience at the hands of the Court of Appeal. That was not just because I "lost" but because I had always presumed that the courts were the one institution that could be trusted to act with integrity. I am no longer afflicted with any blind faith in Canada's courts or tribunals.

There is another important point to be raised about the conduct of Justices Huddart, Saunders, and Low. In my third letter to the Chair of the Canada Industrial Relations Board, I spoke about my discovery in 2009 of the authoritative treatment of the "prima facie" terms in the "Law of Evidence in Canada". I contend that the judges were well aware of the historic abuse of these terms and understood that self-represented litigants before the Labour Relations Board were being denied information that was vital to their pursuit of due process. The judges had an obligation themselves to ensure I was adequately informed. Had they been acting in good faith they would have ensured that obligation was met.

It was clearly the presumption of all the other parties that the Court of Appeal judgment signaled the end of my pursuit of justice. The response to my continued efforts was annoyance that became overt hostility when I compelled the Labour Board to adjudicate another application and then brought a second judicial review petition before Justice Rogers in 2005. Both the union and employer sought and were accorded costs against me for the Court of Appeal outcome, knowing that I did not have the means to pay those costs. Their sole purpose was to prevent me from returning to court by having the grounds to argue for a costs security deposit. That motion was granted in a preliminary hearing before another judge. I was compelled to borrow the money which was deposited with the court. Had I fully understood my options at the time I would have sought, and I believe I would have been granted, indigent status.

The Court of Appeal judgment of 2003 established the agenda for every adjudicator I have since faced, which has been to ensure that I would never see due process. It is clear to me that the superior court judiciary are, like the rest of the legal establishment, leveraging the monopoly of the profession to discourage those who cannot retain professional counsel from bringing any actions before the courts or tribunals. There are myriad ways of doing this, the most effective by imposing usurious costs. When faced with litigants like me however, for whom the costs issues are not necessarily determinative, the legal establishment has created other devices.

It is plain to anyone who cares to look at the evidence that the entire justice system in this country is on a self-destructive course. There are some voices within the system prepared to say that, but of course they are ignored. The "administrative justice" system in particular is a disgrace. The most authoritative voice who has acknowledged that is S.Ron Ellis, who has written a doctoral thesis on this subject that was published earlier this year. (I have recently learned about this and have yet to obtain a copy of his thesis.)

Among the myriad problems that the administrative justice system has created for itself, the labour law regime's statutory Duty of Fair Representation must surely be one of the most noteworthy. No labour board in Canada has ever undertaken to deal with the DFR in good faith. They all whine relentlessly that they are overwhelmed by the number of these complaints. Apparently it has never occurred to any of these labour law "experts" that the number of complaints would decrease if the unions had some reason to expect that they would face real accountability for the abuse they inflict on their members. Nor have any of these experts ever lobbied their respective governments for a solution that would assign the resolution of DFR complaints to an agency better suited to the task. That is because the

"burden" of DFR complaints gives them an excuse for their lack of productivity and relevance to contemporary society's real needs in the labour / employment field.

I don't wish to get into a lengthy discussion of the history of the statutory Duty of Fair Representation in this complaint, but I will note that its creation seems to have been a response to the perceived threat of a common law Duty of Fair Representation that arose with a case heard in British Columbia – Fisher v. Pemberton. (I must thank the current BCLRB Chair, Brent Mullin, for bringing this case to my attention in a decision he wrote many years ago.)

The wording of the Duty of Fair Representation, whether common law or statutory, and regardless of jurisdiction, is consistent: a union may not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of its members.

The current President of the B.C. Federation of Labour, Jim Sinclair, in reply to a letter from me in December 2006[5], said that B.C.'s Social Credit government in the late 1980's was using Duty of Fair Representation cases to undermine the trade union movement:

"Section 13 was introduced because of a problem that arose in the late 1980's and early 1990's. In that era, the Industrial Relations Council (IRC) administering the Code – which had a decidedly anti-union bias – would not exercise its existing power in relation to unfounded DFR complaints, as it sought to undermine the effectiveness of BC unions and drain union treasuries as part of the Social Credit government's attack on the labour movement."

According to Mr. Sinclair, Section 13 was necessary (despite the change of government) to protect the unions from the burden of responding to frivolous DFR complaints.

The new provision had been drafted by three consultants – Vince Ready, John Baigent and Tom Roper. It mandated the Labour Relations Board to conduct an initial assessment of each DFR complaint, to assess whether the complaint presented a "prima facie case", and to summarily dismiss the complaint if it was found that it did not. Section 13 was debated and passed by the Legislature on November 26, 1992 and the Labour Relations Board began applying it a few months later. However, as the record clearly shows, the LRB soon acknowledged that it had a problem with the term "*prima facie* case".

In the B.C. Supreme Court judgment of January 2003 that was nominally in my favour, Justice Goepel used the term "*prima facie* case" just once:

[38] It is to be remembered that the issue before the reconsideration panel was not whether the Union had breached its duty of fair representation, but whether the petitioner had established a *prima facie* case that contravention had apparently occurred.

In the B.C. Court of Appeal judgment of November 2003 it was used several times:

[2] The Board's impugned decision was that Mr. Budgell's written complaint did not disclose a *prima facie* case that the Union had violated its duty of fair representation.

5 http://www.uncharted.ca/images/users/ssigurdur/20061206_sinclair_budgell_response.pdf

[13] Whether one agrees or disagrees with the Board's determination that Mr. Budgell did not make out a *prima facie* case on the facts he alleged, its decision was clearly explained.

[30] . . . What a union may reasonably be asked to do in representing a worker will vary with the circumstances, and will always be a question for the Board, who has the exclusive mandate to decide the extent of the duty of a union under s. 12 and thus, the right to decide what facts may constitute a *prima facie* breach of that duty.

In the B.C. Supreme Court judgment of April 2005 "*prima facie* case" again appears several times, the most interesting of which is at paragraph 47:

[47] In any event, there is no actual or reasonably apprehended bias in this case. As I understand Mr. Budgell's argument, he says that in ***Judd*** Ms. Kearney held that in order for a fair representation complainant to get his case before the LRB he has to meet some burden of proof greater than the *prima facie* burden stipulated by the ***Code*** itself. The imposition of that greater standard of proof, a standard higher than the one the ***Code*** stipulates, constitutes the perversion Mr. Budgell identified in ***Judd***. Mr. Budgell says that Ms. Kearney perpetrated that same perversion against him through her membership on the Decision No. B303/2004 panel. In Mr. Budgell's view, Ms. Kearney's adherence to an improper precedent demonstrates bias against fair representation complainants, a class that includes him.

The tone of Justice Roger's judgment reflects the overt contempt he displayed for me in court from the moment he took his seat on the bench, when he began by admonishing me for failing to wear a tie and instructed me that I was not to appear before him on the second day without wearing one. The agenda was clearly to make that hearing and its outcome so painful for me that I would not contemplate any more efforts at seeking justice.

The next overt display of contempt was after I presented an initial argument about the standing of the Canadian Union of Public Employees. Justice Rogers adjourned the hearing and on returning made a declaration that I had made that argument in bad faith. I did not respond to that affront but I presumed that it would appear in his judgment. It is not in that judgment because it was Justice Rogers, not I, who was acting in bad faith. His contempt and hostility towards me is most evident in the final paragraphs of the judgment:

[57] Further, Mr. Budgell's complaints to the B303/2004 panel and to me about systemic or institutional bias at the LRB simply reiterate arguments he had unsuccessfully made earlier in the train of process leading to today. His arguments were bad then and have not improved since. For the record and to the extent that it is necessary for me to pronounce on the topic, I can find no error in the analysis and conclusions of Goepel J. and the Decision No. B303/2004 panel where they reject Mr. Budgell's allegations of bias and lack or independence.

[58] No useful purpose would be served in picking through and disposing of Mr. Budgell's various other arguments concerning the meaning of *prima facie*, the use of Hansard to interpret the ***Code***, what constitutes a hearing, whether one academic or another has written at one time or another that the rule-of-law ought to apply to administrative tribunals, that the LRB is somehow frightened of fair representation complaints and organizes its affairs to avoid them, and so on. These arguments are not germane to whether the LRB had jurisdiction to entertain Mr. Budgell's complaint after the Court of Appeal had its say on his case. That

decision was the end of all things except for the new evidence motions, the fresh fair representation complaint and the allegation of bias. The Decision No. B303/2004 panel decisions on those latter issues were, for the reasons set out above, correct.

[59] The petition is dismissed with costs on scale 3 to the union and the City.

Given what the CJC itself has written about the treatment that self-represented litigants should expect to receive from the bench, I suggest that Justice Roger's treatment of me, on its face, is simply unacceptable and that on the basis of that evidence alone he should be removed from the bench.

The B.C. Supreme Court judgment of July 2007 relies on extensive citation of Justice Roger's judgment. It does so because it contains nothing of any substance, including anything that might be characterized as a *ratio decidendi*. It would be unduly kind to describe it simply as *obiter dicta*. The hearing was conducted in bad faith by Justice Ross. The judgment was dictated to her in the courtroom by counsel for the Ministry of Attorney General.

When I filed my DFR complaint with the LRB in 2000, Section 13 of the Labour Code did not refer to a "*prima facie* case". The wording of the provision had been altered, even though the Legislature had never again considered it after November 26, 1992. The new wording was clearly inspired by a Labour Board decision[6] dated April 18, 1994, about one year after the Board began applying Section 13. No one has asserted that the altered Section 13 is synonymous with the provision as debated and passed by the Legislature. Any such claim could be refuted by reference to paragraph 99 of another Labour Board decision[7] written by the Chair, Brent Mullin and issued in February 2003, just one month after my nominal success in court:

[99] . . . Despite the Board's existing statutory ability to dismiss any complaint or application at any time for failure to make out a prima facie case (Section 133(4)), the Legislature has set a special mandatory threshold for Section 12 complaints. It has established a minimum that must be done before respondents are put to the difficulty and expense of being engaged in litigation. The Legislature has in fact emphasized the requirement of sufficient evidence of an apparent contravention at two points in the Section 13 process for Section 12 complaints. That legislative policy should be given effect.

If the Labour Relations Board had, as far back as 1994, a problem with the term "*prima facie* case", such that it sought to have Section 13 surreptitiously amended, why is this term still being used by the tribunals and the courts? The answer is that it has been of inestimable service to the legal establishment as a device to confound, confuse, and deny due process to self-represented litigants. Perhaps even the majority of lawyers presume that it is a legitimate legal term of art. If "*prima facie*" is Latin for "on first view" and "*prima facie* case" therefore means "a case, on first view" how can this term be presumed to prescribe a deliberative process, regardless of how simple or elaborate? It can't! Pretending that it does grants the deliberator unlimited discretion – the license to act arbitrarily. And the record of the B.C. Labour Relations Board in its application of Section 13 demonstrates that it is using that license.

6 http://www.lrb.bc.ca/decisions/B156$94.pdf
7 http://www.lrb.bc.ca/decisions/B63$2003.pdf

The "consultants" who claimed to have conceived and drafted Section 13 in 1992 were not really doing anything innovative. The legal establishment has convinced itself that only lawyers can construct a legitimate "cause of action", let alone argue a case before a court or tribunal.

Rarely in fact do judges accede to a motion for a summary dismissal when the plaintiff is represented by counsel. An instructive example is a judgment rendered by Chief Justice Bauman of the B.C. Supreme Court in 2004[8], in which he concluded:

> [60] In my view, while all parties before me are very competently represented, this is one of the factually complex cases in which justice demands a traditional trial preceded by the full panoply of pre-trial discovery procedures.

Perhaps he should have said "because", instead of "while".

Of particular interest to me in this judgment is Justice Bauman's citation, at paragraph 40, of what I call the doctrine of the frivolous, vexatious litigant – a set of "principles" that illustrate the bias that the judiciary has against those persons who believe they are entitled to due process:

> [40] After reviewing the jurisprudence, Henry J. extracted these principles:
>
> (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
>
> (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
>
> (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
>
> (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
>
> (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
>
> (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
>
> (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.
>
> [41] None of these symptoms of a vexatious proceeding or litigant present in the case before me.

8 http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/371385/2004bcsc1165.htm

This is precisely the bias that I faced because I refused to accept the judgment of the B.C. Court of Appeal in 2003. I am unable to cite any jurisprudence that challenges this bias; however I can cite what Madam Justice Nancy Backhouse of Ontario's Superior Court of Justice had to say in the book that she and Constance Backhouse wrote about Elizabeth Bethune Campbell and her lengthy battle with Ontario's legal establishment:

> " It struck me that the stories of these two women had a lesson for a newly appointed judge. That lesson was to resist, at a time of ever increasing numbers of self-represented litigants, concluding too quickly that the claims of such litigants, seemingly obsessed with their cases, lacked merit, and to keep an open mind even where other judges had previously considered the matter and found it unmeritorious.
>
> Mrs. Campbell's book highlights intriguing issues. As a former bencher of the Law Society of Upper Canada, I wondered whether the Law Society today would show similar reticence in disciplining a prominent member of the profession and bencher who had been proved guilty of grave breaches of trust. Mrs. Campbell's story reminded me of how uncomfortable I was when asked as a lawyer to sue or testify against other lawyers. Would someone in Mrs. Campbell's shoes today be able to attract leading counsel to take her case?
>
> Even without the thorny issue of Mr. Hogg's prominence, given the relatively small amount of money involved, Mrs. Campbell's case raises interesting questions of access. Lawyers today would very likely show similar reluctance to that of Mr. Slaght and Mr. McCarthy to carry on with a case with such modest prospects. Mrs. Campbell, because of her background, social standing, and natural abilities, was able to overcome the access difficulties of that era and get her day in the highest court. Would someone today fare as well?"

The answer is clearly no. The "highest court" to which Justice Backhouse referred was the Judicial Committee of His Majesty's Privy Council in London, England. Mrs. Campbell argued her case herself before that court and prevailed over her Canadian adversaries. There is no longer any recourse to that court for Canadian litigants, who must instead seek leave from the Supreme Court of Canada. The Supreme Court of Canada suffers from the same bias as the rest of the legal establishment and doesn't grant leave to self-represented litigants, who are routinely characterized as frivolous and vexatious. On the back cover of the book written by Constance and Nancy Backhouse is a commendation by the Right Honourable Beverley McLachlin, Chief Justice of Canada, which says, "The authors' meticulous and thoughtful treatment of Mrs. Campbell's first-person account brings out multiple layers of insight on the legal profession, gender boundaries, and the fate of self-represented litigants." However, the Chief Justice has also said, in reference to self-represented litigants, "No doubt, some litigants armed with access to the Internet and emboldened by watching 'Judge Judy', think they can do a good job on their own." I have never seen 'Judge Judy', but the Internet has been essential to my pursuit of a case that I would have had to abandon had I been compelled to rely on the assistance of professional counsel.

"The Heiress vs the Establishment: Mrs. Campbell's Campaign for Legal Justice", was published by the Osgoode Society for Canadian Legal History. Another in that organization's publications is "Bora Laskin: Bringing Law to Life"[9]. I purchased this book after learning that a former Chair of the Ontario Labour Relations Board, Madam Justice Rosalie Abella of the Supreme Court of Canada, will be

9 http://www.osgoodesociety.ca/books/book-20053.html

receiving the labour law community's Bora Laskin Award at a dinner in Toronto on October 19th. The principle conclusion I have drawn from Philip Girard's book is that Bora Laskin's real legacy has been betrayed by the judicial and quasi-judicial communities.

Bora Laskin's legacy resulted from his willingness to challenge received wisdom, to "speak truth to power". Today we have in the judiciary and quasi-judiciary people who are only interested in their own comfort, which requires that there be no dissent on issues of real consequence. This is why for years, the legal establishment has been publicly lamenting the deplorable lack of access to justice that is the reality for most Canadians, while refusing to do anything about it.

A final point that I hope will assist the CJC in understanding one of the fundamental issues raised by this complaint is the matter of what question the B.C. Supreme Court and Court of Appeal purported to be answering in their judicial review judgments of 2003, and whether their answers, one Yes the other No, served justice and the public interest.

The question appears to have been:

"Was the B.C. Labour Relations Board's decision patently unreasonable (that is, clearly irrational) in finding that the petitioner had failed to present a *prima facie* case that the union had acted in a manner that was arbitrary, discriminatory or in bad faith?"

I suggest that question cannot be answered with a simple yes or no because it makes no sense. The Supreme Court of Canada has helped to expose what is wrong with this question in its Dunsmuir v. New Brunswick decision of 2008[10]. "The Law of Evidence in Canada" explains why the reliance on the term "*prima facie* case" alone renders the question unintelligible.

In fact, it is best answered by considering what experts in linguistics have said about the use and abuse of language in law. I recommend that the CJC consult a recently published text, Robert Benson's "The Interpretation Game: How Judges and Lawyers Make the Law"[11], which should be required reading for anyone who believes the justice system can and should serve the public interest and the Rule of Law. A wider public will recognize that the question was answered over a century ago by Lewis Carroll in his oft-quoted exchange between Alice and Humpty Dumpty:

'When *I* use a word,' Humpty Dumpty said, in a rather scornful tone, 'it means just what I choose it to mean – neither more nor less.'

'The question is,' said Alice, 'whether you *can* make words mean so many different things.'

'The question is,' said Humpty Dumpty, 'which is to be master – that's all.'

10 http://www.canlii.org/en/ca/scc/doc/2008/2008scc9/2008scc9.html
11 http://theinterpretationgame.info/

Given that I have been working on the case that has resulted in this complaint for a number of years there are likely other relevant facts and argument that I have not covered in this submission. I therefore reserve the right to make further submissions.

If the CJC's response to this complaint is to find again that I have not made out a "*prima facie* case" I will not be surprised. However, the facts have been documented for posterity and in my view they speak for themselves.

Sincerely,

Chris Budgell
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Attachments

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