IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Janik v. Ironworkers Local 97 Apprenticeship and Training Society,* 2025 BCSC 2130

Date: 20251029
Docket: S259264
Registry: New Westminster

Between:

Pawel Janik

Plaintiff

And

Ironworkers Local 97 Apprenticeship and Training Society (“Local 97”) also known as Local 97 of the International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers and British Columbia Institute of Technology (“BCIT”)

Defendants

Before: The Honourable Mr. Justice Blok

Reasons for Judgment

The Plaintiff, appearing in person:	P. Janik
Counsel for Ironworkers Local 97:	R. Berger
Counsel for British Columbia Institute of Technology:	M. Desmarais
Place and Dates of Hearing:	New Westminster, B.C. September 9, 2025
	Port Coquitlam, B.C. October 21, 2025
Place and Date of Judgment:	New Westminster, B.C. October 29, 2025

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I. Introduction

[1] The plaintiff, Pawel Janik, applies for an interlocutory injunction restraining the defendant trade union and its associated training society from relying on any personal or academic information about him received from British Columbia Institute of Technology ("BCIT"), requiring the union to remove its "non-dispatchable" designation for the plaintiff, and requiring the union to commence dispatching the plaintiff in accordance with usual union practices.

[2] There are some other orders sought, but those are the principal ones.

[3] The defendant trade union and its training society are separate legal entities, though not pleaded as such in the plaintiff's claim, so for present purposes I will refer to the trade union as the "Union" and the society as the "Training Society".

[4] The Union says Mr. Janik has failed to meet any of the required elements for an interlocutory injunction. While the Union raises various objections to the relief sought, its primary position is that the subject-matter of Mr. Janik's motion falls within the exclusive jurisdiction of the Labour Relations Board ("LRB").

II. Positions of the Parties

A. The Plaintiff

[5] Mr. Janik presented his case succinctly. He said he attended apprenticeship training at BCIT in 2023 under the sponsorship of a non-union employer. I note his materials indicate that as of March 2024 he is apparently qualified in the trade of reinforcing ironworker.

[6] Mr. Janik alleges that the Union obtained a performance report from his training program at BCIT and, based on that record, designated Mr. Janik as "non-dispatchable". He alleges that this designation was caused through the unauthorized release of his personal or private information by BCIT. He alleges breaches of the *Privacy Act*, R.S.B.C. 1996, c. 373, the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 and the *Personal Information*

Protection Act, S.B.C. 2003, c. 63 [*PIPA*]. He also alleges a common law tort or torts to the same or similar effect.

[7] Under an arrangement with the Construction Labour Relations Association of B.C., the Union is solely responsible for the dispatch of tradespersons to job sites, and so a "non-dispatchable" designation means a person will not be dispatched to any union job sites. Mr. Janik also alleges that this designation caused him to be disqualified from a specific position he had lined up, for which he was otherwise qualified, and that this designation will continue to interfere with his employment opportunities.

[8] Mr. Janik submits that the test for an interlocutory injunction as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 [*RJR-MacDonald*], has been met in this case. As to each of the elements of that test, he says:

a) Serious question to be tried: Mr. Janik says he has pleaded valid causes of action under both privacy statutes and common law;

b) Irreparable harm if the relief is not granted: Mr. Janik says he continues to suffer loss of employment opportunities, reputational damage and mental distress; and

c) Balance of convenience: Mr. Janik says the temporary removal of the "non-dispatchable" label and a restriction on further misuse of improperly obtained information will preserve the *status quo* without undue prejudice to the defendants.

[9] Mr. Janik acknowledged that he has also filed a complaint against the Union with the LRB based on his allegation of an unfair or unjust "non-dispatchable" designation made by the Union. His LRB complaint has been brought pursuant to s. 12 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 [*Code*], although he also invokes other sections.

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[10] Mr. Janik said he recognizes that certain types of complaints must only be dealt with by the LRB, but he says this lawsuit deals with privacy breaches and these must be heard by the Court.

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B. The Union

Further Background

[11] The Union referred to a number of further facts.

[12] In order to become a Union member, a worker must first work as a probationary worker with the Union. To move to the next level, which is that of probationary member, they must submit four good monthly work reports completed by foremen, with "good" being assessed against specific Union "standards of excellence" along with attendance and punctuality. They must then work a prescribed amount of time as a probationary member.

[13] During their time as a probationary member they must sign up for school training through the Union, complete their Red Seal training and begin their apprenticeship. At that point, they may request to be accepted to take the oath and become full members of the Union.

[14] The Union determines, in its sole discretion, whether a worker will take the oath and advance to full membership.

[15] The Union's records show that Mr. Janik is a former probationary worker who in April 2018 commenced work with the Union to gain apprenticeship experience. In or around October 2022, the Union ceased dispatching Mr. Janik to job sites.

[16] The Union has no record of Mr. Janik ever submitting any monthly work reports. As such, he never advanced beyond the status of probationary worker.

[17] The Union does have records of multiple complaints about Mr. Janik, with foremen and employers complaining about his poor attendance and lack of punctuality, and a complaint from another worker who alleged Mr. Janik acted violently toward him and struck him on the head with hand tool.

[18] As a result of these complaints, the Union stopped dispatching Mr. Janik in or around October 2022.

[19] In or around June 2023, Mr. Janik asked that his training trust fund be paid out to him. In accordance with the Union's policy concerning training for non-members, this constituted an acknowledgment by Mr. Janik that employment was no longer being offered to him through the Union. These funds were paid to Mr. Janik, less an amount the Union was entitled to retain for training already received. Mr. Janik disputed that deduction and on February 11, 2024 he filed a claim against the Training Society with the Civil Resolution Tribunal for recovery of the deducted amount and other damages.

[20] In August 2023 the Union was informed that Mr. Janik had commenced an ironworker training program at BCIT though a non-union employer. The Union says this is an additional basis on which Mr. Janik would be designated non-dispatchable.

[21] In January 2024, Mr. Janik inquired about receiving training through the Union and coming back to work with the Union. The Union denied his request based on his poor job performance as a probationary worker.

[22] Some time prior to July 7, 2025, Mr. Janik applied for work with British Columbia Infrastructure Benefits ("BCIB"), a Crown corporation whose role is to provide skilled labour to large public projects. In a letter to Mr. Janik dated July 7, 2025, BCIB said:

> Thank you for your interest in working with BC Infrastructure Benefits (BCIB). As you may have already known, BCIB works collaboratively with our Affiliated Unions (including Inronworkers Local 97) and they have advised us that you are not eligible for dispatch. Please contact Local 97 Union regarding this matter, as we are unable to move forward with your application until it's been resolved.

[23] On July 31, 2025, Mr. Janik filed an LRB complaint against the Union alleging a breach of s. 12 of the *Code* and various other sections. Among other things, he alleges the Union refused to dispatch him to available job opportunities and told a potential employer that he was "not dispatchable".

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[24] Mr. Janik commenced the subject action on August 13, 2025.

[25] According to the Union, Mr. Janik's non-dispatchable status has nothing to do with any attendance issues he had while at BCIT, as Mr. Janik has alleged. Mr. Janik has been non-dispatchable for a number of reasons, including poor job performance, his failure to progress towards probationary membership in the Union and, later, because he took training through a non-Union employer.

[26] On that latter point, the Union points to two items of correspondence from Mr. Janik to the Training Society. The first is dated December 3, 2023. In that letter, Mr. Janik acknowledges he has not been dispatched by the Union for over a year, and he seems to say he is not being dispatched due to a dispute with the dispatcher. Notably, this letter precedes the BCIT performance report. In the second letter, which is dated December 17, 2024, Mr. Janik says he was not being dispatched due to a "personal matter" between himself and a former dispatcher, but he now adds that he is also not being dispatched due to a misunderstanding about his training fund "as well as tickets that were withheld".

Submissions

[27] The Union submits the plaintiff has failed to establish any of the elements of the test for granting an injunction.

[28] First, there is no serious question to be tried because the plaintiff's essential claim, that the Union has wrongfully designated him as "non-dispatchable", is a matter within the exclusive jurisdiction of the LRB.

[29] Furthermore, the plaintiff has already chosen the forum for his complaint by filing a s. 12 complaint with the LRB. The plaintiff's later filing of this lawsuit, which is essentially the same claim, is an abuse of process and therefore cannot amount to a serious question to be tried.

[30] The Union also argues that the plaintiff's claims under *PIPA* and for tortious interference with economic relations are flawed; the *PIPA* claim because alleged

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violations of that statute must first be determined by the Privacy Commissioner before an action may be brought (see ss. 57 and 63); and the interference with economic relations claim because the plaintiff has not alleged that the Union has acted unlawfully against a third party: *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12 at para. 5.

[31] While acknowledging that in *RJR-MacDonald* at para. 50, the Supreme Court of Canada said "a prolonged examination of the merits [of the action] is generally neither necessary nor desirable", the Union notes the Court (at para. 51) also says there is an exception to that general rule when "the result of the interlocutory motion will in effect amount to a final determination of the action" as when "the right which the applicant seeks to protect can only be exercised immediately or not at all".

[32] On that point, the Union notes that the impetus behind Mr. Janik's legal proceedings appears to be his desire to secure work with BCIB. Obtaining an injunction that alters his Union status from non-dispatchable to dispatchable will enable him to secure work through BCIB, which will effectively grant Mr. Janik the final relief he seeks. Accordingly, the Court must examine the "serious question to be tried" element more closely than it would in other cases.

[33] Second, as to irreparable harm, the Union submits the plaintiff has not established irreparable harm if an injunction is not granted because the harm alleged is recoverable, quantifiable and compensable through damages.

[34] The last element is balance of convenience. The Union says the balance of convenience is in its favour. The Union notes the *status quo* in this case is that the plaintiff has not been dispatched since 2022 and he has severed his relationship with the Union. The plaintiff remains free to seek employment through another ironworkers' union (and there is at least one other ironworkers' union in the province) or with non-union employers. Accordingly, the plaintiff's non-dispatchable status with the Union does not preclude him from working in his field.

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C. BCIT

[35] BCIT attended the hearing of the plaintiff's application because the plaintiff sought costs against it, although he sought no other relief against BCIT on the application. The application against BCIT was therefore dismissed with costs to BCIT in any event of the cause.

D. Plaintiff – Reply

[36] In reply, Mr. Janik said the focus of his action is not on his dispatch status, but instead the central issue is the breach of his privacy that led to his wrongful dispatch designation. He submits that his claim is founded on an independent statutory tort, not a labour issue.

[37] Mr. Janik points to several matters he says contradict the Union's assertions that the BCIT performance report is not the basis for his current non-dispatchable status. These include a Union email to him in July 2025 and a printout from a website called QTrades which, I gather, tracks membership status in some fashion. Both the email and the QTrades entry refer to Mr. Janik having taken training through a non-union employer as a basis for showing him to be non-dispatchable. He also points to a letter from the Union dated November 18, 2022 directed to "all probationary workers" informing them that they are now "probationary members" of the Union. Mr. Janik says this change was made to his status despite the prior events that had made him non-dispatchable, meaning that the BCIT performance report must be the only reason why he became non-dispatchable.

[38] Mr. Janik also made reply submissions on the other two elements of the *RJR-MacDonald* test. He said he is suffering irreparable harm because of both reputational damage and the destruction of his livelihood. He submits the balance of convenience is in his favour because for the Union, his status is a mere inconvenience, but for him it involves his ability to work in his profession.

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III. Discussion

A. Legal Principles on LRB Jurisdiction

[39] Section 136 of the *Code* grants exclusive jurisdiction to the LRB over matters within its statutory authority:

> 136 (1) Except as provided in this Code, the board has and must exercise exclusive jurisdiction to hear and determine an application or complaint under this Code and to make an order permitted to be made.
>
> (2) Without limiting subsection (1), the board has and must exercise exclusive jurisdiction in respect of
>
> > a) a matter in respect of which the board has jurisdiction under this Code …

[40] Section 137(1) further provides that “[e]xcept as provided in this section, a court does not have and must not exercise any jurisdiction in respect of a matter that is, or may be, the subject of a complaint under section 133 [relating to contraventions of the *Code*, a collective agreement or the regulations] or a matter referred to in section 136”. This is subject to a narrow exception not applicable here.

[41] Section 139 of the *Code* particularizes a number of areas within the exclusive jurisdiction of the LRB, including questions as to whether “a person is a member in good standing of a trade union” and “whether a trade union … is fulfilling a duty of fair representation”. As to the latter point, s. 12 of the *Code*, which deals with the duty of fair representation, specifically includes issues relating to “the referral of persons to employment”.

[42] In order to determine whether the exclusive jurisdiction of the LRB is engaged, it is necessary to examine the “essential character” of the dispute: *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 at para. 52.

[43] The fact that there may be additional civil causes of action or *Charter* claims does not take a matter outside of the labour dispute resolution process so long as the essential character of the complaint belongs to it: *Weber* at paras. 55–56.

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B. Analysis

[44] I begin with the injunction element of “serious question to be tried”, which raises the issue of jurisdiction.

[45] The Union argues there is no serious question to be tried because the plaintiff’s essential claim on the application, that the Union has wrongfully designated him as “non-dispatchable”, is a matter within the exclusive jurisdiction of the LRB.

[46] In this case, the plaintiff has made a variety of claims in his lawsuit, including claims for damages under both statute and common law, but his injunction application focuses on his non-dispatchable status. Specifically, he seeks orders restraining the Union from relying on any information about him received from BCIT, requiring the Union to remove its “non-dispatchable” designation for the plaintiff, and requiring the Union to commence dispatching the plaintiff in accordance with usual union practices. It is clear the essential character of this injunction application concerns the plaintiff’s dispatch status.

[47] During his oral submissions, the plaintiff himself said that the “key” issue for him is the removal of his non-dispatchable designation. Despite that comment, he insists that the essential character of his case is a dispute over his privacy interests. I disagree for the following reasons.

[48] First, while the plaintiff’s lawsuit includes claims that the Union used his private information from BCIT (specifically, a performance report), his injunction application focuses on reinstatement. An order prohibiting the use of the performance report – that is to say, an order focusing on his privacy interests – would not bring about the reinstatement he seeks in his injunction application.

[49] Second, I am not satisfied that the plaintiff’s non-dispatchable status is rooted in the alleged privacy breach. The evidence is clear that the Union had ceased dispatching the plaintiff over 18 months prior to the date of the BCIT performance report. The plaintiff was obviously aware he was not being dispatched and, prior to the existence of the BCIT report, he attributed it to other factors. The fact that the

plaintiff later took training through a non-union employer became an additional reason why the plaintiff remained non-dispatchable.

[50] While the plaintiff argued that the Union’s evidence suffered from some inconsistency or credibility concerns, these points were peripheral at best and they did not detract from the facts just stated.

[51] Having identified the essential character of the dispute, I now turn to the issue of jurisdiction.

[52] The issue of the Union’s treatment of the plaintiff in referring or not referring him to employment is a subject that is expressly captured in s. 12 of the *Code*. That section reads in part:

> 12 (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith
>
> (a) in representing any of the employees in an appropriate bargaining unit, or
>
> (b) in the referral of persons to employment
>
> whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.

[53] The plaintiff’s dispatch status is a matter that relates to “the referral of persons to employment”. This has been confirmed in at least two LRB decisions, including *Muniandy v Teamsters Local Union No. 155*, BCLRB No. B15/2015, 2015 CanLII 4331. In that case, the complainant alleged the union breached the principles of natural justice when it stopped dispatching him for work, removed him from the dispatch list, and refused him membership in the union. In a decision dated February 2, 2015, a vice-chair of the LRB said:

> [49] Section 12 of the Code applies whether a person is a member or non-member of the union. Under Section 12(1)(a) of the Code, the Board has jurisdiction to determine whether, in representing the interests of employees vis-à-vis the employer, a union has acted in an arbitrary, discriminatory or bad faith manner. Section 12(1)(b) of the Code further prohibits a union from acting in an arbitrary, discriminatory or bad faith manner in the referral of persons to employment. As such, the duty of fair referral under Section 12(1)(b) of the Code applies to the union's administration of its dispatch system regardless of membership status, including decisions not to dispatch

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> and questions of whether there is an enforceable right to be referred to employment: *Paul Jasper*, BCLRB No. B233/2005 at para. 51.

[54] The situation in *Muniandy* was the same as it is here. Accordingly, by operation of ss. 136, 137 and 139 of the *Code*, quoted earlier, the LRB has exclusive jurisdiction in this matter.

[55] Even if this Court had jurisdiction to entertain the plaintiff's injunction application, I am satisfied that the plaintiff's prior filing of a s. 12 complaint with the LRB – a complaint raising the same issue that is the subject of his subsequently-filed lawsuit – amounts to an election as to the forum for his claim: *Speckling v. Communications, Energy and Paperworkers' Union of Canada, Local 76 et al*, 2006 BCCA 203 at para. 44. It may also be an abuse of process to bring duplicative proceedings (see *Speckling* at para. 45), although I note that in *Speckling* the prior s. 12 complaint had already been dismissed, a feature not present here.

[56] For these reasons, I am satisfied that the essence of the plaintiff's application for injunctive relief is his dispatch status, a complaint for which is already before the LRB and which falls within the exclusive jurisdiction of the LRB. It follows that there is no serious question to be tried and so the plaintiff's application for an injunction must be dismissed.

[57] My conclusions on those issues make it unnecessary for me to address the other elements of the *RJR-MacDonald* test.

[58] Costs to the Union/Training Society in any event of the cause.

"Blok J."

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