IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Casavant v. BC General Employees' Union,* 2025 BCSC 328

Date: 20250227
Docket: S100922
Registry: Nanaimo

Between:

Bryce J. Casavant

Petitioner

BC General Employees' Union

Respondent

Before: The Honourable Justice Marzari

Reasons for Judgment

The Petitioner, appearing in person:	B.J. Casavant
Counsel for the Respondent:	M. VanderHouwen K. Hughes, Articled Student
Place and Date of Hearing:	Nanaimo, B.C. December 19, 2024
Place and Date of Judgment:	Nanaimo, B.C. February 27, 2025

INTRODUCTION

[1] The petitioner, Bryce Casavant, is a former member of the respondent, the BC General Employees' Union (the "Union" or "BCGEU"). In July 2015, Mr. Casavant was employed by the BC Government (the "Employer") as a Conservation Officer, and was a member of the Union, when he was disciplined by the Employer after refusing to euthanize two bear cubs when directed to do so. The BCGEU filed several grievances in relation to this discipline in 2015, and in February 2016 the Union, the Employer and Mr. Casavant signed a settlement of those grievances (the "Settlement"). Since then, Mr. Casavant has been seeking to set aside that Settlement and to have his Conservation Officer position reinstated, with varied success. The current petition is the latest of Mr. Casavant's ongoing efforts in this regard.

[2] The terms of the Settlement included the removal of the disciplinary letters from Mr. Casavant's file, the withdrawal of the grievances by the Union, and the acceptance by Mr. Casavant of a position as the Senior Compliance and Enforcement Officer Specialist with the Ministry of Forests, Lands and Natural Resource Operations. Mr. Casavant received funding to upgrade his employment related skills and education in accordance with the terms of the Settlement. The Settlement also included mutual releases with respect to any claims arising or that might arise from Mr. Casavant's employment with the Conservation Officer Service. No liability or wrongdoing by any party was admitted.

[3] Starting in 2017, there has been a series of labour decisions and court decisions pursuant to which Mr. Casavant sought various forms of relief that involved setting aside parts of the Settlement and/or allowing him to be reinstated as a Conservation Officer. He sought the ability to do this independent of the Union, which opposed these applications and consistently took the position that Mr. Casavant had no independent standing to seek to set aside the results of the grievance process.

[4] In 2019, Mr. Casavant brought the first of these petitions to this Court seeking to set aside a decision of the Labour Relations Board denying him standing to challenge the Settlement (among other things). The Board's decision was upheld in this Court, by reasons for judgment indexed as 2019 BCSC 1422, but set aside by the Court of Appeal in *Casavant v. British Columbia (Labour Relations Board)*, 2020 BCCA 159 [*Casavant #1*].

[5] In *Casavant #1*, the Court of Appeal found that the Labour Relations Board, whose decision was the subject of the judicial review, did not have jurisdiction because the grievance and arbitration process under the collective agreement between the Union and the Employer was not the proper process when dealing with the discipline of a conservation officer who was also a member of the provincial constabulary under the *Police Act,* R.S.B.C. 1996, c. 367 [*Police Act*], particularly when the disciplinary issue involved the discharge (or not) of a firearm. The Court of Appeal therefore found that the Board's decision under review was a nullity.

[6] In reaching this conclusion, the Court of Appeal considered whether the jurisdictional issue was properly raised on review, and in particular whether it had been sufficiently raised below. In finding that jurisdiction was properly in issue, the Court stated the following:

> [36] The first point to note about the nature of the jurisdictional challenge is that it related to the correct forum for reviewing Mr. Casavant's dismissal. Although the judge and the respondents all stressed Mr. Casavant's failure to mount a clear challenge to the jurisdiction of the arbitrator and the Board, in my view the responsibility was not his alone. The Union representing Mr. Casavant controlled the grievance process and provided legal advice. The Ministry initiated the disciplinary action under the Conservation Officer Service Code of Conduct but did not raise the jurisdictional issue when the Union filed the grievance under the Collective Agreement and initiated proceedings under the *Code*. As McLachlin J.A. observed in *Carpenter v. Vancouver Police Bd.* (1986), 9 B.C.L.R. (2d) 99, at 124–125 (C.A.) [*Carpenter No. 2*], leave to appeal to SCC ref', 20262 (May 14, 1987), the employer bears some responsibility for conducting disciplinary proceedings in the correct forum.

[7] Ultimately, however, the Court of Appeal did not grant Mr. Casavant the relief he was seeking with respect to the Settlement, saying:

> [60] Mr. Casavant seeks a declaration that the Board did not have jurisdiction over his dismissal — but the question arises as to the practical effect of that declaration given that the settlement agreement the parties entered into has governed their relationship for more than four years. This question was not addressed on appeal by any party, other than to acknowledge that the issue was "complicated".
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> [61] As McLachlin J.A. noted in *Carpenter No. 2*, the court must do its best with the tangled knot created by the parties in adopting a flawed procedure. In my view the best that can be done in these circumstances is to declare that the proceedings before the arbitrator and Board were a nullity, to confirm that Mr. Casavant's dismissal should have been addressed under the *Police Act*, *Special Provincial Constable Complaint Procedure Regulation*, and to leave the parties to sort out the consequences of those declarations, if any, on the settlement agreement.

[8] Ultimately, the parties were unable to sort out the implications of this declaration without further assistance of the court. Mr. Casavant brought a further judicial review seeking a similar remedy that sought in *Casavant #1*: to set aside the Settlement and to reinstate him as a conservation officer effective August 2015. This petition was refused by this Court in *Casavant v. British Columbia (Minister of Environment and Climate Change Strategy*, 2022 BCSC 1573 [*Casavant #2 BCSC*], aff'd 2023 BCCA 320 [*Casavant #2 BCCA*].

[9] The issue of whether Mr. Casavant was a party to the Settlement was squarely at issue in *Casavant #2 BCSC* and *Casavant #2 BCCA*. Both this Court and the Court of Appeal found that he was. This Court found:

> [40] … It is true that Mr. Casavant had no legal representation of his own during the arbitration, including when he signed the Settlement Agreement. However, he was assisted by his union representative.

[10] This Court also found that, through the Settlement, Mr. Casavant released both the Employer and the Union from any liability "in respect of <u>any current or future claims</u> related to his employment with the Conservation Officer Service. It is clear the Settlement Agreement provides for a release going well beyond the grievances and arbitration": *Casavant #2 BCSC* at para. 42 [emphasis in original].

[11] After reviewing the Settlement and its formation and implementation in some detail, the Court of Appeal concluded as follows in *Casavant #2 BCCA*:

> [54] Mr. Casavant now contends that had he been aware when he signed the agreement of what this Court determined in *Casavant CA*—that the arbitration process out of which the settlement agreement arose was flawed and a nullity—he would never have signed it. I understand his thinking, but it again assumes that the result would have been vindication. That does not necessarily follow. Had it been become clear at the time that the process was wrong, then presumably the parties would have turned to the correct process—which may or may not have resulted in a conclusion favourable to Mr. Casavant.
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> [55] The reality is that the agreement resolved not merely the grievance process, but the entire matter of Mr. Casavant's employment with the Province, and the parties acted accordingly. As Mr. Casavant wrote in September 2016, he had no desire then to nullify the settlement agreement, and maintained that he had "respected the terms of the settlement agreement in all my subsequent conduct". Pursuant to its terms, Mr. Casavant and the employer agreed to pursue no claims against each other, and Mr. Casavant was funded for his educational pursuits and accepted employment in a different ministry of the province, where he remained employed at the same level, with the same income and benefits, for several years before resigning for reasons unconnected with this dispute. It is no longer practicable for the proper complaint process to be followed given the passage of time and the destruction of records.
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> [56] But does the settlement agreement remain binding on Mr. Casavant, or, as he argues, is it a nullity because of common mistake? I consider this to be the wrong question. This was implicitly recognized by the judge at paras 43 and 44 of her reasons when, after finding that the settlement agreement was not void as against Mr. Casavant notwithstanding *Casavant CA*, she went on to say: "If I am incorrect about that, I would also have declined to exercise my discretion to grant the relief sought because of the difficulties, if not impossibility, of unwinding the Settlement Agreement in the circumstances."
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> [57] The problem thus recognized by the judge is that this was not an application to enforce the settlement agreement; in essence, it had already been executed: the parties had essentially fulfilled their respective obligations. The question, then, was whether it could practically be unwound in order to restore the parties to a position from which they had long moved on. Irrespective of whether the contract was binding, the judge found that to be impracticable. I see no error in that conclusion.

[12] This remains an unsatisfactory result for Mr. Casavant, who still seeks an avenue whereby he might be reinstated to his role as a conservation officer, or other armed member of the Provincial constabulary. He has had difficulty doing so, despite assurances that his pre-2015 disciplinary record was expunged pursuant to the Settlement. In addition, he says that while the Settlement provided that he would no longer be a conservation officer, he did not believe this would be permanent.

[13] He believes that the Union, and in particular the Union's staff lawyer who was assigned to work on the grievances and the Settlement in 2015–2016, Ms. Esther Ostrower, has documents that may assist him to challenge the finality of the Settlement and to pursue his reinstatement as a conservation officer. From his oral submissions before me, it is clear that Mr. Casavant believes that there may be information in those files that was not before the Court of Appeal when they refused his appeal to set aside the Settlement Agreement and reinstate his previous position. He hopes to use any such documents in a future application to pursue his reinstatement, for example by establishing that the Settlement was not intended to permanently prevent him from being a conservation officer, or that he was given that assurance by Ms. Ostrower before signing the Settlement.

[14] Towards that end, he sought a copy of the related grievance file from the Union. When he was told that his request would be processed through the Union's Privacy Officer under the *Personal Information Privacy Act*, S.B.C. 2003, c. 63 [*PIPA*], he objected to that in principle on the basis that he had a solicitor-client relationship with Ms. Ostrower, and as the client, he was entitled to the entirety of the grievance file as of right. Although not expressly pled, I find Mr. Casavant is relying, at least in part, on s. 78 of the of the *Legal Profession Act*, S.B.C. 1998, c. 9 [*LPA*].

[15] When the Union took the position that he was not in a solicitor-client relationship with Ms. Ostrower, Mr. Casavant brought this petition for declaratory relief. Specifically, Mr. Casavant seeks two declarations:

a) That a solicitor-client relationship existed between himself and Ms. Ostrower in 2015; and

b) That the legal files currently held by the Union are his property and that he is entitled to receive them, essentially without modification or redaction and without going through a *PIPA* process.

[16] While the petition is not explicit about what the "legal files" he seeks are, Mr. Casavant has previously expressed to the Union that he seeks "all [Union] records relating to the development, negotiation, and implementation of the [Settlement]" and that these may include, for example, "the early drafts of the [Settlement]" and "copies of all employer transcripts" relating to witness interviews. Before me, Mr. Casavant argued that he particularly wants to see the "negotiation statements and employers positions" with respect to the Settlement so he can assess what further relief might be available to him in this regard.

[17] The Union maintains its position in this petition that there was no solicitor-client relationship between Mr. Casavant and Ms. Ostrower, and that he has no ownership rights to the grievance files on such a basis. The Union says that Mr. Casavant can still seek copies of these records through a request to the Union's Privacy Officer.

FACTUAL FINDINGS

[18] I find that the evidentiary record before me in this petition establishes the following background facts set out in the Union's response to this petition and its affidavits:

a) The Union is the certified bargaining agent for "employees in the Public Service bargaining unit as defined in s. 4(c) of the Public Service Labour Relations Act."

b) Further to this certification, the Union is party to a collective agreement with the Employer, which governs the terms and conditions of employment for individuals working for the government, other than as licensed professionals, nurses, and other excluded employees (the "Collective Agreement").

c) As the party to the Collective Agreement, the Union has exclusive conduct of grievances that arise under the Collective Agreement and decides how to proceed with grievances – whether to take to hearing, withdraw, settle,

or otherwise – subject to its statutory duty of fair representation, outlined in s. 12 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 [*Code*].

d) In 2015, Mr. Casavant filed three grievances following his suspension as a conservation officer and transfer. The Union assigned various staff members to these grievances, and ultimately referred the grievances to arbitration through its advocacy department. Specifically, the Union assigned the grievances to Ms. Ostrower, who was employed as a staff representative working in the Union's Advocacy department.

e) Ms. Ostrower's job as a staff representative in the Advocacy department was to take conduct of grievances filed by BCGEU members when those grievances were referred to arbitration. She would take grievances to arbitration and sometimes, depending on the circumstances, withdraw or settle grievances on behalf of the Union.

f) Ms. Ostrower was a lawyer, but not all staff representatives in the Advocacy department are lawyers. The grievances could also have been assigned to a non-lawyer staff representative.

g) Ms. Ostrower did not provide a bill to Mr. Casavant, nor was one paid by him.

[19] The evidence before me in this petition also establishes that the settlement of grievances routinely involves agreements that impose legal obligations on the Union member who filed the grievance, including confidentiality clauses and releases of legal claims beyond the grievance. The Union member will generally have the choice whether to sign the settlement and take on those benefits and obligations.

[20] The evidence also establishes that, if a staff representative in the Advocacy department turns down a grievance, the Union member has a right to appeal that decision to the Provincial Executive Grievance Appeal Committee. The Union also has a statutory duty of fair representation, which is set out in s. 12 of the *Code*.

[21] I am also satisfied that the evidence establishes that, in exceptional circumstances that do not involve grievances or the Union's exclusive representational rights, staff representatives in the Advocacy department who are also lawyers can seek permission from the Executive Director of Advocacy to directly represent a member jointly with the Union. In such a case, permission from the Executive Director of Advocacy is required and a joint retainer letter must be signed. This did not occur in this case.

[22] The above facts are largely not contested (at least not through affidavit evidence) by Mr. Casavant. There are, however, key areas where the parties' affidavits directly contradict.

[23] Of most relevance in this case is the conflict in the evidence as to whether Ms. Ostrower ever indicated to Mr. Casavant that she was acting as his lawyer or providing him with legal advice.

[24] Mr. Casavant avers that he was "assigned" Ms. Ostrower by the Union in 2015, and that Ms. Ostrower acted as *his* lawyer at all relevant times during the initial labour proceedings. He deposes that Ms. Ostrower told him that she was his lawyer, he believed she was his lawyer, and she provided legal advice to him. Mr. Casavant further says that he relied on this advice.

[25] Mr. Casavant also says that Ms. Ostrower negotiated, and advised him to sign the Settlement, and that he did so acting on her legal advice. Mr. Casavant alleges that Ms. Ostrower did not properly inform him of the scope of the release in the Settlement, in that she informed him it only related to the grievances, and never told him it went beyond this. He further deposes that Ms. Ostrower told him that he would not be prevented from returning to his role as a Conservation Officer and that all negative records regarding his discipline would be destroyed.

[26] Mr. Casavant says that at some point he requested Ms. Ostrower be removed as his lawyer and that he also requested independent counsel at multiple points between 2015 and 2017, but that this was opposed by the Employer, and that the

Union told him that he was not entitled to independent counsel, and only the Union could appoint him a lawyer.

[27] The Union says that Ms. Ostrower was never Mr. Casavant's lawyer, and Ms. Ostrower avers that she never communicated to him that she was. Ms. Ostrower did not consider that she was taking instructions from Mr. Casavant, though she did consult with him with respect to his grievances. In any proceeding involving Mr. Casavant, she says she represented the Union, not Mr. Casavant, and she was never retained or contracted by Mr. Casavant to act as his legal counsel. In all her work related to the grievances, Ms. Ostrower says that she was clear that she made those submissions on behalf of the Union.

[28] The Union affiants say that staff representatives are not permitted to act as lawyers for the employees affected by the grievances to which they are assigned. Staff representatives act for the Union, who employs them. Staff representatives, including Ms. Ostrower, take instructions from the Union, though the affected employee will generally consult with the staff representative in the course of the grievance and arbitration process, including through the negotiation of any resolution.

[29] The Union concedes that staff representatives in the Advocacy department, whether lawyers or not, give advice to members on the meaning and interpretation of settlement agreements. However, it says that this advice is given in their capacity as the member's union representative, not as the member's lawyer.

[30] Ms. Ostrower swears that she did not inform Mr. Casavant that the Settlement would result in anything other than what is set out in the Settlement. She did not tell him that his constabulary appointment would be returned.

[31] Furthermore, the Union says that members are always entitled to obtain independent legal advice on settlement agreements if they wish. However, members are not entitled to have independent counsel participate directly in a grievance hearing or arbitration, as the members themselves have no independent standing in

that process: grievances are between the Union and the Employer as the only parties to the Collective Agreement.

[32] In enforcing the Collective Agreement and advancing grievances, the Union says the Union and its staff representatives make decisions that are in the best interests of the membership as a whole. Sometimes, these interests are not the same as the best interests of the member directly affected by the grievance and so the Union must make decisions with which an affected member is unhappy. However, the Union argues that it strives to achieve the best possible outcome for affected members in a grievance, wherever possible.

Determination on Contested Facts

[33] I find I am unable to reconcile all of the contradictory affidavit evidence as to whether Mr. Casavant was ever told by anyone that Ms. Ostrower was *his* lawyer. This matter has been brought by petition, and no cross-examination has been conducted by either party on their conflicting evidence.

[34] However, I can and do find on the record that Mr. Casavant understood that he was not a party to the grievance negotiations, and that he specifically complained in his 2020 factum before the Court of Appeal that he had no legal representation in that process. While his view may have changed since then, I find that Mr. Casavant's understanding at the time of the grievances and up to the decision in *Casavant #1*, was that Ms. Ostrower was not representing him, but was representing the Union.

[35] The evidence before me in the petition also establishes that Mr. Casavant did not seek his own independent legal advice with respect to the grievances until after the Settlement was signed. Specifically, I find that the record establishes that approximately six months after the Settlement was signed, the Employer sought a declaration that Mr. Casavant had breached the Settlement. It was at this point that Mr. Casavant sought and retained independent legal counsel.

[36] The Union agrees that it opposed Mr. Casavant's application to have his independent legal counsel represent him as a party in that application, not because Mr. Casavant was not entitled to independent legal advice generally, but rather on the basis that Mr. Casavant had no standing to respond to the Employer's application because of the Union's exclusive right to control grievances. I accept this evidence.

[37] The record also establishes that in 2017, the Union also opposed Mr. Casavant's standing to bring an application to set aside the Settlement, on the basis that the Union had exclusive rights to control the grievance process. This standing issue was the subject of the decision by Arbitrator Sullivan dated April 18, 2017, which eventually led to the Labour Relations Board reconsideration decision that was judicially reviewed in *Casavant #1*.

[38] I note that Mr. Casavant's lack of standing to challenge the Settlement in the context of the Collective Agreement was consistently upheld throughout the appeals and review processes. It was the jurisdictional issue relating to the applicability of the Collective Agreement grievance process itself that ultimately led to the finding that the arbitrator had no jurisdiction, and that the grievance process was a nullity. In my view, the rulings in *Casavant #2 BCSC and BCCA* do not undermine those findings.

Document Requests

[39] Mr. Casavant has made a number of requests for documents and files from the Union over the course of several years.

[40] With respect to the documents sought by Mr. Casavant in this petition, the evidence establishes the following:

a) Mr. Casavant sent an email to the Union's Executive director and General Counsel on September 10, 2023, specifically requesting "copies of all files relating to the [Settlement] and all records held by the union so I can receive further independent legal counsel as needed."

b) The Union's Executive Director responded, copying the Privacy Officer for a response, and the Privacy Office followed up shortly thereafter.

c) On September 22, 2023, Mr. Casavant responded to the Privacy Officer's office, stating that in his view, the Privacy Officer should not be involved.

d) On April 24, 2024, Mr. Casavant wrote a further letter to the Union and the Employer, seeking "all BCGEU records relating to the development, negotiation, and implementation of the [Settlement]". He was again directed to seek these documents through the Privacy Office.

e) Between September 15, 2024, and September 23, 2024, Mr. Casavant continued to ask the Union to return his "personal legal files" on the basis that they are his personal property. The Union continued to advise Mr. Casavant that he could seek the records through the Privacy Office, and that it does not view Mr. Casavant as having a solicitor-client relationship with any lawyer employed by the Union.

[41] The evidence before me establishes that Mr. Casavant has made previous requests for different documents through the Union's Privacy Officer, including on December 1, 2020, and April 27, 2021. The Union provided documents further to the request on December 1, 2020. It did not provide documents further to the request on April 27, 2021 for copies of all Employer transcripts held by the Union, on the basis that the documents were under the Employer's control and had been shared by the Employer only for the purpose of an arbitration, and therefore the Union could not disclose them. The Union suggested that Mr. Casavant seek them from the Employer. This decision was upheld by the BC Office of the Information and Privacy Commissioner.

ISSUES

[42] Mr. Casavant argues that a finding that the Union never provided legal advice to him would be contrary to the findings of the Court of Appeal in *Casavant #1*.

[43] He further argues that such a finding would have the practical effect of "implicitly finding there was no legal advice provided" when the Settlement was negotiated and signed, "thereby calling into question the Court of Appeal's determination" in *Casavant #2 BCCA* that the Settlement is valid and binding. Underlying Mr. Casavant's argument is his assertion that, short of an implicit finding that he received legal advice on the Settlement, the Court of Appeal could not have and would not have found that the Settlement was binding on him. Furthermore, he argues that advice must have been determined to be independent and impartial from the interests of the Union, because the Settlement was determined to have released his rights beyond those related to the grievance alone.

[44] Fundamentally, Mr. Casavant relies on what he says was a factual finding in *Casavant #1* at para. 36 (cited above in full) that the Union provided legal advice to him during the negotiation of the Settlement. Specifically, in considering whether the issue of jurisdiction had been properly raised, the Court of Appeal noted the following in that paragraph: "The Union representing Mr. Casavant controlled the grievance process and provided legal advice."

[45] Mr. Casavant argues that it follows from this provision of legal advice, that he had a solicitor-client relationship with Ms. Ostrower. From the existence of this asserted solicitor-client relationship, Mr. Casavant argues that he owns the legal files related to the grievances and the Settlement.

[46] The latter point is not at issue in these proceedings. The Union does not contest that, if Mr. Casavant was Ms. Ostrower's client, then s. 78 of the *LPA* would apply.

[47] The Union does contest, however, that para. 36 of *Casavant #1* is determinative of the factual issue of whether it provided Mr. Casavant with legal advice. In any event, the Union argues that the provision of legal advice alone is not sufficient to establish a solicitor-client relationship alone, and that there was no such relationship between its staff representative, Ms. Ostrower, and its member, Mr. Casavant.

[48] I will therefore address the following issues in these reasons:

a) Is para. 36 of *Casavant #1* determinative of whether the Union provided legal advice to Mr. Casavant, and was in a solicitor-client relationship with Ms. Ostrower?

b) Does the provision of advice of a legal nature by a Union staff representative to a member give rise to a solicitor-client relationship?

[49] For the reasons that follow, I find that para. 36 in *Casavant #1* is not determinative of the factual question of whether legal advice was provided by Ms. Ostrower to Mr. Casavant on the Settlement. More importantly, I find that even if advice of a legal nature was provided by the Union to Mr. Casavant in relation to the grievances or the Settlement, that this did not give rise to a solicitor-client relationship, or the ownership by Mr. Casavant of Ms. Ostrower's files.

DISCUSSION

Paragraph 36 of *Casavant #1* is not Determinative

[50] For the following reasons, I find that para. 36 of *Casavant #1* is not determinative of the issue of whether Mr. Casavant was in a solicitor-client relationship with Ms. Ostrower.

[51] First, I find that para. 36 of *Casavant #1* does not relate to advice beyond what advice may have been given to Mr. Casavant by the Union about the appropriate forum for his grievance. Paragraph 36 does not relate to advice beyond that jurisdictional issue.

[52] Paragraph 36 of *Casavant #1* was made in the context of the Court of Appeal assessing who was responsible for raising the issue of jurisdiction in the arbitration and Labour Relations Board proceedings, and it is relevant to the Court's conclusion that the invocation of the grievance procedure under the Collective Agreement was not the responsibility of Mr. Casavant alone. In this context, the Court of Appeal's finding that it was the Union that controlled the grievance process is also relevant.

[53] The Court of Appeal did not engage in an analysis of whether, or to what extent, Mr. Casavant received any further advice of a legal nature from the Union. Nor did it have a factual basis before it to do so, as nothing in any of the facta before the Court addressed this point. Nor was this necessary for the determination or the issues before the Court in that proceeding.

[54] Rather, in his factum before the Court of Appeal, Mr. Casavant acknowledged that the Union's counsel was not his counsel, describing the lawyers involved as "a lawyer acting as an arbitrator, a lawyer acting for the union, and a lawyer acting for the employer".

[55] I am satisfied that the reasoning in *Casavant #1* is not determinative of whether Mr. Casavant received advice from the Union beyond advice with respect to the question of the appropriate forum to pursue the grievances. It is uncontentious that the Union proceeded under the Collective Agreement, rather than under the *Police Act*, and that it was the Union that controlled this process.

The Provision of Advice by a Union to its Members does not create a Solicitor-Client Relationship

[56] More importantly, I am convinced on the evidence and law, that the giving and receiving of legal advice is not, in and of itself, sufficient to establish a solicitor-client relationship, particularly in a union-member relationship. There are numerous other factors to be considered in assessing whether a solicitor-client relationship exists.

[57] This Court in *Milverton Capital Corp. v. Thermo Tech Technologies Inc.*, 2002 BCSC 773 at para. 74 [*Milverton*], adopted the test set out in *Jeffers v. Calico Compression Systems*, 2002 ABQB 72 at para. 8, for whether a solicitor-client relationship exists. The question is whether a reasonable person in the position of a party with knowledge of all the facts would reasonably form the belief that the lawyer was acting for a particular party. Relevant factors to this inquiry were helpfully summarized in *Guo (Re)*, 2024 LSBC 21 at para. 144 [*Guo*], as follows:

a) a contract or retainer;

b) a file opened by the lawyer;

c) meetings between the lawyer and the party;

d) correspondence between the lawyer and the party;

e) a bill rendered by the lawyer to the party;

f) a bill paid by the party;

g) instructions given by the party to the lawyer;

h) the lawyer acting on the instructions given;

i) statements made by the lawyer that the lawyer is acting for the party;

j) a reasonable expectation by the party about the lawyer's role;

k) legal advice given; and

l) legal documents created for the party.

[58] Not all of these factors need to be present in order for a solicitor-client relationship to be established: *Spears (Re)*, 2017 LSBC 29, citing *Milverton* at para. 74; and *Jeffers* at para. 8.

[59] I agree with the Union that a reasonable person in the position of Mr. Casavant with possession of all the facts would not reasonably conclude that Ms. Ostrower was in a solicitor-client relationship with him given the facts of this case. I find that the filed evidence before me tends to contraindicate the existence of such a relationship. Considering the factors adopted in *Milverton* and set out in *Guo*, I find:

a) No contract or retainer was signed between Ms. Ostrower and Mr. Casavant;

b) A file was not opened by Ms. Ostrower – the grievances were provided by Mr. Casavant to the Union, and proceeded through the grievance procedure prior to being sent to the Advocacy department, at which point the Union assigned Ms. Ostrower as the staff representative;

c) There were meetings and correspondence between Ms. Ostrower and Mr. Casavant, but only for the purpose of advancing the grievances, over which the Union had ultimate control;

d) There were no bills paid by Mr. Casavant or rendered by the Union;

e) While Ms. Ostrower consulted Mr. Casavant with respect to the grievances and the Settlement, Mr. Casavant did not provide her instructions; and

f) With respect to legal documents, Ms. Ostrower negotiated the Settlement with the Employer on behalf of the Union.

[60] While Mr. Casavant was ultimately found to be a party to the Settlement, and to have personally benefited from provisions of the Settlement including the preservation of his salary and benefits and funding to pursue further education, I find that it was not created "for" him in the sense suggested in *Milverton* and *Guo* as a factor going towards establishing a solicitor-client relationship.

[61] Beyond these factual findings, there is a strong legal basis upon which I would find that Ms. Ostrower was acting for the Union, and not in a solicitor-client relationship with Mr. Casavant.

[62] The law recognizes that union counsel who pursue grievances on behalf of a union member are not counsel for that union member and do not form a solicitor-client relationship with that union member but rather represent the union as a matter of law.

[63] As succinctly put by Justice Abella, then writing for the Ontario Court of Appeal, the "solicitor-client relationship [is] between the solicitor and the union, not

the grievor": *French v. Johnson*, [1997] O.J. No. 4035, 1997 CarswellOnt 4543 (C.A.) at para. 1.

[64] The relationship between union counsel and union members has been considered in the courts largely in the context of applications to remove union counsel for a conflict of interest. For example, in *U.F.C.W., Local 1518 v. C.L.A.C.*, [1999] B.C.J. No. 877, 1999 CarswellBC 864, the plaintiff union's counsel had previously acted as counsel for the union in a grievance arbitration brought on behalf of an individual member who, in the action at bar, was a defendant. The defendants applied to have plaintiffs' counsel removed from the record on the basis of a perceived conflict of interest. In considering this application, the Court held that the law firm had been counsel for the union, not the individual member:

> [20] Counsel for the plaintiff submits first of all that there has never been a solicitor/client relationship between Mr. Gavriel and the law firm of Shortt, Moore & Arsenault. With this, I agree. Union members forego certain individual rights when they join a union. The union becomes the bargaining agent on behalf of all of the employees within the bargaining unit. The union acts for the employees when a dispute arises. The employees do not act on their own behalf.
>
> [21] I agree that the individual employee in this instance is not the client of the law firm. The union, UFCW, acting as the bargaining agent of the employees, is the client of Shortt, Moore & Arsenault. The union contacts the lawyer, pays the retainer, gives instructions, receives the advice and pays the bill. If the bill is not paid, it is the union that gets sued, not the individual employee.
>
> [22] It is only the union that has the exclusive right to bring a grievance under the collective agreement, as pointed out by counsel for the plaintiff.
>
> [23] An individual employee, unsatisfied with a union's handling of a grievance, may well lay a complaint before the Labour Relations Board under s. 12 of the *Labour Relations Code* alleging that the union has failed to give fair representation to that individual employee. In cases cited by counsel for the plaintiff, the same lawyers often defend the trade union against a s. 12 complaint, having previously given opinions to the trade union regarding the merits or the conduct of that particular grievance. The B.C. Labour Relations Board has, in more than one decision, found that this is an acceptable local practice, in the context of the Labour Relations community within this province.

[65] While the Court in that case did exercise its discretion to remove counsel, noting their concern for public perception of fairness, it was nonetheless made clear

that the individual member was not a client of the law firm in question and there was no solicitor-client relationship arising from the firm's representation of the union throughout the grievance process: paras. 20, 27–30.

[66] The British Columbia Labour Relations Board has consistently found that lawyers who are counsel for unions in grievances are not consequently counsel for grievors. For example, in *Molson Brewery B.C. Co. v. Brewery, Winery & Distillery Workers' Union, Local 300 (Buksh),* [1994] B.C.L.R.B.D. No. 457, 1994 CarswellBC 3938 [*Buksh*], the Board addressed the law and policy of solicitor-client privilege under the *Code*. The decision dealt with whether a communication between the grievor and a union's counsel was covered by solicitor-client privilege, in the context of a s. 12 complaint to the Board.

[67] In the collective bargaining regime, the union becomes the representative of all the employees in an appropriate bargaining unit. Consequently, when a union decides whether to proceed with a grievance, it cannot only consider a grievor's wishes. Rather, "It must also assess a variety of factors such as the validity of the grievance, competing interests of other employees and the cost to the bargaining unit as a whole of perusing [*sic*] the grievance": *Buksh* at para. 44.

[68] Unions frequently retain legal counsel to advise or represent them in a particular case. In the course of their work, legal counsel can investigate and conduct interviews, including of the grievor. However, the Board concluded that "these interviews by legal counsel do not turn the grievor into the counsel's clients": *Buksh* at para. 45.

[69] In these cases, the union holds privilege over communications with its lawyers, and the lawyer's client in these circumstances is the union, not the grievor: *Buksh* at paras. 46–47.

[70] Additionally, a union's lawyer does not communicate with a grievor in their capacity as a professional legal advisor. While a union's lawyer might have certain obligations to a grievor, the grievor is not their client. Their client is the union: *Buksh*

at paras. 48–49, citing *Peterson v. Kennedy*, 771 F. (2d) 1244, 103 LC 24865 (9th Cir. 1985).

[71] The Union's authority to make decisions about the enforcement of the Collective Agreement is subject only to its obligation under s. 12 of the *Code* not to represent members in a way that is arbitrary, discriminatory, or in bad faith. This relates to the obligations of a union-member relationship, but not a solicitor-client relationship.

[72] The employee affected by a union's decision with respect to advancement, resolution, or withdrawal of a grievance does not have to agree with that decision, for the union to have met its obligations of fair representation under the *Code*: *Judd v. C.U.P.E., Local 2000*, [2003] B.C.L.R.B.D. No. 63, 2003 CanLII 62912 at paras. 34, 39 [*Judd*].

[73] I am also concerned that conflicts of interest could arise if union counsel were found to also be acting as counsel to grievors. Unions exercise collective power in part because their decisions are not dictated by the desire of an individual employee. In advancing grievances, unions must sometimes make decisions that are in the best interests of the membership as a whole, even if the affected individual employee is adversely impacted or is unhappy with that decision: *Judd* at paras. 38–39.

[74] Mr. Casavant would distinguish the above law on the basis that none of this jurisprudence relates to the relationship between a police officer or member of the provincial constabulary and their union. He argues that according to *Casavant #1*, one cannot apply the same reasoning to that unique employment relationship.

[75] He relies on the Supreme Court of Canada decision in *R. v. Campbell*, [1999] 1 S.C.R. 565, 1999 CanLII 676, which he says establishes and imports Lord Denning's decision regarding the constabulary. On this basis, he argues that collective bargaining, and therefore the Collective Agreement broadly, does not apply to him as a provincial constable.

[76] Implicit in this argument is the suggestion that Ms. Ostrower must therefore have been representing him directly because it was ultimately found that a grievance under the Collective Agreement was a nullity.

[77] In my view, this argument improperly recasts the nature of his relationship with Ms. Ostrower through the lens of what was later found in *Casavant #1,* when no such relationship existed any longer. In my view, the later discovery that the chosen grievance process was not applicable to Mr. Casavant's discipline cannot be used to recast the nature of the relationship as it existed at that time. That relationship was a union-member relationship: one that involved the provision of some advice relating to grievances that may properly be considered as "legal" in nature, but which fundamentally was not part of a solicitor-client relationship.

[78] Nor do I consider that such a finding undermines the conclusions of the Court in *Casavant #2 BCCA*. It is possible that the Settlement was valid and binding on Mr. Casavant without a finding that Ms. Ostrower was Mr. Casavant's lawyer or in a solicitor-client relationship with him. Indeed, the valid and binding nature of the Settlement has now been finally determined in *Casavant #2 BCCA*, and the results of this petition are not capable of undermining that finding in any event.

CONCLUSION

[79] In conclusion, I would dismiss Mr. Casavant's declaratory relief.

[80] I note that Mr. Casavant is not without recourse to seek the documents he seeks through the Union's Privacy Office, which he has thus far refused to do.

[81] However, regardless of whether he pursues this option, and regardless of whether he obtains all, some, or none, of the records he seeks, Mr. Casavant's entitlement does not arise from a solicitor-client relationship, or s. 78 of the *LPA*.

[82] The Union is generally entitled to its costs of this petition. Should the parties wish to make submissions on costs, they may do so by requesting to appear before me through the Registry within 30 days of the release of these reasons.

"Marzari J."