CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 397, Applicant v STEPHANIE KERR, Respondent

LRB File Nos. 176-23, 177-24, 216-24, 217-24, 219-24 & 246-24; May 28, 2025
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *COPE, Local 397 v Kerr*, 2025 SKLRB 25

Counsel for the Applicant COPE, Local 397:	Samuel Schonhoffer
For the Respondent, Stephanie Kerr:	Self Represented

Summary Dismissal – Applications for summary dismissal allowed in part

Part II – The Board does not have original jurisdiction over Part II matters – claims related to Part II summarily dismissed

Section 6-36 – Unfair labour practice – Section inapplicable as the Union's actions are not a lockout as defined in Part VI

Section 6-43 – Unfair labour practice – Section inapplicable as no pleading that the Employer failed to deduct Union dues

Section 6-58 – Internal Union Affairs – Claims under s. 6-58 allowed to proceed as facts if proven could found a finding of a breach of procedural fairness

Section 6-59 – Duty of Fair Representation does not apply to internal union matters – Claims under s. 6-59 summarily dismissed

Section 6-62 – Unfair labour practice – Section inapplicable as Union acting as a Union and section applies to Employers – Claims under s. 6-62 summarily dismissed

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Stephanie Kerr has filed three applications against the Canadian Office and Professional Employees Union, Local 397 (the "Union") in relation to being put on leave from her duties as elected President by the Union. The Union has filed summary dismissal applications in response to each of Ms. Kerr's applications.

[2] From the pleadings of the three applications, the Board assumes the following background facts to be true for the purpose of determining the summary dismissal applications.

[3] Ms. Kerr was elected President of the Union for the term of January 1, 2022 to December 21, 2024.

[4] Ms. Kerr is a member of the Union within the SGI Bargaining Unit.

[5] Ms. Kerr voluntarily went on leave from her position as President on September 19, 2023, in response to complaints about a social media meme posted in error.

[6] Ms. Kerr has been locked out of the duties of President of the Union since September 21, 2023.

[7] An investigation into the social media posts was completed on November 21, 2023.

[8] Ms. Kerr tried to return to her work as President on November 22, 2023, which was refused by the Union. All attempts by Ms. Kerr to return to work have been met with hostility. The Union executive has refused requests for meetings to discuss Ms. Kerr's return to work.

[9] Ms. Kerr alleges that this breaches various articles of the Union's Constitution. Ms. Kerr also raises various issues related to pay during her time on leave.

[10] A Union Trial was held in relation to the complaints giving rise to the investigation on August 9 and 29, 2024 (the "Trial"). Ms. Kerr alleges that proper notice of the Trial was not provided and that the hearing process violated articles of the Union's Constitution.

[11] At some point following the Trial a decision was issued. Ms. Kerr states that the Union failed to follow the Trial decision.

[12] In related to these facts, Ms. Kerr has raised various alleged violations of the *Saskatchewan Employment Act.*

[13] Ms. Kerr filed LRB File No. 176-24 (the "First Application") on September 17, 2024. In the First Application, Ms. Kerr alleges violations of Sections 6-58 and 6-59 of the SEA.

[14] Ms. Kerr filed LRB File No. 177-24 (the "Second Application") on September 17, 2024. In the Second Application, Ms. Kerr alleges violations of ss. 2-27, 2-36, 2-37, 6-36, 6-43, 6-58 and 6-59.

[15] Ms. Kerr filed LRB File No. 219-24 (the "Third Application") on November 8, 2024. In the Third Application, Ms. Kerr alleges violations of ss. 6-59, 6-62(1)(a), 6-62(1)(h) and 6-62(1)(i).

Argument on behalf of the Union:

[16] The Union argues that the First, Second and Third Applications should be summarily dismissed in their entirety for failure to plead causes of action, and that certain allegations should be dismissed on jurisdictional grounds.

[17] The Union also argues that the Second Application should be dismissed as an abuse of process as it seeks to litigate the same issues and facts as raised in the First Application.

Argument on behalf of Ms. Kerr:

[18] Ms. Kerr argues that all of her claims fall within the jurisdiction of the Board. Ms. Kerr's submissions do not address the test for summary dismissal and argue various matters on the merits related to:

a. Employment and Membership Status,
b. Denial of Natural Justice and Conflict of Interest,
c. Failure to Provide Financial Transparency, and
d. Breach of Fiduciary and Statutory Duties.

[19] Ms. Kerr asks for the Board to make various final orders in reply to the summary dismissal applications.

Relevant Statutory Provisions:

[20] The Second Application raises s. 2-27, related to vacation pay, which reads:

> ***Vacation pay***
> ***2-27****(1) An employee is to be paid vacation pay in the following amounts:*
>
> > *(a) if the employee is entitled to a vacation pursuant to clause 2-24(1)(a), three fifty-seconds of the employee's wages for the year of employment or portion of the year of employment preceding the entitlement to the vacation;*
> >
> > *(b) if the employee is entitled to an annual vacation pursuant to clause 2-24(1)(b), four fifty-seconds of the employee's wages for the year of employment preceding the entitlement to the vacation.*
>
> *(2) With respect to an employee who is entitled to a vacation pursuant to section 2-24 but who does not take that vacation, the employer shall pay the employee's vacation pay*

not later than 11 months after the day on which the employee becomes entitled to the vacation.

(3) The employer shall pay vacation pay to the employee in an amount calculated according to the length of vacation leave taken:

(a) at the employee's request, before the employee takes the vacation; or

(b) on the employee's normal payday.

(4) An employer shall reimburse the employee for any monetary loss suffered by the employee as a result of the cancellation or postponement of the vacation if:

(a) the employee has scheduled a period of vacation at a time agreed to by the employer; and

(b) the employer does not permit the employee to take the vacation as scheduled.

(5) A monetary loss mentioned in subsection (4) is deemed to be wages owing and this Part applies to the recovery of that monetary loss.

[21] The Second Application also raises s. 2-36 related to deductions, which reads:

Deductions and special clothing
2-36*(1) Except as permitted or required pursuant to this Act, any other Act or any Act of the Parliament of Canada, an employer shall not, directly or indirectly:*

(a) make any deductions from the wages that would be otherwise payable to the employee;

(b) require that any portion of the wages be spent in a particular manner; or

(c) require an employee to return to the employer the whole or any part of any wages paid.

(2) In addition to deductions permitted or required pursuant to law, an employer may deduct from an employee's wages:

(a) employee contributions to pension plans or registered retirement savings plans;

(b) employee contributions to other benefit plans;

(c) charitable donations voluntarily made by the employee;

(d) voluntary contributions by the employee to savings plans or the purchase of bonds;

(e) initiation fees, dues and assessments to a union that is the bargaining agent for the employee;

(f) voluntary employee purchases from the employer of any goods, services or merchandise; and

> *(g) deductions for purposes or categories of purposes that are specified pursuant to subsection (3).*
>
> *(3) For the purposes of clause (2)(g), the Lieutenant Governor in Council may specify purposes and categories of purposes by regulation or by special order in a particular case.*
>
> *(4) No employer shall require an employee to purchase special clothing that identifies the employer's establishment.*
>
> *(5) An employer who requires an employee to wear a special article of clothing that identifies the employer's establishment shall provide that special article of clothing free of cost to the employee.*

[22] The Second Application also raises the Union's alleged failure to provide a statement of earnings pursuant to s. 2-37, which reads:

> ***Statement of earnings required***
> ***2-37****(1) An employer shall provide a statement of earnings to an employee:*
>
> *(a) on every payday; and*
> *(b) when making payments of wage adjustments.*
>
> *(2) A statement of earnings required pursuant to subsection (1) must:*
>
> *(a) clearly set out:*
> *(i) the name of the employee;*
> *(ii) the beginning and ending dates of the period for which the payment of wages is being made;*
> *(iii) the number of hours of work for which payment is being made for each of wages, overtime and hours worked on a public holiday;*
> *(iv) the rate or rates of wages;*
> *(v) the amount paid for each of wages, overtime and public holiday pay and work on a public holiday, vacation pay and pay instead of notice;*
> *(vi) the employment or category of employment for which payment of wages is being made;*
> *(vii) the amount of total wages;*
> *(viii) an itemized statement of any deductions from wages being made; and*
> *(ix) the actual amount of the payment being made; and*
>
> *(b) be in a form that:*
>
> *(i) is separate from, or readily detachable from, any form of cheque or other type of voucher issued in the payment of wages; or*
>
> *(ii) if an employee is provided with an electronic statement, permits the employee to print off a copy of the statement of earnings.*
>
> *(3) Unless the contrary is established, wages and other amounts that are not included in a statement pursuant to subsection (2) are deemed not to have been paid.*

[23] The Second Application relies on s. 6-36, which raises the definition of lockout and strike. The definitions of lockout and strike are contained in s. 6-1, which reads in part:

Interpretation of Part
6-1*(1) In this Part:*

…

(m) "lockout" means one or more of the following actions taken by an employer for the purpose of compelling employees to agree to terms and conditions of employment:

(i) the closing of all or part of a place of employment;
(ii) a suspension of work;
(iii) a refusal to continue to employ employees;

(n) "strike" means any of the following actions taken by employees:

(i) a cessation of work or a refusal to work or to continue to work by employees acting in combination or in concert or in accordance with a common understanding;

(ii) any other concerted activity on the part of employees in relation to their work that is designed to restrict or limit output or the effective delivery of services;

…

[24] As mentioned, the Second Application raises s. 6-36, which reads:

Benefits during strike or lockout
6-36*(1) In this section, "benefit plan" means a medical, dental, disability or life insurance plan or other similar plan.*

(2) During a strike or lockout, the union representing striking or locked-out employees in a bargaining unit may tender payments to the employer, or to a person who was, before the strike or lockout, obliged to receive the payment:

(a) in amounts sufficient to continue the employees' membership in a benefit plan; and

(b) on or before the regular due dates of those payments.

(3) The employer or other person mentioned in subsection (2) shall accept any payment tendered by the union in accordance with subsection (2).

(4) No person shall cancel or threaten to cancel an employee's membership in a benefit plan if the union tenders payment in accordance with subsection (2).

(5) On the request of the union, the employer shall provide the union with any information required to enable the union to make the payments mentioned in subsection (2).

[25] The Second Application also raises s. 6-43, which reads:

Employer to deduct dues
6-43*(1) On the request in writing of an employee and on the request of a union or union local representing the employees in the bargaining unit, the employer shall deduct and pay in periodic payments out of the wages due to the employee the union dues, assessments and initiation fees of the employee.*

(2) The employer shall pay the dues, assessments and initiation fees mentioned in subsection (1) to the union or union local representing the employee.

(3) The employer shall provide to the union or union local the names of the employees who have given their authority to have the dues, assessments and initiation fees mentioned in subsection (1) paid to the union or union local.

(4) Failure to make payments or provide information required by this section is an unfair labour practice.

[26] The First and the Second application plead s 6-58, which reads:

Internal union affairs
6-58*(1) Every employee who is a member of a union has a right to the application of the principles of natural justice with respect to all disputes between the employee and the union that is his or her bargaining agent relating to:*

(a) matters in the constitution of the union;
(b) the employee's membership in the union; or
(c) the employee's discipline by the union.

(2) A union shall not expel, suspend or impose a penalty on a member or refuse membership in the union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the union if:

(a) in doing so the union acts in a discriminatory manner; or
(b) the grounds the union proposes to act on are that the member or person has refused or failed to participate in activity prohibited by this Act.

[27] All three applications raise allegations under the duty of fair representation in s. 6-59, which reads:

Fair representation
6-59*(1) An employee who is or a former employee who was a member of the union has a right to be fairly represented by the union that is or was the employee's or former employee's bargaining agent with respect to the employee's or former employee's rights pursuant to a collective agreement or this Part.*

(2) Without restricting the generality of subsection (1), a union shall not act in a manner that is arbitrary, discriminatory or in bad faith in considering whether to represent or in representing an employee or former employee.

[28] The Third Application raises several allegations under s. 6-62, which reads in part:

Unfair labour practices – employers
6-62*(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*

(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;

(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;

> …
> *(h) to require as a condition of employment that any person shall abstain from joining or assisting or being active in any union or from exercising any right provided by this Part, except as permitted by this Part;*
>
> *(i) to interfere in the selection of a union;*
> …

[29] The allegations pursuant to Part II, raise the question of the Board's jurisdiction as set out in s. 6-103, which reads:

> ***General powers and duties of board***
> ***6-103****(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*
>
> *(2) Without limiting the generality of subsection (1), the board may do all or any of the following:*
>
> > *(a) conduct any investigation, inquiry or hearing that the board considers appropriate;*
> > *(b) make orders requiring compliance with:*
> > *(i) this Part;*
> > *(ii) any regulations made pursuant to this Part; or*
> > *(iii) any board decision respecting any matter before the board;*
> >
> > *(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act;*
> >
> > *(d) make an interim order or decision pending the making of a final order or decision.*

Analysis and Decision:

Summary Dismissal

[30] The Board utilizes summary dismissal to decide cases that have no reasonable chance of success. Summary dismissal is only used by the Board to decide cases that are patently flawed, it is not for deciding weak or novel cases and arguments. The Board has repeatedly relied on the test for summary dismissal as articulated in Roy v Workers United Canada Council, 2015 CanLII 885 (SK LRB):

> *[8] The Board recently adopted the following as the test to be applied by the Board in respect of its authority to summarily dismiss an application (with or without an oral hearing) as being:*
>
> > *1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant is able to prove everything alleged in his/her claim, there is no reasonable chance of success. The Board should exercise*

> *its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*
>
> *2. In making its determination, the Board may consider only the subject application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his/her claim.*
>
> *[9] Generally speaking, summary dismissal is a vehicle for the disposition of applications that are patently defective. The defect(s) must be apparent without the need for weighing of evidence, assessment of credibility, or the evaluation of novel statutory interpretations. Simply put, in considering whether or not an impugned application ought to be summarily dismissed, the Board assumes that the facts alleged in the main application are true or, at least, provable. Having made this assumption, if the Board is not satisfied that the main application at least discloses an arguable case, and/or if there is a lack of evidence upon which an adverse finding could be made, then the main application is summarily dismissed in the interests of efficiency and the avoidance of wasted resource.*

[31] In *SGEU v Morrisseau Dickson*, 2025 SKLRB 15 (CanLII), the Board affirmed the continuing application of the test but noted based on Court jurisprudence that pleadings must be read generously and consider whether the facts support causes of action that are not pled.

The First Application

[32] The First Application relates to facts up until the Trial and specifically pleads s. 6-58 and s. 6-59. The Board will consider whether either of these claims should be summarily dismissed.

Section 6-59

[33] Ms. Kerr has pled that the Union breached its duty of fair representation under section 6-59 in various ways in relation to her removal as President and the related proceedings. Ms. Kerr argues that the duty of fair representation covers the Union's internal operations. The Board disagrees.

[34] The duty of fair representation is a duty owed by the Union in its representation of members in relation to collective bargaining and Part VI rights: *Saskatchewan Government and General Employees' Union v Lapchuk*, 2025 SKKB 53 (CanLII); *Ha v Saskatchewan Polytechnic Faculty Association*, 2024 CanLII 126796 (SK LRB); *J.C. v Regina Police Association Inc*., 2023 CanLII 99838 (SK LRB). For the duty to apply, the case must relate to the matters set out in s. 6-59. This case is not; it is about internal operations of the Union.

[35] Ms. Kerr refers to decisions of this Board in *Canadian Union of Public Employees v Reuben Rosom*, 2022 CanLII 100088 (SK LRB); *Upper v Saskatchewan Government and General Employees' Union*, 2023 CanLII 120942 (SK LRB); and *David B. Lapchuk v.*

Saskatchewan Government and General Employees' Union, 2022 CanLII 21656 (SK LRB). None of these cases support the contention that the duty of fair representation applies to internal matters.

[36] The rights that Ms. Kerr alleges were infringed arise not from the collective bargaining relationship or Part VI of the SEA. The rights Ms. Kerr alleges to have been breached arise from the Constitution of the Union. The First Application cites Article 11.1, 14.17, 18 and 19 of the Union's Constitution. The subject matter of the First Application is how the Union put Ms. Kerr on leave as elected President and its refusal to allow her to return from leave. These issues are not within the ambit of s. 6-59. The Union's representational duty does not apply to internal matters and Ms. Kerr cannot succeed in a claim of a failure of the duty of fair representation in relation to the same.

[37] The Manitoba Board has also found that the duty of fair representation does not extend to internal matters, as stated in *C.M. v Amalgamated Transit Union, Local 1505*, 2020 CanLII 98742 (MB LB):

> *48 In assessing a prima facie case, the Board must assume that the allegations outlined in the Application are true. The Board can appreciate that the allegations surrounding the holding of a "secret trial" are understandably troubling for the Applicant. However, as the Board has previously noted, the duty of fair representation is confined to an individual's employment and does not extend to review of internal union matters. This conclusion is dictated by the very wording of Section 20, which requires that a bargaining agent "in representing the rights of any employee under the collective agreement" has not acted in an arbitrary, discriminatory, or bad faith manner.*

[38] Similarly, the Canadian Industrial Relations Board does not extend the duty of fair representation to internal union matters. In *Beaton v International Longshore and Warehouse Union-Canada*, 2017 CIRB 846 (CanLII), the Board said the following:

> *54 The Board has consistently held that a right must flow from the collective agreement for section 37 of the Code to apply: Carter v. I.L.A., Locals 1879 & 1654 (1991), 84 di 32 (Can. L.R.B.) (CLRB no. 849); McRaeJackson, supra; and Yetman and Longshoremen's Protective Union (ILA, Local 1953), Re, 2014 CIRB 709 (C.I.R.B.). In Yetman, supra, a complaint was brought pursuant to section 37 of the Code following the union's refusal to reinstate the complainant as a temporary card holder. The Board dismissed the complaint, since the right claimed by the complainant was contained in the hiring hall rules, not in the collective agreement, a matter over which the Board does not have jurisdiction in a DFR complaint:*
>
> > *[21] The complainant asserts that he is an employee in the bargaining unit, since he once held a temporary card and has been working at the port since August 2013. However, he failed to provide any evidence that he has rights under the collective agreement between the ILA 1953 and the SJSA that have been violated.*

> *[22] The evidence indicates that, in accordance with the LOA between the employer and the union, the complainant was one of 55 casuals issued with a temporary card in September 2002. The collective agreement is silent with respect to the conditions that must be met in order to maintain temporary card status. Those criteria are contained in the union's hiring hall rules rather than the collective agreement. Accordingly, as the complainant cannot point to any rights he has under the collective agreement to temporary status, the Board must conclude that section 37 of the Code has no application to the complainant's situation.*

[39] The Board's interpretation of the caselaw and s. 6-59 is that the duty of fair representation does not apply to the internal affairs of the Union. Even assuming all the allegations are true, the claim pursuant to s. 6-59 is destined to fail as it is not a claim within the recognized bounds of the duty of fair representation. The Board summarily dismisses the First Application as it relates to s. 6-59.

Section 6-58

[40] The second allegation in the First Application relates to section 6-58. The SEA provides jurisdiction to the Board to review internal union disputes in s. 6-58 of the SEA. The Union argues that s. 6-58 is not properly pled by Ms. Kerr as none of the facts could support a finding of a denial of natural justice. The Board disagrees.

[41] Section 6-58 provides the Board with jurisdiction to review certain internal union matters for compliance with the principles of natural justice, which is to say the Board ensures the Union conducted certain matters in a procedurally fair manner. The Board is granted this jurisdiction to protect union members from abuse of authority that is granted to unions through the SEA and orders of the Board. The predecessor provision from the Trade Union Act was discussed by the Saskatchewan Court of Appeal in *McNairn v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 179*, 2004 SKCA 57 (CanLII):

> *[37] In significant part, the purpose of this section lies in protecting a member of a union from abuse in the exercise of the power conferred on unions by the preceeding section—section 36—and in particular subsections (4) and (5) thereof. These subsections empower a union to fine any of its members who has worked for a struck employer during a strike, provided the constitution of the union made allowance for this before the strike occurred. The purpose also lies in protecting an employee, employed in a unionized shop and required to maintain union membership as a condition of employment, not to be deprived of membership by the union except, according to subsection (3), for failure to pay the dues, assessments, and initiation fees uniformly required of all members.*
>
> *[38] Thus subsection 36.1(1) imposes a duty upon a union (again correlative to the right thereby conferred upon an employee), to abide by the principles of natural justice in disputes between the union and the employee involving the constitution of the trade union and the employee's membership therein or discipline thereunder. As such, the subsection*

> *embraces what may be characterized as "internal disputes" between a union and an employee belonging to the union, but it does not embrace all manner of internal dispute. For the subsection to apply, the dispute must encompass the constitution of the union and employee's membership therein or discipline thereunder. And when it does apply, it requires that the principles of natural justice be brought to bear in the resolution of the dispute.*
>
> *[39] Seen in this light, and in light of the allegations of fact made in the statement of claim, subsection 36.1(1) has no effective bearing on the essential character of the dispute between the parties. The Union is not alleged to have breached the duty imposed upon it by this subsection, and nothing material to the action and its determination turns on this duty. The Union's duty to place the names of its unemployed members on the unemployment board in prescribed sequence, which lies at the heart of the dispute posited by the statement of claim, is not to be found in subsection 36.1(1) of The Trade Union Act but in Article 11(d) of the Union's Working Rules and Bylaws. And on the facts of the matter, the complaint is not about Mr. McNairn having been deprived of natural justice by the Union, contrary to section 36.1(1) of the Act. It is about his having been deprived of work, for which he was qualified, because the Union, contrary to Article 11(d) of Working Rules and Bylaws, moved his name to the bottom of the unemployed board following his job-related experience at Burstall.*

[42] The duty of procedural fairness imposed by s. 6-58 is contextual, and the content of the duty will depend on the context of a particular case. In *Saskatchewan Polytechnic Faculty Association v Chau Ha*, 2022 CanLII 75556 (SK LRB), the Board noted the following:

> *[41] Section 6-58 imposes a duty on a union to abide by the principles of natural justice in disputes between the employee and the union relating to matters in the constitution of the union, the employee's membership in the union, or the employee's discipline by the union.*
>
> *[42] In University of Saskatchewan Faculty Association v R.J., 2020 CanLII 57443 (SK LRB), the Board described the nature of the principles of natural justice, generally:*
>
> > *[98] The principles of natural justice govern individuals' participatory rights with respect to decision-making processes that may adversely affect their privileges, rights, or interests. Given the breadth of circumstances in which these rights may arise, their content is variable depending on the context, including the applicable statutory scheme. However, the principles of natural justice are generally concerned with ensuring that a person has a fair opportunity to be heard before being adversely affected by a decision, and with ensuring that the decision-maker is free from bias and the appearance of bias.*
>
> *[43] In summary, the purpose of section 6-58 is to protect an employee from abuse in the union's exercise of its power. It affords an employee the right to natural justice (procedural fairness) with respect to the union's decision-making process in relevant disputes between the employee and the union. It means that, depending on the circumstances, the employee will have the appropriate degree of participatory rights in relation to that process. The employee will have a fair opportunity to be heard prior to being adversely affected by a decision.*

[43] Within the context of this case, it is arguable that a high level of procedural fairness was required as it involved the removal of an elected officer of the Union from office. See: *Butt v.*

Naimpoor, 2014 CarswellOnt 66, 2014 ONSC 35, 236 A.C.W.S. (3d) 741. Section 6-58 is engaged as the matter is pled to involve both discipline by the Union and matters in the Union's Constitution.

[44] Ms. Kerr has pled that she voluntarily went on leave from her position as President, but when she sought to return from voluntary leave, this request was denied and requests for meetings with the Executive were refused. This is an allegation that the decision to make the leave involuntary, i.e.: impose a form of discipline, was not done in accordance with natural justice. It is implied in the pleading that there was no notice of the leave being converted to involuntary, and it is expressly pled that Ms. Kerr was denied an opportunity to be heard. Whether these issues are provable and constitute a breach of s. 6-58 are issues to be determined on the merits and not on summary dismissal.

[45] As it relates to the August 2024 Trial, Ms. Kerr has pled an arguable case of a breach of s. 6-58. It is pled that the hearing process did not accord with the Union's Constitution and that Ms. Kerr did not receive provide notice of the Trial. Both issues are essentially allegations of breaches of procedural fairness. If assumed to be true, there is a reasonable chance of success in this case and the Board declines to summarily dismiss the allegation.

[46] The threshold for summary dismissal is high. The Union must establish that there is no reasonable chance of success on the assumed facts. The Board finds that the Union has not met this burden, and it is arguable that there is a chance of success as it relates to s. 6-58. The Board declines to summarily dismiss the First Application as it relates to s. 6-58.

The Second Application

[47] The Second Application also relates to the facts before the Trial. It again pleads ss. 6-58 and 6-59 but also raises allegations under Part II of the SEA and ss. 6-36 and 6-43. The Board will consider the new sections before considering ss. 6-58 and 6-59 again.

Part II Allegations

[48] Ms. Kerr has raised various complaints under Part II of the SEA. These complaints fall outside the Board's jurisdiction. The Board is a creature of statute and only has the jurisdiction granted to it by statute. The Board is created under s. 6-92 and empowered under s. 6-103 to have the powers and duties that are conferred by the SEA. There is no section in Part II (or any section of the SEA) that confers on the Board with the power to determine disputes under Part II at first instance.

[49] Under Part IV, and in particular s. 4-8, the Board is granted appellate jurisdiction of Part II adjudications. This jurisdiction is clearly appellate, see: *Buchanan (Rural Municipality) v Veldman*, 2024 SKCA 111 (CanLII) at para 11, and this appellate jurisdiction cannot be expanded to grant the Board with the authority to determine Ms. Kerr's Part II complaints in the first instance.

[50] It is plain and obvious that the Board does not have jurisdiction to determine the parts of the Second Application related to Part II and those complaints are summarily dismissed.

Part VI Allegations

[51] Ms. Kerr has alleged that the Union has failed to comply with s. 6-36 by not paying certain benefits during her leave or while she was locked out of performing the duties of President. However, Ms. Kerr has not pled the facts necessary for s. 6-36 to apply. Section 6-36 only applies to lockouts as defined in s. 6-1 of the SEA. Administrative leave or being locked out of one's elected Union position does not fall within the definition of lockout applicable to Part VI as it was not done for the purpose of "compelling employees to agree to terms and conditions of employment".

[52] Ms. Kerr has alleged that the Union breached s. 6-43. Section 6-43 relates to the Employer's obligation to deduct union dues. The informational duty in this section relates to Employers and Unions and does not require employees to receive information. There are no facts pled that the Union failed to deduct dues or provide information to the Employer. Further, the duty imposed is only between employers and unions, an individual member does not have standing to bring an unfair labour practice pursuant to this section.

[53] It is plain and obvious that there is no reasonable chance of success of a claim for failure to deduct union dues as there is no factual allegation of a failure to deduct and Ms. Kerr is not a union and cannot bring a claim under s. 6-43.

Allegations that overlap with the First Application

[54] The underlying facts are the same for the two applications, and sections 6-58 and 6-59 are pled for both applications. The s. 6-59 allegations are dismissed for the same reason as the dismissal under the First Application.

[55] The section 6-58 allegations were not dismissed for the First Application. However, the Board controls its own process and generally does not permit the same relief to be sought

concurrently in multiple applications as it is an abuse of the Board's process to do so. The Board summarily dismisses the s. 6-58 allegations in the Second Application as they are more properly dealt with within the First Application and it would be an abuse of process to allow both applications to proceed.

The Third Application

[56] The Third Application relates to events after the Trial. It raises unfair labour practice allegations and duty of fair representation allegations. The Third Application does not plead s. 6-58, but the Board considers it necessary to determine whether the facts would support a claim under that section.

The Unfair Labour Practice Allegations

[57] Ms. Kerr has alleged various duties under s. 6-62 have been breached by the Union. The Board does not find s. 6-62 to be applicable as it relates to actions by Employers and this case relates to internal Union conduct. Ms. Kerr was not an employee of the Union certified with another Union, she was an officer elected from a bargaining unit certified with the Union. As will be discussed further below, the claim more properly falls under the rubric of s. 6-58.

[58] Section 6-63 would be more applicable than section 6-62, however, the facts pled are insufficient to establish interference or intimidation under s. 6-63(1)(a). It is pled that Ms. Kerr was removed from office and that the Union subsequently failed to follow the Trial decision. More facts are required to raise this past a matter falling under s. 6-58, to a matter that would qualify as the Union engaging in interference and intimidation in labour relations activity and membership in the Union. The Board summarily dismisses the pleading of an unfair labour practice based on the Union's response to the Trial decision.

The Duty of Fair Representation Allegation

[59] As discussed above, internal union disputes do not generally relate to the duty of fair representation. Whether the Union follows its internal decisions is not a collective bargaining right or a right under Part VI of the SEA. For that reason, the duty of fair representation allegation is bound to fail and the Third Application is summarily dismissed on that issue.

Should the Application Proceed Under s. 6-58?

[60] The Board must consider whether the factual allegation of the Union failing to follow the Trial decision would potentially ground a claim under s. 6-58. The Board should give self-represented litigants the benefit of the doubt in the drafting of applications to ensure that they receive access to justice. As stated by Barrington-Foote J. (as he then was) in relation to motions to strike in *Thirsk v Public Guardian and Trustee of Saskatchewan*, 2017 SKQB 66:

> *[26] However, technical rules relating to pleading can also prevent access to the court's process. That is particularly so in relation to self-represented litigants. Robin Hood suggests that the self-represented pleader should, "within reason", be given the benefit of the doubt in determining what is properly pled. Reisinger emphasizes that the court must nonetheless keep the purpose of pleadings in mind, and that it is, for that reason, sometimes appropriate to construe very poor pleadings against the pleader.*

[61] Ms. Kerr has pled that the Union's Constitution states that the Union's executive is bound by the written findings of the hearing committee. This is a pleading that there was a legitimate expectation of a certain procedure being followed by the Union.

[62] The doctrine of legitimate expectations is an extension of the rules of natural justice, as discussed by McCreary J (as she then was) in *Maharaj v Rosetown (Town)*, 2020 SKQB 254 (CanLII):

> *[51] The doctrine of legitimate expectations is an extension of the rules of natural justice and procedural fairness. However, it does not create substantive rights; where a legitimate expectation exists – this merely affects the content of the duty of procedural fairness: Old St. Boniface Residents Assn. Inc. v Winnipeg (City), 1990 CanLII 31 (SCC), [1990] 3 SCR 1170 at para 94 (WL); Baker at para 26; and Oberg at para 33. Before a legitimate expectation can arise respecting procedure, there must be either a clear, unambiguous and unqualified representation by the decision-maker about the procedure it will follow, or the decision-maker must have consistently adhered to certain procedural policies: Canada (Attorney-General) v Mavi, 2011 SCC 30 at para 68, [2011] 2 SCR 504; and Agraira v Canada (Public Safety and Emergency Preparedness), 2013 SCC 36 at para 94, [2013] 2 SCR 559.*

[63] Ms. Kerr has therefore pled an arguable case that the Union's deciding not to follow the Trial decision is a breach of procedural fairness in how that decision was made and in particular that the decision breached Ms. Kerr's legitimate expectation that the Union will follow the Trial decision. Legitimate expectations do not create a substantive right, but Ms. Kerr's potential legitimate expectations inform the content of the duty of procedural fairness and the pleadings raise the question of whether the decision to not follow the Trial decision was procedurally fair.

[64] Further, the allegations of retaliation, while unclear as to specifics, would also fall within s. 6-58. If the Union chose to not follow the Trial decision for improper purposes, that could constitute a breach of natural justice as it may not have been an unbiased decision.

[65] Whether the Union decided not to follow the Trial decision in accordance with the principles of natural justice is a matter that should not be determined at summary dismissal. It is a arguable question based on the pleadings and should to be resolved on the merits itself. The Third Application is summarily dismissed in part as it relates to s. 6-59 and 6-62, but the factual allegations will be considered under s. 6-58.

[66] The Board views the Third Application as directly tied into and related to the pleading under s. 6-58 in the First Application. It would be inefficient to allow The Third Application to proceed separately from the First Application. The Board orders that the First Application and the Third Application will be consolidated going forward.

Conclusion:

[67] The First Application and the Third Application can proceed for a determination on the issue of whether there has been a breach of s. 6-58. The Duty of Fair Representation allegation in the First Application, the Second Application in total, and the Third Application other than a s. 6-58 claim are summarily dismissed.

[68] With these Reasons, an Order will issue that:

a. the Application for Summary Dismissal in LRB File No. 217-24 is granted;

b. the Applications for Summary Dismissal in LRB File Nos. 216-24 and 246-24 are granted in part;

c. the Unfair Labour Practice Application in LRB File No. 177-24 is dismissed;

d. the Employee-Union Dispute Applications in LRB File Nos. 176-24 and 219-24 are dismissed in part; and

e. LRB File Nos. 176-24 and 219-24 are consolidated and shall be heard together going forward.

[69] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

DATED at Regina, Saskatchewan, this **28th** day of **May, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson