

Court File No.: CV-22-00686404-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

JAMIL JIVANI

Plaintiff

- AND -

BELL MEDIA CORPORATION

Defendant

STATEMENT OF DEFENCE

1. Unless expressly admitted below, the Defendant Bell Media Corporation (“**Bell Media**”, “**Bell**” or the “**Company**”) denies all of the allegations contained in the Plaintiff’s Statement of Claim and denies that the Plaintiff is entitled to the requested relief set out in paragraph 1 of the Statement of Claim.

THE PARTIES

2. The Defendant Bell Media, a subsidiary of Bell Canada, is a corporation duly incorporated pursuant to the applicable laws in Canada. Bell Media, a licensed multimedia broadcasting undertaking, is the former employer of the Plaintiff.
3. The Plaintiff is an individual residing in the Province of Ontario. Up until his termination on January 4, 2022, the Plaintiff was a radio host employed by the Defendant as the host of a radio show.

OVERVIEW OF THE MATTER

4. The Plaintiff was employed pursuant to a contract with Bell ("**Employment Agreement**") effective February 8, 2021. The Plaintiff's employment was terminated as the result of restructuring that resulted in the cancellation of the Plaintiff's show without any plan to replace the Plaintiff as host. On January 4, 2022, the Plaintiff was provided written notice of his termination in accordance with the termination provisions of the Employment Agreement and received further salary continuance until February 18, 2022, despite not signing the release required to receive the additional salary continuance.
5. Prior to the termination of the Plaintiff, Bell had serious concerns regarding the Plaintiff's failure to respect Bell's DEI principles as set out in its Code of Business Conduct and different DEI initiatives, including his open disdain for the Company's efforts to promote diversity, equity, and inclusion within the organization. As an Employee of Bell Media, the Plaintiff was bound by its principles, including its Diversity, Equity, and Inclusion ("**DEI**") principles. The Plaintiff was made aware of

the principles as a part of the hiring process and further advised of the importance of the principles through organization-wide messaging as set out below.

6. Bell's concerns extended to the content of the Plaintiff's show relating to discriminatory comments made by the Plaintiff on his show about members of the LGBTQ2S+ community. These comments garnered concerns and criticism both inside Bell and from listeners of the Plaintiff's radio show.
7. Bell also had serious concerns that the Plaintiff invited guests to his show who espoused "anti-vax" views and spread false information about the necessity and efficacy of vaccines and alternative therapies such as hydroxychloroquine. The Plaintiff allowed these guests to espouse such views without challenging such views or offering a balancing counterpoint. In addition, the Plaintiff repeatedly refused to provide Bell his vaccine attestation despite being himself vaccinated and despite repeated requests by his manager to provide the attestation.
8. Furthermore, the Plaintiff frequently exhibited a resistant and combative attitude when asked to address his performance issues by his managers. The Plaintiff responded to an e-mail request by his manager Hilary Whyte for a meeting to discuss several issues regarding his on-air performance and that of his guests. The issues related to the Plaintiff's poor ratings, public concerns and complaints received by the Defendant over the Plaintiff's on-air content (which included ideas regarding COVID-19 'anti-vax conspiracies' and skepticism over the validity of trans- and other gender identities as expressed by the Plaintiff and guests on his show) and concerns that the Plaintiff was not acting in accordance with the Bell's

principles, which the Plaintiff was required to follow. In response to Whyte's request for a meeting, the Plaintiff demonstrated gross and intolerable insubordination and a disdainful attitude toward Whyte by alleging that Whyte had levelled "baseless smears" against him.

9. Lastly, Bell had concerns with the Plaintiff's ratings which were in decline and underperforming.
10. For the reasons above, Bell determined that a restructuring was necessary and that the Plaintiff's show would be cancelled outright, as opposed to replacing the Plaintiff as a host. Consequently, the decision was made to terminate the Plaintiff's employment on a without cause basis.
11. On January 4, 2022, the Plaintiff's employment was terminated on a without cause basis. As a part of the termination, the Plaintiff was paid his entitlement equal to two (2) weeks' pay as per his Employment Agreement and a further additional four (4) weeks' pay in lieu.

The Plaintiff's Employment

12. The Plaintiff began his involvement with Bell Media first appearing as a guest on Bell Media's radio talk-show on the 1010 Newstalk station.
13. The parties subsequently entered into an independent contractor agreement July 6, 2020 pursuant to which the Plaintiff would produce and host a weekly radio talk show. From July 20 to 31, 2020, the Plaintiff also served as a fill-in on the Evan

Solomon Show, where he was asked to speak about the Black Lives Matter movement.

14. On January 28, 2021, the parties entered into a written employment agreement with the Plaintiff effective February 8, 2021 whereby the Plaintiff would host a night-time radio talk show.
15. Under the terms of the Agreement, the Plaintiff's compensation included:
 - (a) an annual salary of \$75,000;
 - (b) participation in a ratings bonus plan up to a maximum of \$10,000 per annum based on his performance in accordance with performance targets;
 - (c) participation in Bell's benefit plans; and,
 - (d) fifteen days of vacation.
16. The agreement, which is enforceable, provided that the Plaintiff's employment could be terminated at any time for any reason by Bell Media by providing the Employee with notice or pay in lieu of notice:

Notwithstanding any other provisions herein, this Agreement may be terminated at any time for any reason by Bell Media by providing the Employee with notice or pay in lieu of notice or a combination thereof as set out below (the "Notice Period"):

After three (3) months of employment and before completing one (1) year of employment, the Employee will be entitled to two (2) weeks base salary. After one (1) year of employment, the Employee will be entitled to three (3) weeks base salary for each completed year of employment with the Company, with a minimum entitlement of three (3) months' base salary and a maximum entitlement of twelve (12) months' base salary, or the minimum notice and severance required under the Canada Labour Code, whichever is greater. The Employee agrees that the Notice Period includes all statutory amounts payable under applicable employment legislation

as amended from time to time. Payments under this subsection 11.2 are in full satisfaction of any and all notice and severance entitlements, and are conditional upon the Employee executing a full and final release in favour of Bell Media.

17. The Plaintiff was terminated on January 4, 2022 on a without cause basis and paid his entitlements under the contract being two (2) weeks, and an additional four (4) weeks' was offered to the Plaintiff as further severance in exchange for an executed release. The Plaintiff was paid those additional four (4) weeks despite not executing the release and later commenced this litigation.
18. Prior to his termination, Bell Media had numerous concerns regarding the Plaintiff's on-air performance and his resistant and combative attitude toward his managers and workplace policies as well which he was bound to follow but resisted or ignored, as below.

DEI Principles

19. As a part of its overarching corporate objective, Bell Media adopted a range of Diversity, Equity, and Inclusion principles and initiatives aimed at fostering an inclusive, equitable and accessible workplace. As a part of that effort, Bell launched new pronoun guidance and efforts to enhance understanding the importance of inclusive language.
20. At the time of his hiring, the Plaintiff was advised of the Company's principles and his obligation to abide by them in his role, which he accepted. Furthermore, during the time of his employment, he received directives from the Company regarding its DEI principles.

21. Bell's commitment to inclusion was reinforced to its employees through its messages to the entire Bell organization, including the Defendant, which set out the Company's DEI principles and related efforts to promote its DEI initiatives, further underscoring the importance of the DEI as a key objective within Bell. The Plaintiff refused to participate in any of Bell's DEI initiatives, suggesting instead that the Defendant "demonstrate a commitment to true diversity: diversity of thought."
22. The Plaintiff continued to demonstrate a resistant and dismissive stance toward Bell Media's DEI principles by expressing skepticism regarding trans- and other gender identities on his show.
23. On or about October 13, 2021, the Plaintiff expressed the view on his show that celebrity Demi Lovato was disingenuous and merely "seeking attention" by asking that she be referred to the pronoun "they" as opposed to "she". The Plaintiff stated that he had received "hate" from those who disagreed with his views then expressed exasperation at using "they" as a pronoun, before saying he just could not do it anymore and that for the purposes of the show he would use "he" or "she".
24. As the result of the above, Bell received complaints from listeners and concerns from members of Bell Media that the messages that the Plaintiff was expressing and promoting through his show were damaging to Bell Media's reputation and giving the false impression that Bell Media held or supported similar views as the Plaintiff.

25. The Plaintiff also exhibited a resistant attitude toward Bell's workplace policies in respect of COVID-19 and vaccine attestations.
26. The Plaintiff was advised on numerous occasions about Bell Media's Vaccine Attestation mandate and resisted or otherwise evaded providing the attestation, stating that his e-mail inbox was full and that he did not check his e-mail.
27. The Plaintiff invited guests onto his show who expressed extreme, false views on the COVID-19 Global Pandemic and failed to challenge their viewpoints or offer a balancing counterpoint, as follows:
 - (a) On or about December 6, 2021, a caller to the show espoused the view that "the West" was "weak" and that Prime Minister Justin Trudeau was a "tyrant dictator" and a "globalist puppet". The Plaintiff did not challenge the comments of the caller, but rather then posed the question to the caller whether they thought the costs of COVID-19 were worth the consequences, to which the caller responded that they knew of "therapeutics" and individuals in Europe who had taken hydroxychloroquine with zinc and recovered and consequently "they...have blood on their hands". Again, the Plaintiff did not challenge the caller's false assertion regarding the safety and efficacy of hydroxychloroquine and other therapeutics.
 - (b) On December 8, 2021, the Plaintiff had Cathy Wagantall, a Member of the Parliament of Canada for Saskatchewan as a guest on his show. During the show she questioned the efficacy of COVID-19 vaccines and suggested that there were natural immunities to the COVID-19 virus. Again, the Plaintiff failed to challenge Wagantall on the falseness of her assertions in that regard.

28. Again, the broadcasting of such extreme viewpoints in an unchecked fashion garnered criticism and concerns from both internal members of Bell Media and individuals who had listened to the Plaintiff show concerned about the public perception of the company as a result of the broadcasting of such views; the veracity of the claims made; and the effects of facilitating of dissemination of such extreme views to a wider public audience.

The Poor Ratings of the Plaintiff

29. Bell Media was additionally concerned over the poor ratings the Plaintiff was achieving on his show.
30. When comparatively evaluating the market share of the Plaintiff and that of the previous host in the same time slot, the Plaintiff's ratings were in steady decline and underperforming..

Disciplinary Issues and Hostile Reactions to Managers

31. Bell Media was increasingly concerned regarding the Plaintiff's combative attitude when asked by various managers to change or improve his performance.
32. On one occasion, the Plaintiff failed to adequately prepare for a live, on-air broadcast, resulting in part of the show being done over the phone. The Plaintiff was subsequently advised by his Program Director Mike Bendixen that such a failure in preparation was unacceptable. The Plaintiff was asked to devise a process so that the same situation could be avoided. In response the Plaintiff challenged Bendixen in a hostile e-mail, stating that only the first segment was

done by phone and that it was “fine” and further stating that “if you have a problem, you can ask me instead of sending this type of e-mail. And perhaps acknowledge that we work very hard, even when we are sick, and I had one screw up like this in over a year.”

33. As the cumulative result of the above issues, Hilary Whyte, General Manager, Radio, wrote to the Plaintiff to advise him of complaints and concerns received regarding the show and invited the Plaintiff to discuss the show’s content and future plans, stating that “I want to be sure that we are reflecting the company’s strong commitment to Diversity and Inclusion, and that we are building passion in our audience and growing our ratings. We are incredibly challenged right now in both ratings and revenue, and it’s critical that we remain aligned.”
34. In response, the Plaintiff delivered a belligerent e-mail response, accusing Whyte of levelling “baseless smears” against him and stating that “as the only black radio host” he was offended that the show’s “commitment to diversity and inclusion” was being “questioned.”
35. The Plaintiff further advised that Whyte’s e-mail was so disturbing that he could not fulfill his duties and appear on-air. Later that evening, the Plaintiff publically tweeted “If you only welcome black men into your organization in order to control what we say, that isn’t diversity or inclusion.”

THE TERMINATION OF THE PLAINTIFF

36. As a result, Bell Media determined for the reasons set out above that a restructuring was necessary and the Plaintiff's show was to be cancelled without seeking to replace the Plaintiff with another host.
37. Consequently, the Plaintiff was terminated on January 4, 2022 on a without cause basis. The Plaintiff was paid the equivalent of two (2) weeks' pay as per his contractual entitlements and an additional four (4) weeks' pay, despite refusing to sign the release offering the additional four (4) weeks' pay. .

POST-TERMINATION CONDUCT OF THE DEFENDANT

38. In February 2022, the Plaintiff began to publish a five-part series on his personal online Substack blog, in which he recounted his involvement and eventual termination from Bell Media.
39. Of his hiring at Bell, the Plaintiff wrote that:

Elite institutions often make assumptions about a person's political views based on what he looks like or where his parents are from. Soon after being hired, I could see that Bell Media/iHeartRadio erred in making the same assumptions. I felt that they were hoping to have a hired a liberal stereotype of a black man who espouses their expected political talking points.

40. The Plaintiff admitted to resisting Bell Media's DEI principles, stating:

*Months later, corporate executives shared by email a vision for diversity and inclusion that involved dividing employees up by race, gender, and sexuality for "equity consultations." **I refused to participate, and suggested that the company ought to demonstrate a commitment to true diversity: diversity of thought.***

41. Additionally, the Plaintiff described Whyte's meeting request, confirming his resistant and dismissive attitude toward Bell Media's DEI principles and combative attitude to requests for changes in his performance:

*By December 2021, Bell Media/iHeartRadio attempted to pressure me into being a liberal stereotype. In spite of my efforts to engage a wide range of guests and ideas, one executive in particular began to question my commitment to "Diversity and Inclusion" (I assume she capitalized the letters D and I to show how serious she was). **Her attempts came across to me as actually questioning my willingness to parrot her preferred ideological talking points on identity politics.***

42. The Plaintiff further wrote:

My experience shows exactly why it's critical for politicians and business leaders to challenge the power of woke capital. What these companies are doing is not just business; it's politics.

MITIGATION

43. The Plaintiff indicated in a blog post entitled "I have a new job and Bell Media isn't happy" that he had successfully mitigated his damages by securing a position as President of Canada Strong and Free Network.

DAMAGES

44. The Defendant denies, on the basis of the foregoing, that the Plaintiff has been wrongfully dismissed or has otherwise suffered damages, as claimed.
45. The Plaintiff is entitled only to the severance as set out in his Employment Agreement, being two (2) weeks' pay in lieu of notice. Despite his entitlements, and despite his refusal to signed the release required to receive an additional four (4) weeks' pay, Bell paid the Plaintiff additional four weeks without a release for a total of six weeks' pay.

46. Under the Employment Agreement, the Plaintiff was entitled to an annual salary and eligible for a bonus up to a maximum amount of \$10,000. The ultimate amount of the bonus was contingent on performance targets based upon the market share the Plaintiff attained. In order to be eligible for the bonus, the Plaintiff had be actively rendering service as an on-air radio host both during and at the conclusion of the applicable Numeris ratings period. Accordingly, the Defendant states that the Plaintiff is not entitled to any amounts as bonus.
47. In the event damages are owing at common law, which is denied, the claimed notice period is excessive given:
 - (a) The Plaintiff's age, service, position, and other relevant factors;
 - (b) The Plaintiff's skills and abilities, which are considerable and readily transferrable to a wide range of employment possibilities, and support his excellent prospects of re-employment; and,
 - (c) Any damages incurred are subject to the principles of mitigation.
48. In any event, the damages claimed are inordinate and excessive.
49. The Defendant asks that this matter be dismissed with cost payable to the Defendant.

October 7, 2022

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Proceeding commenced at **TORONTO**

STATEMENT OF DEFENCE

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