

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JAMIL JIVANI

Plaintiff

- and -

BELL MEDIA CORPORATION

Defendant

**REPLY TO STATEMENT OF
DEFENCE**

1. The Plaintiff repeats and relies upon all allegations contained in the Statement of Claim.
2. The Plaintiff denies all allegations contained in the Statement of Defence, unless specifically admitted herein.

The Defendant Admits to Misrepresenting the Plaintiff's Termination

3. The Defendant informed the Plaintiff that his employment was terminated "*as a result of changes to the organization.*"
4. In the Statement of Defence, the Defendant admits, for the first time, that the Plaintiff's employment was terminated for ideological and political reasons.

Bell Baselessly Smears the Plaintiff's Character

5. In the Statement of Defence, the Defendant has attempted to mischaracterize the Plaintiff and has relied on ideologically based attacks in an effort to smear his character.
6. Contrary to Paragraphs 5 and 21 of the Statement of Defence, the Plaintiff is strongly committed to diversity, equity, and inclusion (hereafter referred to as "DEI").
7. The Plaintiff's understanding of DEI is fundamentally informed by his lived experience as a Black man. As a result, the Plaintiff has developed a strong commitment to a robust and substantive understanding of DEI. The Plaintiff's unique perspective as a Black man also formed an important part of the Defendant's ultimate decision to offer him employment.
8. However, when the Plaintiff brought this robust and substantive understanding of DEI into the workplace, he was met with hostility by the Defendant's largely White management. The Defendant clearly was only interested in an approach to DEI that fit its political bias and stereotypes.
9. In line with his personal commitment to DEI, the Plaintiff then attempted to engage with the Defendant in meaningful and respectful dialogue. However, the Defendant repeatedly dismissed the Plaintiff's attempts. The Plaintiff was then unfairly branded as "difficult" and "problematic."
10. DEI is a journey that companies and employees must go on together, especially when employees are from minority communities who are further unrepresented by management. The Plaintiff attempted on many occasions to be a team player and work with the Defendant to develop a mutual understanding of DEI that was genuine and fostered a sense of belonging for all people. This is evidenced by the Plaintiff's willingness to discuss vaccine hesitation in Black communities, at the Defendant's request, and interviewing trans and non-binary guests, also at the

Defendant's request. However, the Plaintiff was uncomfortable with attempts to segregate and separate employees on the basis of identity.

11. On November 10, 2021, the Defendant began to promote an approach to DEI that involved segregation and separation of employees on the basis of race, sex and sexual orientation. However, the Defendant also told employees that different perspectives were welcome: *"[i]t is important to hear from team members about their unique perspectives related to their own lived diversity experience."* The Plaintiff was told by the Defendant that the Defendant was willing to embrace other points of view from diverse employees, however it was made clear upon the termination of the Plaintiff that the Defendant is indeed not interested in embracing points of view that are not an echo chamber. The Defendant used the Plaintiff when it was beneficial, then terminated him when DEI required meaningfully engaging with a Black employee.
12. The Plaintiff hoped that a constructive and professional relationship with Regional Manager, Hilary Whyte (hereinafter referred to as "**Whyte**"), could be established, even after Whyte's history of hostile behaviour toward the Plaintiff. The Plaintiff agreed to meet with Whyte and General Manager, Richard Gray, on January 4, 2022 to discuss how they might work together moving forward and better understand what DEI looks like in practice. The Plaintiff hoped that the Defendant would show an interest in respecting the Plaintiff as both an employee and a Black man. However, the Defendant chose to terminate the Plaintiff rather than have such a conversation. It is the Defendant, not the Plaintiff, that refused to live up to the principles of DEI and who failed to show respect in the workplace.

The Plaintiff Promoted Fair and Balanced Discussions on his Show – Which the Plaintiff was Punished For

13. Contrary to Paragraphs 6 and 22 of the Statement of Defence, the Plaintiff was committed to creating an inclusive and respectful space for the LGBTQ2S+ community on his platform. As part of this, the Plaintiff engaged in a respectful discussion of trans and non-binary identities on his show (hereinafter referred to

as the “**February 24 Discussion**”) on February 24, 2021. As part of an interview that also touched on the impact of anti-Asian discrimination, the Plaintiff spoke with science columnist and former academic sex researcher, Dr. Debra Soh, about a controversy in the news concerning the banning of books on the subject of gender ideology.

14. Shortly afterwards, the Plaintiff was made aware that the February 24 Discussion had garnered minor criticism. The Plaintiff was forwarded an internal email authored by Christopher Bury, CJAD 800 Program Director (hereinafter referred to as “**Bury**”), which stated that the complaints regarding the February 26 Discussion were “*mostly internal*” and that Bury himself did not “*have a big problem with anything he [the Plaintiff] said.*” Bury’s email was forwarded to the Plaintiff by Michael Bendixen, Newstalk 1010 Program Director (hereinafter referred to as “**Bendixen**”). The Plaintiff then responded by sending an email to Bendixen in which he voiced his discouragement at the fact that some of his colleagues had taken issue with his work despite having done nothing wrong. Despite not raising any personal criticisms of their own, Bury and Bendixen still suggested that the Plaintiff interview “*a clearly pro-Trans activist or pro-Trans expert*” for the sake of appealing to those few who took issue with the February 24 Discussion.
15. The Plaintiff agreed to their suggestion as a show of respect. The Plaintiff then interviewed two separate trans guests, comedian Valerie Faye and politician Dr. Amita Kuttner, on February 26, 2021 and November 26, 2021, respectively. From February 26 to December 8, 2021, the Plaintiff further received no additional written communication from the Defendant expressing concerns over his discussions of trans and non-binary news stories.
16. Contrary to Paragraph 23 of the Statement of Defence, the Plaintiff’s discussion of singer, Demi Lovato (herein referred to as “**Lovato**”), on October 13, 2021 occurred against the larger context of a series of incidents involving the singer. On October 12, 2021, Lovato had been reported in the news as claiming the term “alien” was offensive to extraterrestrial beings. In this specific context, the Plaintiff perceived Lovato’s comments regarding her pronoun usage as an attempt at celebrity attention-seeking. However, the Plaintiff was and remains respectful of

pronoun usage. The Plaintiff respected the pronoun usage of multiple trans and non-binary guests who have appeared on his show, both before and after his comments on Lovato.

17. Contrary to Paragraph 7 of the Statement of Defence, the Defendant had requested that the Plaintiff discuss Black community perspectives on COVID-19 and COVID-19 vaccination, including an appearance on CTV's Your Morning. Vaccine hesitation is a well-documented phenomenon in the Black community due to historic and ongoing medical racism against the Black community. The Defendant therefore placed a significant burden on the Defendant's shoulders to represent complex views on several highly controversial topics. This was also a burden that a non-Black talk radio host in a similar position would not have been made to carry. Despite this, the Plaintiff responded by presenting fair and balanced discussions of COVID-19 and COVID-19 vaccination which incorporated Black community perspectives. Yet, despite the Plaintiff's effective and good faith efforts, he was unfairly reprimanded by the Defendant. By placing a significant burden on the Plaintiff's shoulders that it otherwise would not have put on a non-Black radio host, and then reprimanding the Plaintiff for allegedly failing to shoulder that significant added burden, the Defendant effectively set the Plaintiff up for failure.
18. Contrary to Paragraphs 25 and 26 of the Statement of Defence, the Plaintiff made clear to the Defendant that he was vaccinated. On October 20, 2021, the Plaintiff communicated his vaccination status to Whyte, and submitted a vaccination attestation through the Defendant's standard internal process.

The Plaintiff is Branded as "Difficult" Simply for Standing up for Himself

19. In response to Paragraph 8 of the Statement of Defence, the Plaintiff was unfairly cast as being difficult and combative simply for advocating for himself in light of the Defendant's highly toxic and unsupportive workplace culture.
20. The Defendant's workplace culture was toxic enough that it led the Plaintiff to confide in Bendixen that he was struggling to cope. Bendixen responded by

agreeing to meet the Plaintiff for an in-person lunch. At the lunch meeting, Bendixen encouraged the Plaintiff to persevere in light of the Defendant's toxic workplace culture as there was a potential opportunity for the Plaintiff to succeed John Moore (hereinafter referred to as "**Moore**"), host of the Defendant's Toronto morning show, upon Moore's retirement.

21. However, Bendixen was later terminated by Whyte on November 22, 2021, and replaced with Jeff MacDonald (hereinafter referred to as "**MacDonald**"). MacDonald was tasked with program directing for two large radio stations and therefore did not have a similar amount of time to help employees such as the Plaintiff to navigate the Defendant's toxic workplace culture. With his only form of support gone, the Plaintiff was left to twist in the wind.
22. Contrary to Paragraphs 33-35 of the Statement of Defence, the Plaintiff was unfairly mischaracterized as being unreasonable and combative in his response to the email from Whyte. As a Black man, the Plaintiff is thoroughly aware of the need for diversity and inclusion. Diversity and inclusion are deeply personal and professional values that shape the lived experience of all Black workers, including the Plaintiff's. Black workers therefore hold unique and deeply personal perspectives on the topics of diversity and inclusion. When Whyte questioned the Plaintiff's commitment to diversity and inclusion in her email, she was othering the Plaintiff and therefore effectively questioning the belonging of Black people at the Defendant company.
23. Contrary to Paragraphs 31 and 32 of the Statement of Defence, the Plaintiff had a respectful working relationship with Bendixen until Bendixen's termination on November 22, 2021. The Plaintiff treated Bendixen as a confidant and would willingly receive constructive feedback from him. However, there were occasional miscommunications between the Plaintiff and Bendixen. Those miscommunications were the result of the fact that the Plaintiff was working remotely for the majority of the COVID-19 pandemic. The Plaintiff did not have the opportunity to build in-person connections with his coworkers, including Bendixen. The Plaintiff therefore often found it difficult to understand the tone or intention of

emails from coworkers whom he had little to no in-person interaction with.

The Defendant Fabricates a Narrative about Poor Ratings

24. In response to Paragraphs 9 and 30 of the Statement of Defence, the Defendant's allegations regarding the Plaintiff's ratings and/or performance are contradicted by the Defendant's own actions. In January 2021, the Defendant demonstrated its satisfaction with the Plaintiff's performance by promoting him from hosting a nightly one-hour show in the Toronto market to hosting a nightly three-hour show which was nationally syndicated and broadcast in three different provinces (i.e. Ontario, Quebec, and British Columbia).
25. After receiving his promotion, the Plaintiff also continuously received positive feedback from Bendixen during weekly team meetings throughout 2021. Bendixen even went as far to inform the Plaintiff that he was being considered to replace Toronto morning show host, John Moore, upon his retirement.
26. The Plaintiff's ratings were also not in steady decline or underperforming. During weekly team meetings, Bendixen consistently communicated that ratings were down across the board due to a significant reduction in listeners commuting to work due to COVID-19 lockdowns. Therefore, the performance of any prior radio hosts in the Plaintiff's slot is not a reliable indicator of the Plaintiff's performance as the Plaintiff unfortunately began his role during the heart of the COVID-19 pandemic. Bendixen further advised the Plaintiff to focus his efforts on creating the best possible product as ratings would naturally pick back up whenever the COVID-19 pandemic was over. As a newcomer to the radio industry, and the only Black talk radio host in most of the Defendant's respective markets, the Plaintiff relied on Bendixen's experience and insights concerning his performance. Bendixen never informed the Plaintiff that his ratings were of concern to the Defendant. In fact, the Plaintiff was congratulated by Bendixen when he received a performance bonus for placing third in his timeslot.
27. Per the Plaintiff's employment contract with the Defendant, this bonus was paid to the Plaintiff on June 23, 2021. In a congratulatory email, Bendixen wrote, "*You*

have achieved 3rd place in the spring ratings paying you a \$1,000 bonus. It will be paid out on this Friday's pay period. Congrats man, it's been a strange few months and I very much value your commitment to the show and the station."

The Defendant Attacks the Plaintiff for not Towing a Liberal Partisan Line

28. Contrary to Paragraph 27 of the Statement of Defence, the criticisms levelled against Prime Minister Justin Trudeau (hereinafter referred to as "**Prime Minister Trudeau**") on December 6, 2021, were not "extreme" insofar as they echoed a common line of criticism made against Prime Minister Trudeau by both sitting members and supporters of the Conservative Party of Canada.
29. The Defendant's position that employees should defend Prime Minister Trudeau against widely held criticisms is a position that would require employees to be partisan in favour of the Liberal Party of Canada.
30. Furthermore, the comments made by MP Cathay Wagantall (hereinafter referred to as "**MP Wagantall**") on December 8, 2021, were the comments of a duly-elected Member of Parliament giving her perspective on policies that impact parliamentarians. The Defendant's position that employees should oppose the views of a duly-elected Member of Parliament is a position that would require employees to be partisan against the Conservative Party of Canada. Moreover, MP Wagantall's views were sufficiently debated by the Plaintiff and callers on the radio show.
31. The Defendant's alleged "concerns" over callers to its radio stations are baseless. The Plaintiff, like other on-air employees, does not screen callers to the show. Callers are screened by producers who are given instructions by Bell Media's management. The Defendant was largely unaware of the instructions given to producers and was not involved in communications between management and producers on that issue. For example, on April 15, 2021, the Plaintiff became aware of the Defendant's instructions to a technical producer to not allow callers on the air who sound like "seniors." The Plaintiff was sent a listener complaint dated

April 14, 2021, which stated, *"I was told by your screener Mark last night around 7pm that I sounded like a senior and therefore would not be allowed to make my comment. He said his director Mike Bendixen told them not to let seniors speak as he did not want to turn his station into an old person's radio station."*

32. The Defendant's producer sent a clarifying email in response to the listener's complaint, which read *"She said something along the lines of "I just never get on anymore, I don't know why". At this point I felt bad and decided the best decision to get her to stop calling and wondering why she wasn't getting on anymore was to tell her the truth."* The Plaintiff was not consulted in this decision or any other decision about what producers were told by management about call screening.

Post-Termination Conduct

33. It is unclear why the Defendant raised issue with the Plaintiff's post-termination conduct, except to show that the Defendant is clearly upset that the Plaintiff spoke the truth and did not remain silent.
34. There was nothing improper about the Plaintiff's conduct following his termination. The Plaintiff is an outspoken advocate and he shared his story in the hopes that others would know the truth as to his experience as the only full-time Black talk radio host employed and then terminated by the Defendant in the reprehensible manner that he was.

Date: October 24, 2022

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JAMIL JIVANI
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BELL MEDIA CORPORATION
Defendant

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Proceeding commenced at **TORONTO**

REPLY TO STATEMENT OF DEFENCE

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