



**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JAMIL JIVANI

Plaintiff

- and -

BELL MEDIA CORPORATION

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages:

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office

TAKE NOTICE THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: September 1, 2022

Issued By:

Local Registrar

Address of Court:

330 University Avenue

8th Floor

Toronto, ON

TO: Bell Media Headquarters
299 Queen St West
Toronto, ON M5V 2Z5

1. The Plaintiff, Jamil Jivani, claims against the Defendant:
 - a. Damages for breach of contract and wrongful dismissal damages in the sum of \$42,500 representing the compensation the Plaintiff would have earned during the common law notice period of 6 months;
 - b. A declaration that the Defendant breached its contractual duty of good faith and honesty in contractual performance to the Plaintiff;
 - c. Damages for the breach of contractual duty of good faith and honesty and contractual performance and/or moral damages for the bad faith manner of dismissal in the amount of \$300,000;
 - d. Punitive damages in the amount of \$200,000;
 - e. The Plaintiff's costs of this action on a substantial indemnity basis, plus the applicable HST; and
 - f. Such further and other relief as this Honourable Court may deem just.

The Parties

2. The Plaintiff is currently 34 years of age and resides in the city of Oshawa, in the province of Ontario. He is a lawyer, author, community advocate and media personality.
3. The Defendant (“Bell”) is a Canadian media company.

The Plaintiff is Recruited to Join Bell

4. Prior to commencing employment with Bell, the Plaintiff appeared on its shows as a guest.
5. The Plaintiff worked as an independent contractor with Bell after completing a try-out show on July 5, 2020, where the focus was on Black Lives Matter.
6. From July 20 – 31, 2020, the Plaintiff filled in on the Evan Solomon Show where he focused on Black Lives Matter.
7. He was recruited to join Bell as a radio show host by the program director for Newstalk 1010.
8. On September 3, 2020, the Plaintiff entered a contract to do a nightly 10 – 11 pm show in the Toronto market on iHeartRadio. He was excited to bring on a variety of guests from the Black community who represented a diversity of views. His first guests included the first Black Attorney General Kaycee Madu, and the first Black championship CFL coach Michael Pinball Clemons.
9. The Plaintiff was excited to join one of Canada’s largest media companies and to share his views and perspectives, not just as a member of the Black community, but as a free-thinker and activist.

10. Bell was excited to have the Plaintiff on its programming, as he was a member of a racialized community and it was beneficial to them for both optics and content.
11. The Plaintiff brought significant credibility to Bell in the areas of diversity and inclusion. At the time he joined Bell, he had recently published a book with HarperCollins Canada on the experiences of young men in racialized communities. He was also chair of the Premier of Ontario's Council on Equality of Opportunity and the Macdonald-Laurier Institute's Senior Fellow for Diversity and Empowerment. Earlier in his career, the Plaintiff was President of the Yale Black Law Students Association and named Young Lawyer of the Year by the Canadian Association of Black Lawyers.

The Plaintiff is Promoted to a Nightly Radio Show

12. Bell was impressed with the Plaintiff's performance, and he was promoted.
13. On January 28, 2021, the Plaintiff entered into a full-time employment contract with Bell to do a nightly (7-10 pm) radio show that was syndicated in the national market. This show was syndicated to seven different markets in three different provinces. Bell made it clear to the Plaintiff that he was poised to have a long career with the company, and this was a long-term investment into him as on-air talent and additional opportunities would come when it came time to replace established voices in the talk radio market.
14. He earned a salary of \$75,000 with the possibility of an additional \$10,000 in a bonus, which was dependent on ratings.
15. The Plaintiff was Bell's only full-time Black radio host in the talk radio market. His show was branded The Jamil Jivani Show.

16. The show began on February 3, 2021, during Black History Month.
17. Bell expected the show to focus heavily on Black History Month, and a Black History Month segment was part of the show daily.

Bell Attempts to use the Plaintiff as a Token

18. Little did the Plaintiff know, Bell expected the Plaintiff to espouse only certain kinds of views – ones that fit a stereotype that Bell thought a member of the Black community should conform to.
19. As news stories around Black Lives Matter and other racial issues faded from the news, Bell no longer had the same use for a Black employee. Tensions increased from Bell management when the Plaintiff would share his perspectives, views and beliefs.
20. It became clear that Bell had a rigid but unspoken vision for how Black people should fit into the company. Bell wanted the Plaintiff to be a token beholden to the company's identity politics.

Bell Tries to Force the Plaintiff to Denounce Canada for Canada Day

21. In the lead up to Canada Day 2021, Bell management pressured the Plaintiff to denounce Canada as racist. On-air talent were instructed to air pre-produced segments that defined Canada by the worst parts of the country's history.
22. The Plaintiff refused and questioned this bizarre request from Bell. He did not think it was appropriate to attack Canada in the lead up to Canada Day. This did not reflect his view or his values.

23. Instead of denouncing Canada Day, the Plaintiff aired segments highlighting the accomplishments of Canadians and spotlighting the voices of immigrants and military veterans.
24. Tensions from Bell management increased again. Bell was disappointed by his refusal to espouse a specific set of social and political views, and the company was disappointed that he did not fit the mold of a Black stereotype that they had expected him to.
25. Despite obvious tensions, Bell management refused to explicitly state their expectations of the Plaintiff or explain why the company had such stereotypical expectations of him as a member of the Black community.

General Manager Hilary Whyte demonstrates hostility to the Plaintiff

26. Hilary Whyte is a General Manager who oversees 17 radio stations with Bell.
27. On July 2, 2021, one of Bell's producers quit right before The Jamil Jivani Show went on air.
28. In a follow-up virtual meeting on July 30, 2021, Ms. Whyte insinuated that multiple employees were at fault for the producer's decision to quit. The Plaintiff asked Ms. Whyte for evidence to back up her insinuations. Ms. Whyte provided no evidence.
29. Ms. Whyte requested a one-on-one virtual meeting with the Plaintiff on August 5, 2021. Ms. Whyte again failed to provide evidence to back up her attempts to lay blame on the employees working on The Jamil Jivani Show. Ms. Whyte vowed to improve communication between Bell management and the Plaintiff. No improvements were made.

30. On November 17, 2021, Ms. Whyte fired the program director of Newstalk 1010, who was the only member of Bell management that the Plaintiff had ever met in person. Ms. Whyte refused to communicate what this significant change in management would mean for the Plaintiff or his colleagues on The Jamil Jivani Show.

Bell Removes the Plaintiff from the Air for Expressing Views Not Consistent with Its Stereotype of the Black Community

31. The Plaintiff frequently invited a diverse and inclusive collection of guests on his show to talk about a myriad of issues. Guests included Toronto Raptors’ Fred VanVleet, Brown University’s Glenn Loury, science columnist Dr. Debra Soh, evolutionary biologist Dan Riskin, social entrepreneur Tanya Lee, veteran sports journalist Jason Whitlock, author Fred Litwin, Jeff Charles of RedState.com, The Blaze’s Delano Squires, Kentucky State professor Wilfred Reilly, Samuel Sey of SlowtoWrite.com, standup comedian Valerie Faye and Green Party leader Dr. Amita Kuttner.
32. In the spirit of diversity and inclusion, the Plaintiff’s show encouraged debate and dialogue over important issues in the news.
33. On December 8, 2021, Ms. Whyte wrote to the Plaintiff and advised him that Bell had received “*complaints and concerns*” about his show and wanted to discuss his show’s “*content and plans.*” She referenced concerns with his alleged “*divisive and contrarian topics.*” She further stated:

I want to be sure 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. Ms. Whyte sent this email shortly before the Plaintiff was scheduled to go on air, causing him significant distress. As one of Bell's most visible Black employees, he was uncomfortable by Ms. Whyte's attempt to question his commitment to diversity and inclusion in a haphazard manner.
35. The Plaintiff was shocked and blindsided to receive this email, and wrote to Ms. Whyte "*as the only Black radio host in most (if not all) of Bell's talk radio markets, I am offended that a show branding my name would have its commitment to diversity and inclusion questioned. We embrace different viewpoints on our show each and every night that reflect Canada's multicultural mosaic.*"
36. In this lengthy email, the Plaintiff went on to ask whether the meeting that Ms. Whyte wished to have was disciplinary in nature. He asked a number of other specific questions, such as particulars pertaining to Bell's ratings and revenues, and he addressed some of the views which Ms. Whyte has identified as being "problematic." He asked specifically what opinions his diverse and inclusive collection of guests were espousing that were problematic. Finally, he asked that this meeting take place early in the new year, as he was departing on holidays on December 10, 2021.
37. Ms. Whyte responded to the Plaintiff advising that the meeting would be scheduled for January 4th, and the substance of the Plaintiff's email would be addressed "*at that time*". Further, she advised the Plaintiff that he would be removed from the air until that time.

38. Ms. Whyte sent the Plaintiff a calendar invitation for a meeting on January 4th. The calendar invitation included Ms. Whyte's superior, Regional General Manager Richard Gray. The Plaintiff had requested the presence of Mr. Gray due to his past experiences on the receiving end of Ms. Whyte's hostility.
39. The Plaintiff spent the Christmas holidays and New Year's preparing for a substantive conversation about diversity and inclusion. Given the importance of the subject to him personally and professionally, the Plaintiff was hopeful that a constructive dialogue could clarify specific expectations Bell had of him as an employee.

The Plaintiff is Terminated

40. On January 4, 2022, at the commencement of the meeting to address his email and Bell's concerns about alleged "*diversity and inclusion*", the Plaintiff was once again blindsided.
41. Mr. Gray did not attend the conference call meeting. Ms. Whyte did attend, and informed him that his employment was being terminated "*as a result of changes to the organization.*"
42. Ms. Whyte then abruptly left the conference call, leaving the Plaintiff to discuss his termination with one of Bell's human resource consultants. The Plaintiff asked the consultant if anyone at Bell would discuss his concerns over the company's diversity and inclusion policies. The consultant was not prepared to have that conversation and said she would look into the Plaintiff's concerns. No one at Bell followed up with the Plaintiff over his concerns.
43. Despite the fact that Bell has asserted that diversity and inclusion are paramount in the company, it would not answer the questions asked by its Black employee and instead manufactured reasons to terminate him.

44. Rather than address the Plaintiff's important questions about diversity and inclusion, Bell chose to dodge the conversation by terminating his employment.

Damages for Wrongful Dismissal

45. The Plaintiff's employment was wrongfully dismissed without cause, reasonable notice or sufficient compensation in lieu of reasonable notice contrary to his statutory and common law entitlements.
46. The Plaintiff states that he is entitled to damages equal to the compensation and benefits that he would have received over the period of his reasonable notice entitlement. In this regard, the Plaintiff pleads that he is entitled to a notice period of at least six (6) months.
47. In determining the plaintiff's entitlement to reasonable notice at common law, this Honorable Court ought to take into account the following factors:
- a. The character of the plaintiff's position;
 - b. The availability of comparable employment within the plaintiff's industry; and
 - c. The limited prospects for the plaintiff finding comparable employment at a comparable level of compensation.

Damages for Breach of the Duty of Honesty in Contractual Performance

48. The Plaintiff pleads that Bell's conduct, as described above, constitutes a breach of the doctrine of the duty of good faith, including the duty of honesty in contractual performance, which amounts to a breach of contract. In that regard, it was an implied duty with his employment with the Bell that it would treat him in good faith, with honesty, in a reasonable, candid and forthright manner, which the Plaintiff pleads that Bell failed to do.

Moral Damages For the Bad Faith Manner of Dismissal

49. In determining the Plaintiff's moral damages, the Plaintiff pleads that this Honourable Court ought to account for Bell's unconscionable and malicious treatment of him resulting in its failure to comply with its duty of good faith and fair dealing in the manner of dismissal and contractual duty of honesty in both pre and post-termination conduct.
50. In that regard, the Plaintiff pleads that when the parties entered into the employment agreement, it was contemplated that if Bell were to breach its duty of good faith and fair dealings upon the termination of the Plaintiff's employment, it was reasonably foreseeable that this would cause him mental distress.
51. The plaintiff pleads that he has suffered significant distress and reputational harm due to the unconscionable, malicious and vicious actions and inactions taken by Bell as particularized in this action.
52. The Plaintiff therefore pleads that he is entitled to moral damages in the amount of \$300,000.
53. The Plaintiff pleads that he is entitled to punitive damages in the amount of \$200,000.
54. The Plaintiff proposes that this action be tried in the City of Toronto in the Province of Ontario.

September 1, 2022

LEVITT SHEIKH LLP
130 Adelaide Street West, Suite 801
Toronto, ON M5H 3P5

Kathryn Marshall
LSO # 69168R
Telephone: 416-597-7887
Facsimile: 416-597-3396
Email: kmarshall@levittlp.com

Lawyer for the Plaintiff

JAMIL JIVANI		BELL MEDIA CORPORATION	
Plaintiff		Defendant	
		Court File No:	
		ONTARIO SUPERIOR COURT OF JUSTICE Proceeding commenced at Toronto	
		STATEMENT OF CLAIM	
		LEVITT SHEIKH LLP 130 Adelaide Street West, Suite 801 Toronto, ON M5H 3P5 Kathryn Marshall LSO # 69168R Telephone: 416-597-7887 Facsimile: 416-597-3396 Email: kmarshall@levittllp.com Lawyer for the Plaintiff	