

Federal Court



Cour fédérale

Date: 20220907

Dockets: T-553-22

T-554-22

Vancouver, British Columbia, September 7, 2022

PRESENT: Case Management Judge Kathleen Ring

Docket: T-553-22

BETWEEN:

**ANDREW ROBERT GIRARD, ALEXANDER GOSSEN, HARRY GARCIA,
MARCO AUGUSTO CARREIRA, THOMAS LAMOUREUX, JULIE KERFOOT,
PAUL GORDON MACDONALD, DAVID MONTAGNON, CHAD REXER,
SEAN BRIAN WILLIAM HOWE, JAMIE TATE LINN, DEVON BROOKS,
MICHAEL BROWN, AARON RUHL, ANDREW TIGHE,
THOMAS ALEXANDRE JOSEPH POIRIER, MARC DANIEL PARADIS,
JOHN ARTHUR GARY GEORGE SKEOCH, RYLEE JON GUDNASON STEVENS,
SHELDON BENEDICTSON, TREVOR J HALLETT, BRETT JERRY GAUDRY,
DON WERSCHLER, MARK BAKER, BRAEDEN ADAMS, DARRYL REID,
LANCE KENYON, JOHN KARKARIS, ORRIE MYLES ANDERSON,
CHRISTOPHER DANIELS ANDREWS, CAMERON JOSEPH EDWARDS,
DEREK ESKOWICH, BRENT TIMOTHY MARTIN, PAUL DEVARENNE,
BRODIE MELNYCHUK, NIKOLAS JAMES MALONEY, DANIEL PURPUR,
RYAN HRYNIW, ADAM HELFRINCH, MARTIN JOHN GOGELA,
EJAZ ALEKOZAI, JEREMY STEPHENSON, BRYAN MATTHEW MCHUGH,
RYAN EDGE, NOAH STEELE, TULLY HARTL, SPENCER STEVENS,
ANDREW NJUME, MATTHEW HICKS, LISA SCHMIDTKE,
CHRISTOPHER LOCKE, JEFFERY DEVINE, DAWOOD K HAIDER,
JARED SCOTT MAYHEW, TYRRELL HIATT, SHAWN BASKETTE,
GEORGE COSTA, BRIAN DESROSIERS, KYLE WILLIAM ROSS PILON,
KYLE DANIEL MICHAEL KORTKO, SHANE THOMAS STONE,
ANTHONY FIORINO BIN, JESSE RANDALL BLOOM, COLIN STAN PORTICE,
RYAN CHARLES THIESSEN, TIMOTHY HAY, MATTHEW BLANC,
DAVID MICHAEL BREDIN, RUSSELL THOMAS HENDERSON, STEVEN KOENIG,
THOMAS MARTIN SAVORN, JAMES WELCH, CINDY STEVENSON,
JON MCALLISTER, MICHAEL DAVID SERBEN, JACK EBIN THOMAS SAVORN,
CHARLES MILLER, MILAN MITIC, ROBERT DESROSIERS,
MATTHEW CARTER-BARR, WILLIAM CHESTER JOSLIN, COLBY COCHRANE,
TRAVIS SCHALLOCK, ANDREW MULHERIN-CARON,
CHRISTIAN THOMAS JONES, GEORGE ZINDROS, JEFFREY WYCHOPEN,**

**GLEN SAINAS, RYAN DONER, KYLE WICKSTROM, SLATE PODAIMA,
COLEMAN MITCHELL, ERNEST GEORGESON, DALLON DAVID EDMONDSON,
AARON SWAN, SARA LOVEGROVE, SAMUEL LEGERE,
CLAUDIO CARACCILO, RACINE MARIE STONE, STEVE STOPA,
CLAUDIA LAPOLLA, KELLY ROBERT HIGGINS, TED AMEAR KIRYAKOS,
ALAN TODD RUDDERHAM, SAMANTHA OLSEN, CHANDRA MARIE GILLIES,
LANCE LESLIE WILLIAMS, LIONEL BROWN RICHARDO,
JOHN THOMAS CRODEN, CHARLES ANTHONY DICKSON,
MICHAEL CASTILLO, MICHAEL CERULLI, KARIM LOWEN, SHAWN SILVARI,
JUSTIN DADINA, MARCEL LEONARD BEDARD, DWAYNE SOBERS,
JESSE ALLISON, NICOLAS LICOIS, CLAYTON PAPP, DOUGLAS BRYAN,
DEREK JAMES CHARLES WATERHOUSE, JAMIE CAMERON HALL,
DAYLE JONES, KENTON HILDEBRAND, DEVANANTH VICTOR SELVAM,
MATTHEW BRITTON, JESSICA ERIN ASLIN, ALIE KRAAYENBRINK,
NANCY JEAN WARD, ERIC BEAULIEU, REJEAN DONALD JOSEPH SAWCHUK,
DARYL CHAMBERS, RAPHAEL DESCHENES, JAMES LEE KERR,
EUGENE JEFFREY MACKAY, BRETT KYLE HUNT, DERRICK WOODALL,
TROY STRANDBERG, BILLY NEUMANN, RONALD MARK KELLY,
SUZANNE MARIE BATTICK, NATHAN HUGH BOHMER, TYLER BYRNES,
ROBERT STUVE, JASON FLOYD FREDRICKSON, KATHY PIETERSMA,
BRAD PALEY, CHANTEL TARA KOETZLE, PARTICK PAQUET, DENISE FINK,
NATHAN ROBERT VEINOT, KYLE GEORGE KING, DOMENIO RICCI,
CATHLEEN ALICE PESSERL, STEPHEN EDWARD GLADISH, REMY FAST,
ROBERT KOETSIER, BRETT HERBERT, COREY ADAM ARSENAULT,
JAZMINE STADNYK, RAYMOND LUNN, CAMERON JAMES SMITH,
MYLES GOZDA, DAVID CAMERON WENSLEY, ANDREW PAUL STEWART,
MICHAEL MARUSHY, NATHAN GOY, RICHARD MICHAEL, RYAN GILBY,
DEAN GRYWACHESKI, DORIN HALMAGHI, MICHAEL VALLINS,
NICOLE LABOUCAN, JAMES BULLOUGH, WALTER FERLEYKO,
JOCSELYN VALERIA YANEZ, TRISTAN JENKIN, SEAN FIORILLO,
ERIC MORKEBERG, NATHANIEL PHILIPPOT, JUSTIN DADINA,
CHAMREIYANG KAMEI, SHENDY GINGRAS, JEFFREY THOMAS BURT,
JAMES FREDERICK BETTS, DALE SAWA, ALEXANDER BLOKZYL,
ANDREW BLOKZYL, CLAYTON EDWARD MOFFAT, AARON TANK,
JOHN ROBERT MANSEAU, SEBASTIEN TRITZ,
COOPER AUSTIN BAILEY SHAW, DAVID WEBSTER, KATERINA D'AMOURS,
ANDREW STEPHEN KOETZLE, ANTHONY FEDERICO, BYRON SABORIO,
ADAM ALEXANDER EALEY, JOSEPH GUY CRISTIAN DUFOUR,
ARGENTINA CORPENNO, KEITH STOWE, TIM SCORY
and CAROLINE ROBILLARD**

Plaintiffs

and

**THE MINISTER OF TRANSPORT, HER MAJESTY THE QUEEN IN RIGHT OF
CANADA, ATTORNEY GENERAL OF CANADA, DIRECTOR GENERAL RAIL
SAFETY, AND CANADIAN NATIONAL RAILWAY**

Defendants

AND BETWEEN:

Docket: T-554-22

**ALLAN ROBINSON, AARON DUTKEWICH, BYRON FRANK,
MIKE CATHCART, CHRISTOPHER LAVIS, CHRISTOPHER WRIGHT,
MARTIN ALLAIRE, CHRIS BLASCHUK, RICHARD PROCTOR,
DARIO REMENTERIA, DYLAN PARKER, ELIZABETH PODGURNY,
EVAN BATKE, GLENNIE BROST, KEVIN KOLLMAN,
JOSH BERGEN, HOLLY KAMPS, KOBY WHITFIELD,
GREG PRINGLE, MARIJOE BURNHAM, MARK CEBROWSKI,
NATASA RISTOVIC, RYAN NEEFS, NELSON ROUSSEAU,
PAUL KUJADT, PAUL WEUSTEN, LANDON ALTMAN,
STEPHEN MERRELLS, THOMAS LARSON, ZACH PEPIN,
KYLE SMITH, JOSEPH SPEZIALE, ALEX HYNDS, CHRIS KUNTZ,
RICHARD JAWA, ROBERT ROY, CLAYTON GECK, JOHN BRYNE,
DAVID GUAY, ROBIN BROWN, NENAD MILETIC,
TYLER POINTER, MARK WOLYNICE, TRISTAN WETENDORF,
AUSTIN GENGE, ERNEST PEDERSEN, TIMOTHY O'LEARY,
TRAVIS BROST, SEAN MURPHY, PETER NOTAR, DARREN KORF,
CHUN (ROSE) WANG, DAVID HREBICEK,
MICHAEL SIMPKINS, CARSON WARNER,
CHRISTINE KRUSHEL FORD, GLEN SWEDLO, GILLES BOUTIN,
DANIEL HYNDS, ROBERT KOSSAN, DAVID BROST,
BRYCE DESJARLAIS, NORMAN DECK, WILLIAM CATHCART,
MICHELLE KING, DARRIN DMYTERKO, JESSICA DEBELLIS,
BRENDEN ANDREWS, GRAHAM HILL, MATTHEW BORLAND,
CLAIRE DUCHESNE, STYLIANOS ADAMIDIS, MARTIN DECK,
CATHERINE MARTIN, IAN BASARABA, CHRISTOPHER GREGORY,
WILLIAM HYNES, TODD MONTGOMERY, AARON BRISEBOIS,
SUKHDEEP NAGRA, GREGORY LOPATKA, THOMAS ARSTAD,
STEVE BAUMANN, DARYL COMMONS**

Plaintiffs

and

**THE MINISTER OF TRANSPORT,
HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
ATTORNEY GENERAL OF CANADA, CANADIAN PACIFIC RAILWAY,
AND DIRECTOR GENERAL, RAIL SAFETY**

Defendants

ORDER

UPON a case management teleconference having been held this day with counsel for the parties in the two above-noted actions to address the scheduling of the Defendants' proposed motions to strike in both matters;

AND UPON hearing submissions on behalf of the parties;

AND UPON being advised by counsel for the Defendants, the Minister of Transport, Her Majesty the Queen in Right of Canada, the Attorney General of Canada, and the Director General Rail Safety (collectively the "Federal Defendants") that the Federal Defendants are withdrawing their request to bring motions to strike in both actions at this time;

AND UPON being further advised that the Federal Defendants seek an order to extend the time for filing their Statement of Defence in both actions to 30 days after the issuance of the Court's decision on the other Defendants' motions to strike;

AND UPON noting the Plaintiffs' consent to the proposed timeline for the filing of the Federal Defendants' Statement of Defence;

AND UPON noting that counsel for the Plaintiffs submitted proposed Amended Statements of Claim to the Court in each action under cover of letter dated September 6, 2022;

AND UPON the parties being agreed that the Plaintiffs may file the proposed Amended Statements of Claim as of right pursuant to Rule 200 of the *Federal Courts Rules* (“*Rules*”);

AND UPON noting that the parties have agreed to the staggered timetable proposed by counsel for the Plaintiffs in correspondence dated September 2, 2022 for the delivery and filing of motion materials and the hearing of the motion to strike by the Defendant, Canadian National Railway (“CNR’s Motion to Strike”) and the motion to strike by Canadian Pacific Railway (“CPR’s Motion to Strike”) (collectively, the “Railways’ Motions to Strike”);

AND UPON the Court advising the parties that, given the overlap between the impugned pleadings and the proposed motions to strike in both actions, the Court prefers to have one timetable and one hearing date for the Railways’ Motions to Strike;

AND UPON counsel for the Plaintiffs confirming that the Plaintiffs do not anticipate making any further amendments to their pleadings in either action at this time. Accordingly, the Railways’ Motions to Strike will be based on the Plaintiffs’ Amended Statements of Claim;

THIS COURT ORDERS that:

1. The timetable for the service and filing of motion materials in the CPR’s Motion to Strike set out in paragraphs 1 to 5 of the Order dated August 3, 2022 remains in full force and effect. Paragraph 6 of the August 3rd Order is amended in accordance with paragraph 3 of this Order.

2. The timetable for the service and filing of motion materials in the CNR's Motion to Strike shall be the same as for the CPR's Motion to Strike, namely that:
 - (a) The Defendant CNR shall serve (but not file) its notice of motion and any supporting affidavit evidence by November 14, 2022;
 - (b) The responding parties on the motion shall serve (but not file) any responding affidavit evidence by December 14, 2022;
 - (c) The parties shall complete any cross-examinations on affidavits by January 31, 2023;
 - (d) The Defendant CNR shall serve and file its complete motion record, in accordance with Rule 364 of the *Rules*, along with proof of service, by February 21, 2023; and
 - (e) The responding parties shall serve and file their complete motion records, in accordance with Rule 365 of the *Rules*, along with proof of service, by March 14, 2023.

3. The hearing of the Railways' Motions to Strike shall take place at a special sitting of the Federal Court on Tuesday, April 11, 2023 at 9:30 a.m. MST for a duration of four (4) days. Unless otherwise directed by the Court, the hearing shall proceed as a hybrid hearing with counsel for the Plaintiffs and counsel for the Defendants CPR and CNR appearing in person at the Federal Court, 3rd Floor, 635-8th Ave. S.W., Calgary, Alberta and counsel for the Federal Defendants appearing by videoconference.

4. The Federal Defendants are granted leave to serve and file their Statement of Defence in both of the actions within 30 days after the date of the Order(s) disposing of the other Defendants' Motions to Strike.

“Kathleen Ring”
Case Management Judge