

Federal Court



Cour fédérale

Date: 20230213

Dockets: T-553-22

T-554-22

T-2286-22

Edmonton, Alberta, February 13, 2023

**PRESENT:** Madam Associate Judge Catherine A. Coughlan

**BETWEEN:**

Docket: T-553-22

**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, JOCELYN 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, HIS MAJESTY THE KING IN RIGHT OF CANADA, ATTORNEY GENERAL OF CANADA, DIRECTOR GENERAL RAIL SAFETY, AND CANADIAN NATIONAL RAILWAY**

**Defendants**

**Docket: T-554-22**

**AND BETWEEN:**

**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, HIS MAJESTY THE KING IN RIGHT OF  
CANADA, ATTORNEY GENERAL OF CANADA, CANADIAN PACIFIC RAILWAY,  
AND DIRECTOR GENERAL, RAIL SAFETY**

**Defendants**

**AND BETWEEN:**

**Docket: T-2286-22**

**DARRAN BLACKMON  
PAUL MENEER  
KARIM BEKRI  
TAMMY MITCHELL  
ADAM VAN DE WALLE  
EDDIE NEISER  
YOANN HAMEL  
VIKRAM KUKADIA  
KAJEN SATHASIVAM  
ADAM JOHNSON  
JOHN NORDQUIST  
PIERRE POIRIER  
RAJANIKANTH SHANMUGAM  
AUSTIN CLARK  
MARK DESJARDINS  
ISAIAH JOHNSON  
LINDEN AWSOME  
ARTHUR ANSELM  
TYSON WEBER  
EUGENIA KULCHYCKY  
TAMMY SMITH  
YANNICK LAPLANTE  
CAROLIN BOYER  
CHARLES ADAM  
PHILIP SCHROER  
ANDREW PRATT  
LUC PRINCE**

**Plaintiffs**

**and**

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

**Defendants**

**ORDER**

**UPON** the parties agreeing to a joint timetable proposed by counsel for the Plaintiffs in correspondence dated September 2, 2022 for the delivery and filing of motion materials and hearing of the motion to strike on the basis of jurisdiction by the Defendant, Canadian National Railway, and the motion to strike on the basis of jurisdiction by the Defendant, Canadian Pacific Railway (collectively, the “Jurisdiction Motions”);

**AND UPON** Associate Judge Ring’s Order of September 7, 2022 endorsing the timetable for the Jurisdiction Motions (the “September Order”);

**AND UPON** the Defendants, Canadian National Railway and Canadian Pacific Railway, serving (but not filing) their notices of motion and supporting affidavit evidence in respect of the Jurisdiction Motions on November 14, 2022 pursuant to the September Order;

**AND UPON** the Plaintiffs serving (but not filing) their responding evidence in respect of the Jurisdiction Motions on December 14, 2022 pursuant to the September Order;

**AND UPON** reading the correspondence dated January 5, 2023 from counsel for the Defendant, Canadian National Railway, with the consent of and on behalf of the Defendant, Canadian Pacific Railway, advising of their intention to bring a motion to strike the Plaintiffs’ responding affidavit evidence (collectively, the “Affidavits Motions”);

**AND UPON** reading correspondence dated January 26, 2023 from counsel for the Defendant, Canadian National Railway, with the consent of and on behalf of all parties, setting out a jointly proposed timetable for the Affidavits Motions and the Jurisdiction Motions;

**AND UPON** a case management videoconference having been held on January 27, 2023, with counsel for the parties in the above-noted actions;

**AND UPON** hearing the submissions on behalf of the parties;

**AND UPON** determining that the following timetable shall govern the next steps in the proceeding;

**THIS COURT ORDERS that:**

1. The Defendant, Canadian National Railway, shall serve (but not file) any materials in support of the Jurisdiction Motion in the matter bearing Court File No. T-2286-22 (*Darran Blackmon et al. v. The Minister of Transport et al.*), *nunc pro tunc*, by January 25, 2023.
2. The parties shall determine whether an agreement can be reached in respect of the Affidavits Motions, *nunc pro tunc*, by no later than February 10, 2023, subject to the Plaintiffs filing any evidence on Canadian National Railways' jurisdiction motion in the matter bearing Court File No. T-2286-22 (*Darran Blackmon et al. v. The Minister of Transport et al.*).
3. To the extent that the parties cannot reach an agreement in respect of the Affidavits Motions:

- (a) The Defendants, Canadian National Railway and Canadian Pacific Railway, shall serve and file their motion records in support of the Affidavits Motions pursuant to Rules 364 and 369(1) of the *Federal Courts Rules* by February 20, 2023;
  - (b) The Plaintiffs shall serve and file their responding motion records in response to the Affidavits Motions pursuant to Rules 365 and 369(2) of the *Federal Courts Rules* by March 6, 2023;
  - (c) The Defendants, Canadian National Railway and Canadian Pacific Railway, shall serve and file reply evidence (if any) on the Affidavits Motions by March 10, 2023 pursuant to Rules 369(3) of the *Federal Courts Rules*.
4. Regardless of whether the parties are able to reach an agreement in respect of the Affidavits Motions, the parties shall abide by the following timelines in respect of the Jurisdiction Motion:
- (a) The Plaintiffs shall serve (but not file) their evidence (if any) responding to Canadian National Railway's Jurisdiction Motion in respect of Court File No. T-2286-22 (*Darran Blackmon et al. v. The Minister of Transport et al.*) by February 15, 2023;
  - (b) The Defendants, Canadian National Railway and Canadian Pacific Railway, shall serve (but not file) any reply evidence in respect of the Jurisdiction Motion by March 13, 2023;

- (c) Cross-examinations on affidavits shall be completed by no later than April 24, 2023;
- (d) The Defendants, Canadian National Railway and Canadian Pacific Railway, shall serve and file their motion records for the Jurisdiction Motion by May 5, 2023;
- (e) The Plaintiffs shall serve and file their responding motion records responding to the Jurisdiction Motion by May 26, 2023;
- (f) The hearing in respect of the Jurisdiction Motion shall be heard in-person, over four days starting on June 13, 2023, in Edmonton, Alberta.

“Catherine A. Coughlan”

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Associate Judge