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**THE KING'S BENCH
Winnipeg Centre**

Oct 10 2023 08:34
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CHARGE/FEE PAID: 250.00

BETWEEN:

RYAN PILLON

Plaintiff

and

DUCKS UNLIMITED CANADA

Defendants

STATEMENT OF CLAIM

GREY WOWK SPENCER LLP
c/o Leighton B.U. Grey, K.C.
#200, 5110 51 Avenue
Cold Lake, Alberta T9M 1P3
Phone: (780) 594-0299
Fax: (780) 594-0211
Email: lgrey@gwslp.ca
File No. CST-84

**FILED
KING'S BENCH
OCT 10 2023
LAW COURTS
WINNIPEG**

APPVD
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**THE KING'S BENCH
Winnipeg Centre**

BETWEEN:

RYAN PILLON

Plaintiff

and

DUCKS UNLIMITED CANADA

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

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 a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Kings's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

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.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

OCT 10 2023

Date

Issued

B. Balth
Deputy Registrar

TO: DUCKS UNLIMITED CANADA
Oak Hammock Marsh Interpretive Centre
1 Mallard Bay at Highway 220

COURT OF KING'S BENCH
MAIN FLOOR - 408 YORK AVENUE
WINNIPEG, MANITOBA R3C 0P9
CANADA

CLAIM

1. The Plaintiff seeks the following remedies against the Defendant of this action:
 - a. A Declaration that the "COVID-19 Vaccination Passport Policy" ("Policy") issued by Ducks Unlimited Canada ("DUC"), requiring all DUC staff be Fully Vaccinated against COVID-19 and provide Proof of Vaccination to DUC by 24 September 2021 or at any other date be declared a unilateral change in the parties' employment contract;
 - b. A Declaration that the Plaintiff's employment was wrongfully terminated on or about 18 October 2021, or on such other date as determined by this Honourable Court;
 - c. The Plaintiff seeks all of his common law and statutory entitlements;
 - d. General damages in the sum of \$40,921.76 for wrongful dismissal, breach of contract and negligent misrepresentation, or in such other amount as is determined by this Honourable Court, representing the following:
 - i. 8 months' wages, travel allowance, taxable benefits, living out allowance, overtime, statutory pay, sick pay and vacation pay in the amount of \$36,257.92.
 - ii. A further amount equal to \$1,835.36 representing expected employer RRSP/DPSP contributions for the remainder of the notice period;
 - iii. A further amount equal to \$979.52 representing expected benefits costs for the remainder of the notice period;
 - iv. A further amount equal to \$1,848.96 representing GPP contributions during the notice period;
 - e. General damages for intentional infliction of mental suffering, invasion of privacy and harassment in the amount of \$250,000.00;
 - f. Aggravated damages for mental distress in the amount of \$250,000.00 or in such other amount as is determined by this Honourable Court;

- g. Punitive damages in an amount to be determined by this Honourable Court but not expected to exceed \$250,000.00;
- h. Special damages incurred in seeking alternative employment, relocation and retraining expenses and other out-of-pocket expenses in an amount to be determined at trial;
- i. Prejudgment and post judgment interest pursuant to the *Manitoba Court of King's Bench Rules*;
- j. Costs of this action including costs of all experts on a full fee basis; and
- k. Such further and other relief as this Honourable Court may deem just and equitable in the circumstances.

DEFINITIONS

- 2. The following definitions apply for the purposes of this Statement of Claim:
 - a. **DUC Staff:** means all permanent full and part-time employees, term employees and independent contractors including those individuals currently working remotely for DUC.
 - b. **Employment Insurance Benefits ("EI Benefits"):** means those benefits established under the *Employment Insurance Act, SC 1996, c 23*.
 - c. **Fully Vaccinated:** means having received the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19, and having allowed the time recommended by public health authorities to produce an immune response to COVID-19 elapse (14 days from receipt of a single-dose vaccine or of the second dose of a two-dose series). In time, being Fully Vaccinated may mean having received booster shots, when and as recommended by the applicable public health authorities.
 - d. **Informed Consent:** means the ability to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion, with sufficient knowledge and comprehension of the elements of the subject matter involved as to enable the individual to understanding and make an enlightened decision (*The Nuremberg Code, 1947*).

- e. **Policy:** refers to the "COVID-19 Vaccination Passport Policy" issued by DUC on 24 September 2021, requiring all DUC Staff be Fully Vaccinated against COVID-19 and provide Proof of Vaccination to DUC.
- f. **Privacy:** means the fundamental right of individuals to create boundaries limiting access to their person, communications, or personal information, including but not limited to, medical and health records.
- g. **Proof of Vaccination:** means providing to DUC documentary proof that a member of DUC staff is Fully Vaccinated.

OVERVIEW OF ACTION

A. The Parties

- 3. The Plaintiff, Ryan Pillon ("**Pillon**"), resides at or near The Pas, in the Province of Manitoba.
- 4. The Plaintiff was at all material times a DUC Staff member and subject to the Vaccine Policy.
- 5. The Defendant DUC, is a Canadian non-profit organization that works to conserve, restore and manage Canadian wetlands in order to preserve habitat for North American waterfowl, wildlife and people.

B. The Policy

- 6. On 24 September 2021, DUC issued the Policy. The Policy required all DUC Staff to be Fully Vaccinated against COVID-19 and provide Proof of Vaccination to DUC. During the time in question, DUC was "closely monitoring the COVID-10 situation and following the guidance and best practise from the Public Health Agency of Canada".
- 7. The Policy created a hostile and toxic work environment at DUC and no viable alternative options have been offered to being Fully Vaccinated.
- 8. The Policy unlawfully required the Plaintiff to disclose his private health information, namely his COVID-19 vaccination status, as a condition of his employment.

9. There was only one possible exemption to compliance with the Policy: *bona fide* medical reason that required documentation from a clinical specialist, to be addressed on a case-by-case basis. DUC failed to take requests for exemptions or accommodations seriously and did not grant them. Asking for an exemption also discriminates, as the individual is forced to disclose personal information.
10. The Policy did not provide for rapid antigen testing as a clear alternative. Many facilities and employers adopted testing policies whereby both vaccinated and unvaccinated individuals were regularly tested for COVID-19. Such policy was based upon the scientific recognition that vaccinated and unvaccinated individuals contract COVID-19 and potentially transmit the virus.
11. The steps taken by DUC to enforce its Policy as well as the Policy itself were inconsistent with its claims of promoting safety and wellbeing.
12. The Policy falsely or erroneously stated that COVID-19 vaccines are safe and effective.
13. The Policy discriminated against an identifiable group of employees (those who have not received a COVID-19 vaccine) and did not provide exemptions for employees who have natural immunity to COVID-19 or those with conscientious objections or for those working remotely or with little to no contact with other colleagues.
14. The Policy discriminated by mandating that all DUC Staff attest to their medical status regarding the COVID-19 vaccine. Those who did not were threatened with termination. This discriminated against an identifiable group based on medical records, including the Plaintiff.
15. The Policy discriminated against those who did not consent to the vaccination or who did not consent to providing their vaccination record to their employer, effectively forcing individuals such as the plaintiff to consent to a medical treatment to avoid termination.

C. The Vaccine

16. Five vaccines were currently authorized in Canada to treat symptoms of COVID-19: AstraZeneca, Moderna, Pfizer, Novavax, and Johnson & Johnson. All COVID-19 vaccines are still undergoing clinical trials until 2023 or later. None of these vaccines prevent the infection or transmission of COVID-19, or any of its variants. Nor has a complete list of the ingredients of any of these vaccines been published.

17. These vaccines are experimental. Long-term effects have not yet been sufficiently studied and there is emerging evidence of significant risks. These vaccines have not undergone the same stringent scientific approval process by Health Canada as have previous vaccines and medications. These vaccines cause other side effects that are not fully known at this time due to their relatively recent origin. No one can be certain about the long-term effects of a vaccine that has not been in existence for the long term and has not been studied over a span of years.
18. The COVID-19 vaccines recommended by Canadian public health authorities are known to cause severe adverse effects and injuries for some individuals. Health Canada has warned about various serious reactions from the COVID-19 vaccinations. These vaccines cause serious reactions including myocarditis, pericarditis, Bell's Palsy, thrombosis, immune thrombocytopenia, venous thromboembolism, acute myocardial infarction, cardiac sarcoidosis and anaphylaxis.
19. Vaccinated and unvaccinated Canadians can be infected with and transmit COVID-19. Pfizer and Moderna publicly acknowledge that their mRNA vaccines do not provide immunity to COVID-19 or its known variants. They merely claim to provide some "benefits" or "protection" that in certain circumstances at best lessens severity of symptoms or potentially reduces the risk of hospitalization.
20. The "benefits" or "protection" of the vaccines vary depending on numerous factors that are still being observed and studied, including any underlying health conditions, the individual's age, and when the vaccine was administered in relation to any variant of concern.
21. The recent and continued release of Post Authorization Adverse Events Reports, by the US Food and Drug Administration ("FDA") regarding the Pfizer COVID-19 vaccine, indicate that adverse reactions and side-effects, up to and including death, are not only more severe, but more frequent than anticipated based on initial data released to the public. The FDA's own documentation reports that during the Reporting Interval alone, 1,223 deaths were reported with 9,400 cases having an unknown outcome.

D. The Employment

22. Pillon commenced employment with DUC on or about 1 August 2017 as a Conversation Program Specialist 2. Pillon worked faithfully and honourably for DUC for a period of 4 years. At the time of his wrongful dismissal, he had advanced through the pay steps of a Conservation Program Specialist 2.

23. The key terms of the Plaintiff's employment contract included:

- his employment was indeterminate;
- his base annual salary was \$54,000.00;
- he was entitled to five (5) weeks annual vacation;
- he was entitled to share in DUC's extended benefits program;
- he was entitled to share in DUC's group savings and retirement; and
- he was entitled to reasonable notice or pay in lieu of reasonable notice for termination without cause.

24. The Plaintiff was at all material times a competent, hard-working and valuable employee. He consistently received positive performance reviews followed by regular promotions, salary increases and discretionary bonuses.

E. The Wrongful Dismissal

25. DUC promised a diverse culture where everyone was welcome, stating that a variety of cultures, identities and beliefs enrich its environment. DUC claims to believe innovation is enhanced through diversity and inclusion and commits itself to being a place of belonging for all people, united in conservation. The plaintiff discovered that none of this applies to unvaccinated persons who refuse to disclose their personal medical information.

26. The Policy required that all DUC Staff must be Fully Vaccinated and provide Proof of Vaccination. Violation of the Policy brought disciplinary action up to and including termination of employment. Employees not granted an accommodation who remained unvaccinated had their employment contracts unilaterally terminated.

27. The Policy was a blanket one granting no alternatives. The risk of infection, let alone serious illness or death, is vanishingly low for all but a statistically minuscule segment of the elderly population, almost none of which are part of the Canadian workforce.

28. On 18 October 2021, Pillon was notified by DUC via letter that he was in violation of the Policy and that his employment was summarily terminated.

29. No accommodations were offered by DUC to Pillon. Where taking part in an activity can be shown to be a *bona fide* requirement, employers are required to accommodate to the point of undue hardship by assigning an employee an alternative assignment or method of compliance. The Plaintiff often worked remotely during his employment with DUC.
30. At the time of his wrongful dismissal, the Plaintiff's gross annual salary was \$54,000.00, not including other employer contributions, rewards or benefits.
31. The Plaintiff claims wrongful dismissal from DUC, effective 18 October 2021. He was dismissed without just cause, without notice and without pay in lieu of notice.
32. The Plaintiff says that, even if successfully established by the employer, which is not admitted and is expressly denied, one act of insubordination is insufficient grounds for summary dismissal. Factors the court will consider in determining whether one instance of insubordination or disobedience constitutes grounds for just cause for summary dismissal include, of relevance and, among others:
- a. Whether the work rules were consistently enforced;
 - b. Whether work rules were clearly communicated to the employee;
 - c. Whether the work order was lawful and reasonable in content; and
 - d. Whether the employee had a reasonable excuse for disobedience.
33. Pillon opposed the Policy's requirement to reveal his medical records and says that being forced to provide medical information as a condition of employment was discriminatory.
34. The Policy discriminated by mandating that all employees attest to their medical status regarding the COVID-19 vaccine. Those who refused were put on leave without pay and threatened with termination. This discriminated against an identifiable group based upon non-disclosure of private medical records.

F. Damages for Wrongful Dismissal

35. The common law permits an employer to terminate an employee at any time for no reason at all, provided that the employer provides the employee with reasonable notice of the termination, or pays termination pay in lieu thereof. As Pillon was in fact terminated on a without-cause basis, he is entitled to pay in lieu of common law reasonable notice, in addition to any statutory minimum entitlements found in Provincial legislation. Pursuant to standard contractual principles, Pillon is entitled to be

restored to the position he would have been in if he had continued to remain employed with DUC for the balance of the notice period. This clearly includes the base salary, commissions, benefits, vacation pay and other entitlements that would have accrued during the applicable notice period.

36. At the time of his wrongful dismissal, the Plaintiff was 34 years old and had been employed with DUC for 4 years. His specialized skillset, training, and experience in what is otherwise a very niche market is not easily transferable to other employers or positions in different market segments, therefore the Plaintiff is entitled to a higher notice period.
37. The Plaintiff says that the applicable reasonable notice period is 8 months or pay in lieu thereof.
38. The Policy and resulting actions by DUC unilaterally changed the terms of employment, revoked employment and privileges, and caused loss of employment to the Plaintiff. Wrongful dismissal is prohibited under Manitoba law and entitles an employee to sue for the same damages they would have received in an outright termination.
39. Upon acceptance of his offer of employment with DUC, the Plaintiff did not agree to any condition of employment involving compulsory vaccinations, let alone an experimental injection bearing a Health Canada warning that is linked to the deaths and injuries of untold recipients, and which is still undergoing clinical trials. The Policy caused severe hardship and irreparable harm to Pillon.
40. The Plaintiff says that DUC is legally obliged to respect the autonomy and dignity of its employees and the confidentiality of their medical information, even after they have died; DUC is obliged not to use medical knowledge to breach the employment contract and violate the human rights and civil liberties of Pillon, even under threat from government authority. These duties have not been demonstrated in the application of the DUC Policy.

G. MITIGATION

41. On 15 October 2021, Employment and Social Development Canada ("ESDC") announced new codes for the Record of Employment ("ROE") relating to the termination of employees in relation to COVID-19.
42. The ESDC's announcement demanded that employers who terminate an employee because of failure to comply with a mandatory COVID-19 vaccination policy are to indicate **code M** (dismissal) on that employee's ROE, disqualifying them from eligibility.

43. The ESDC website has been further updated to advise potential claimants that:

"[I]n most cases, if you lose or quit your job because you didn't comply with your employer's mandatory COVID-19 vaccination policy, you won't be eligible for EI regular benefits."

44. The ESDC website states:

When the employee doesn't report to work because they refuse to comply with your mandatory COVID-19 vaccination policy, use **code E (quit)** or **code N (leave of absence)**.

When you suspend or terminate an employee for not complying with your mandatory COVID-19 vaccination policy, use **code M (dismissal or suspension)**.

If you use these codes, we may contact you to determine:

- if you had adopted and clearly communicated to all employees a mandatory COVID-19 vaccination policy
- if the employees were informed that failure to comply with the policy would result in loss of employment
- if the application of the policy to the employee was reasonable within the workplace context
- if there were any exemptions for refusing to comply with the policy

45. The ESDC uses the facts provided by the employer and the terminated employee to determine if the employee will be entitled to EI Benefits, which they will likely not be, by the ESDC's own admission.

46. The Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion, stated in a CBC Radio interview on 21 October 2021 that Employees who do not comply with a Covid-19 vaccination policy will be ineligible for EI Benefits, stating that if getting vaccinated is "a condition of employment that hasn't been met and the employer [is] choosing to terminate someone for that reason, [then that] would make that person ineligible for EI".

47. As of 18 October 2021, Pillon lost his primary source of income and was rendered ineligible for EI Benefits. His primary source of mitigation was therefore lost by operation of federal law.

H. INTENTIONAL INFLICTION OF MENTAL SUFFERING

48. The Plaintiff pleads that DUC intentionally caused mental suffering to him through threats and intimidation during his employment because of his vaccination status and his general distrust and hesitation over the COVID-19 vaccine specifically.

I. INVASION OF PRIVACY

49. The Plaintiff pleads that DUC committed a tortious invasion of privacy upon him by disclosing the identity of unvaccinated employees through DUC's communications revealing which employees were terminated as a result of their vaccination status.
50. By forcing DUC employees to reveal their unvaccinated status in order to receive an accommodation, or risk being denied and fired with cause, DUC forcibly invaded the Privacy of their employees, including the Plaintiff.
51. DUC's revelation of the Plaintiff's unvaccinated status constituted public disclosure of private information. Such information was disclosed to others by secluding and separating unvaccinated employees at DUC. This inflicted mental harm upon the Plaintiff.
52. This invasion of privacy and public disclosure of the Plaintiff's private medical information was intentional and reckless. DUC knew or ought to have known that such disclosure would cause distress, humiliation or anguish to the Plaintiffs.

J. GENERAL AND MORAL DAMAGES FOR BAD FAITH

53. The Plaintiff suffered significant mental anguish resulting from exposure to the risk that he was unable to meet his basic needs; food, clothing, and shelter for himself and his family.
54. The Plaintiff claims punitive damages for the harassment and prejudice suffered by he and his family as a result of the discriminatory Policy. The Plaintiff reserves the right to amend the amounts claimed for punitive damages to account for future economic losses.
55. In addition to damages for pay in lieu of notice, the Defendant is liable for further aggravated and punitive damages stemming from the unduly insensitive manner in which it carried out the termination. The Defendant's actions are particularly egregious given that the quality of his work was exemplary.
56. At all material times, the Defendant had a contractual duty to treat the Plaintiff with good faith, both during the course of his employment and at the date of his termination.
57. The Plaintiff has suffered measurable damages, including mental distress, anxiety, and in particular, injury to dignity and self-respect. The Plaintiff is therefore entitled to seek significant damages due to

the manner in which the Defendant terminated his employment, including a claim for punitive aggravated damages arising from flagrant human rights violations.

58. Scientific data shows that the COVID-19 virus poses no serious health risk to 99.97% of Canadians, and that nearly all deaths directly attributable to the virus occur in persons over 80 years of age suffering from multiple co-morbidities and compromised immune systems. Such persons are not part of the Canadian workforce. The risk of serious illness or death to persons under the age of 60, which includes the Plaintiff, remains vanishingly low.
59. The best scientific data available shows that there is a 0.7% risk of asymptomatic spread of the COVID-19 virus even among persons living in the same household.
60. There is no scientific data to support the conclusion that the COVID-19 vaccines have any impact upon reducing the spread of the virus.
61. There are many reasonable and practical alternatives to mandatory vaccination that would be more effective at controlling spread of the COVID-19 virus among the Defendant's employees, all of which are far less prejudicial than summary termination of loyal employees exercising their right to refuse the vaccine.
62. Mandating employees to take the COVID-19 vaccine violated the fundamental tenet of medicine known as Informed Consent, and the Hippocratic medical maxim: "do no harm".
63. The collection of vaccine status is not confidential. When an employee is placed on unpaid leave, or termination from their employment, their status is immediately apparent.
64. The Defendant actively, knowingly, and willfully harmed the Plaintiff. The Defendant's conduct was high-handed and improper.
65. As a result of these breaches, the Plaintiff has suffered the following damages:
 - a. Severe and permanent psychological, physical, and emotional trauma;
 - b. Loss of employment opportunities;
 - c. Loss of sleep;
 - d. Loss of trust in others;
 - e. Loss of self-confidence;
 - f. Loss of income;
 - g. Loss of opportunity for future income; and
 - h. Other such damages as will be proven at the trial of this action.

66. The Plaintiff pleads and relies upon the following:
- a. *Manitoba Employment Standards Code*, CCSM c. E-110; specifically ss. 4(2), 5, 29(1), 29(2), 43, 44, 60.1, 61(1), 61(2), 76, 77(1), 77(2), 86(1), 88, 133(1), 135(1), 135(3), 139(1), 140(1), 140(2), and 141;
 - b. COVID-19 Policy issued by DUC; and
 - c. Such other enactments and legislation as the Plaintiff may advise and this Honourable Court may consider given the circumstances.
67. The Plaintiff proposes that the trial of this action take place in Winnipeg.
68. The Plaintiff states that the trial will take no longer than twenty-five (25) days.

OCT 10 2023

Date of issue

GREY WOWK SPENCER LLP

c/o Leighton B.U. Grey, K.C.

#200, 5110 51 Avenue

Cold Lake, Alberta T9M 1P3

Ph: 780-594-0299

Fax: 780-594-0211