

Form 10
[Rule 3.25]

Clerk's Stamp:



COURT FILE NO. 2106 00746

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE LETHBRIDGE

PLAINTIFF NAOMI SMART

DEFENDANT CANADIAN NATURAL RESOURCES LTD.

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

James S. M. Kitchen
Barrister & Solicitor
203-304 Main St S
Suite 224
Airdrie AB T4B 3C3
Phone: 403-667-8575
Email: james@jsmklaw.ca

NOTICE TO THE DEFENDANT

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of Facts Relied On:

Background

1. The Plaintiff, Ms. Naomi Smart resides at or near Pincher Creek, Alberta, and was previously employed by the Defendant.
2. The Defendant, Canadian Natural Resources Ltd. is an oil and gas company (CNRL) based in Calgary and which operates various resource extraction sites throughout Alberta and British Columbia.
3. Ms. Smart became an employee of the Defendant in December 2020. She was a heavy equipment operator for the duration of her employment with the Defendant.
4. Ms. Smart faithfully and diligently performed her duties on behalf of the Defendant, and throughout her employment, Ms. Smart proved herself to be a valuable and reliable employee. Only a week prior to her termination, she had been selected to train for a promotion to a supervisory position.
5. Ms. Smart's duties included but were not limited to:
 - a. Heavy equipment operation;
 - b. Line duty; and
 - c. Permits to work issuer.
6. Ms. Smart's employment with the Defendant continued unabated until she was terminated on October 26, 2021 without cause and without reasonable notice or proper pay in lieu thereof.

The Defendant's COVID Vaccine Mandate, the October 12, 2021 Letter, and Termination of Ms. Smart

7. On September 23, 2021, the Defendant implemented a mandated COVID vaccination policy. This policy requires all employees of the Defendant to provide proof of double COVID vaccination or be placed on "unpaid leave" as a disciplinary measure on December 1, 2021.

8. Shortly following September 23, Ms. Smart and several other employees of the Defendant exercised their lawful right to communicate with each other and with other employees regarding the Defendant's COVID vaccine mandate. Many hundreds of CNRL employees and contractors joined an online group stated by Ms. Smart and her colleagues for the purpose of discussing the Defendant's COVID vaccine mandate and what could be done about it. The group exercised its lawful right to seek legal counsel.
9. On October 12, 2021, counsel for the group issued a letter to the Defendant, asking the Defendant to reconsider its COVID vaccine mandate and notifying the Defendant that over 1,100 of its employees and contractors disapproved of the Defendant's mandate, did not intend to comply with the mandate, and would take legal action if disciplined pursuant to the Defendant's mandate. The Defendant did not respond to the October 12 letter.
10. At some point after the October 12 letter was provided to the Defendant, it was publicized in the media. The letter was not provided to the media by Ms. Smart and she was not at any time publicly identified as one of the 1,100 CNRL employees and contractors referred to in the letter. At no time prior to her termination did Ms. Smart receive any communication from the Defendant regarding the October 12 letter, or her involvement, such as it was, in organizing the group of CNRL employees and contractors.

Termination of Ms. Smart

11. On October 26, 2021, Ms. Smart received a call on her cell phone from her manager, Tim Hayward. The call lasted approximately 90 seconds. Mr. Hayward told Ms. Smart that she was being terminated immediately. Later that same day, Ms. Smart received a letter from Mr. Hayward stating that Ms. Smart had been terminated without cause. No explanation or reason for termination was provided in either the call or the letter.
12. The Defendant presented Ms. Smart with a release agreement that required her to release the Defendant from any and all claims regarding her termination in order to receive any severance pay above the minimum 2 weeks of pay in lieu of notice she is statutorily entitled to pursuant to the *Employment Standards Act*. Ms. Smart did not endorse the release.
13. Ms. Smart was blindsided by the sudden termination and emotionally devastated.

Damages: Notice Period

14. Ms. Smart had intended to work for the Defendant for the rest of her career and retire in or around the year 2034. Prior to starting with the Defendant, Ms. Smart had been working in the oilsands for approximately 19 years, since 2001. At her date of termination, Ms. Smart was earning an annual salary of \$99,736.
15. Knowledge of Ms. Smart's termination has spread throughout the oilsands industry. Despite being fully qualified, she has not received any offers of employment in response to her job applications. The Defendant's unlawful conduct has rendered Ms. Smart nearly unemployable in her field.
16. Among other reasons, as a result of her knowledge, her skills and qualifications, her experience, her age, her excellent record of employment throughout her career in the oilsands, her duties and responsibilities generally, and the challenges she is and will continue to encounter in obtaining reasonably comparable and alternative employment, a common law notice period of twenty-four (24) months is appropriate in the circumstances.
17. Ms. Smart was entitled to certain benefits as of the date of termination, the value of which will be proven at the trial of this action, including stocks:

Damages: Aggravated and Punitive

18. Ms. Smart pleads that the Defendant failed to abide by its duty to act honestly, fairly and in good faith, and refused or failed to be open, candid, honest and informative regarding the reasons and circumstances surrounding her termination.
19. Specifically, Ms. Smart pleads that the reason for her termination was to retaliate against and punish her for her involvement in organizing the group of CNRL employees and contractors, and to make an example of her for the purpose of intimidating all the other members of the group.
20. Ms. Smart was terminated suddenly, without any explanation, and without receiving the pay in lieu of notice she is entitled to at law. Further, in the midst of the distress caused by the manner of her termination and the abrupt loss of income, the Defendant attempted to take

advantage of her vulnerability to coerce her into ransoming her right to take legal action in order to receive a small fraction of the severance she is entitled to at law.

21. The egregious manner in which Ms. Smart was terminated resulted and continues to result in mental distress through emotional, psychological and physical harm including, but not limited to, humiliation; embarrassment; damage to her self-respect, self-esteem and self-worth; stress; strain on her personal relationships with her immediate family; anxiety and other physical symptoms, all of which were reasonably foreseeable by the Defendant. Ms. Smart pleads that the Defendant's conduct constitutes a distinct actionable wrong, above and beyond mere wrongful dismissal, for which aggravated damages are called for.
22. Ms. Smart did nothing wrong, both in the contractual and moral sense. But, the Defendant did not like what she was doing, wanted her to stop, and wanted to scare everyone else into stopping as well. To affect its desire to put an end to Ms. Smart's perfectly lawful activities, and to quell the growing resistance to its coercive vaccine mandate, it reacted in the most high-handed and harsh way it could by terminating her in the most callous way possible. The Defendant's conduct toward Ms. Smart amounts to the cruel, barbarous, but often effective tactic of nailing her skin to the fencepost for all her would-be successors to look upon and cower. The Defendant's vindictive and oppressive behaviour cries out for a punitive damages award to denounce and deter such outrageous treatment of its employees.

Mitigation and Place of Trial

23. Since October 26, 2021, Ms. Smart has made faithful and diligent efforts to find comparable employment to mitigate her losses.
24. Ms. Smart proposes that the trial of this action be held in the City of Lethbridge in the Province of Alberta.

Remedy Sought:

25. A Declaration that Ms. Smart was wrongfully dismissed.
26. Damages for wrongful dismissal as follows:
 - a. Pay in lieu of notice in the amount of 24 months, being approximately \$200,000;

- b. Lost benefits in an amount to be proven at trial;
- c. Compensation for out-of-pocket expenses arising from Ms. Smart's efforts to mitigate her loss and injury and to seek alternative employment following her wrongful dismissal in an amount to be proved at trial;
- d. Aggravated damages in an amount to be proved at trial;
- e. Punitive damages in the amount of \$75,000; and
- f. Interest pursuant to the *Judgement Interest Act*, R.S.A. 2000, c. J-1

27. Costs of this action; and

28. Such further and other relief as counsel may advise and as this Honourable Court deems just and equitable.

NOTICE TO THE DEFENDANT

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Lethbridge, Alberta AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.