Federal Court  Cour fédérale

Date: 20201102

Docket: T-431-16

Citation: 2020 FC 1019

Ottawa, Ontario, November 2, 2020

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

DAN PELLETIER

Plaintiff
(Responding Party)

and

HER MAJESTY THE QUEEN

Defendant
(Moving Party)

JUDGMENT AND REASONS

I. Introduction

[1] This is a motion to strike out the Plaintiff's Amended Statement of Claim under paragraphs 221(1)(a)(c) of the *Federal Courts Rules*, SOR/98-106 [Rules] and, in the alternative, a motion for summary judgment on the basis that there is no genuine issue for trial under Rule 215(1).

[2] The Defendant submits that it is plain and obvious that the claim discloses no cause of action. It further contends that the Plaintiff's claim is scandalous, frivolous and vexatious as it is so replete with vague assertions and conclusions and is so devoid of factual material that it remains impossible to meaningfully plead a defence. Nor is it likely that the claim could be amended to disclose a cause of action.

[3] I agree with the Defendant's submissions. For the reasons that follow, the motion to strike is granted without leave to amend. The reasons also indicate that had it been necessary to do so, the Court would have granted the motion for summary judgment on the basis that there is no genuine issue for trial.

II. **Background**

A. The first Statement of Claim

[4] The Plaintiff in the underlying action, and Respondent to this motion, Mr. Dan Pelletier, filed a Statement of Claim on March 11, 2016, as a proposed class proceeding, within the meaning of Part 5.1 of the Rules, seeking various declaratory and injunctive relief as well as compensatory damages against the Federal Crown. The Claim alleged that on various occasions, Mr. Pelletier observed aircraft discharging trails of white particulate-like matter (Aerial Discharges) into Canadian airspace. He alleged that the liability of the Federal Crown was engaged as its actions – or inactions – with respect to Aerial Discharges contravened the *Canadian Environmental Protection Act, 1999,* SC 1999, c 33 [*CEPA*] as well as the *Canadian Charter of Rights and Freedoms* Part I of the *Constitution Act, 1982*, being Schedule B to the

Canada Act 1982 (UK), 1982, c 11 [the *Charter*], amounted to negligence, trespass and impeded on the quiet enjoyment of his property and that of the potential members of the Proposed Class.

[5] A motion to strike the claim without leave to amend was brought, in writing, by the Defendant on the basis that it discloses no reasonable cause of action and it was "scandalous, frivolous or vexatious."

[6] The motion was determined by Justice LeBlanc on December 8, 2016. In *Pelletier v Canada*, 2016 FC 1356 [*Pelletier I*], Justice LeBlanc struck out the Plaintiff's Statement of Claim on the basis that he had failed to plead facts in sufficient detail to support the claim and relief sought. The Court found that the Plaintiff's Statement of Claim consisted solely of "bald allegations and mere conclusory statements of law and falls well short, as a result, of pleading with sufficient detail the constituent elements of each cause of action raised." The Statement of Claim failed to describe "who, when, where, how and what gave rise to its liability and to define the issues with sufficient precision to make the trial process both manageable and fair" (*Pelletier I* at para 15 citing *Mancuso v Canada (Minister of National Health and Welfare)*, 2015 FCA 227 at paras 18-19 [*Mancuso*]).

[7] Additionally, Justice LeBlanc found that the Plaintiff's Claim amounted to a scandalous, frivolous or vexatious pleading (*Pelletier I* at para 23 citing *Kisikawpimootewin v Canada*, 2004 FC 1426 at para 9 and *Ceminchuk v Canada*, [1995] FCJ No 914 at para 10).

[8] Leave to amend the pleadings was granted.

(1) The Amended Statement of Claim

[9] The Plaintiff filed his Amended Statement of Claim on January 17, 2017. The Amended Statement of Claim, Annex "A" to this Judgment, alleges that the Defendant and/or her agents or instrumentalities are responsible for the alleged Aerial Discharges. Specifically, the Plaintiff claims that the Canadian Military, and parties authorized or contracted by it, perform the alleged Aerial Discharges in Canadian airspace pursuant to various programs and initiatives, such as an alleged joint US-Canadian military operation involving the release of chemicals and particulates into the atmosphere identified by the Plaintiff as "Project Cloverleaf."

[10] According to the Plaintiff, the purpose of Project Cloverleaf is to purposefully and intentionally seed and saturate the atmosphere with chemicals and particulates in an effort to:

(1) facilitate the operations of High Frequency Active Auroral Research Program (HAARP), which has for objective to manipulate the weather;

(2) possibly engage in biological experimentation without public knowledge, authorization or consent;

(3) possibly control or influence the viewpoint and reasoning capacity of a domestic or foreign population through chemical and/or electromagnetic means; and

(4) for other purposes yet unknown.

[11] The Amended Statement of Claim alleges that the Defendant knows or ought to have known that the Aerial Discharges are toxic and harmful and cause lower levels of awareness and alertness, neurological impairment, respiratory distress and property damages. To the extent the Defendant engages in the release of Aerial Discharges to influence the viewpoint and reasoning capacity of the population, the Plaintiff alleges that the Defendant's conduct breaches his

fundamental rights to freedom of conscience and freedom of thought, belief, opinion and expression guaranteed by section 2 of the *Charter* and breaches his freedom from threat to his physical integrity guaranteed by section 7 of the *Charter*. The Amended Statement of Claim alleges that the Aerial Discharges also amount to negligence, nuisance and trespass.

(2) Preliminary matters

[12] In the course of case management proceedings, the Defendant filed the present motion to strike and, in the alternative, for summary judgment, on September 21, 2017. A responding motion record was filed on December 8, 2017. A series of motions and case management directions followed in 2018 during which the Plaintiff had the benefit of several extensions of the timetable set out by the Court. The Plaintiff attempted, without success, to file additional affidavit evidence in response to the motion to strike. Additionally, Justice LeBlanc refused to grant leave to the Plaintiff's counsel, Mr. Tony Vacca, to present arguments on the affidavit he deposed, as there were no exceptional circumstances justifying granting an exception to the principle, enshrined in Rule 82, that an advocate could not also be a witness without leave of the Court.

(a) *The Vander Zalm affidavit*

[13] On April 3, 2018, the Plaintiff filed a motion to allow the late filing of an affidavit of Mr. William Vander Zalm, dated December 29, 2017, with an attached fifty-page exhibit. The three-paragraph affidavit served solely to identify the exhibit which consisted of a letter from

Environment Canada dated March 13, 2014, with enclosures released under the *Access to Information Act,* RSC 1985, c A-1.

[14] Following a hearing on April 24, 2018, Justice Manson held that the exhibit contained hearsay that was not within the personal knowledge of the affiant. The affidavit was thus an attempt to submit evidence through an affiant who had no ability to speak to the reliability of the material other than stating the source. The documents within the exhibit spoke to potential methods of moderating global warming, as opposed to actual operational activities being conducted by Environment Canada. Moreover, as the exhibit consisted of documents referencing the state of scientific research being conducted, in part, by scientists in Environment Canada and not to the activities of the Canadian military, or the alleged aerial spraying program, it was of marginal relevance. The affidavit was therefore inadmissible as an exception to the hearsay rule and the motion for leave was dismissed with costs.

[15] No appeal appears to have been taken from Justice Manson's Order.

[16] A few days prior to the scheduled hearing of this motion, counsel for the Plaintiff asked the Registry to include a Request to Admit in Form 255 and the Defendant's response in Form 256 in the Court record. The Request concerned the March 13, 2014 Access to Information response to Mr. Vander Zalm. I directed that the documents could be received and used for the purpose of oral argument at the hearing and instructed that the parties were to provide me with post-hearing written submissions on admissibility of the Access to Information documents through this means. I will deal with that issue below.

(b) *The Herndon Affidavit*

[17] A motion for leave to allow the late filing of the affidavit of Dr. Marvin Herndon as expert evidence was filed on May 14, 2018. Dr. Herndon averred that he is a scientist and corporate executive in San Diego, California. His evidence was intended to establish that the Aerial Discharges, allegedly observed by the Plaintiff, are comprised of toxic materials and constitute an act of deliberate air pollution. Attached to the affidavit as an exhibit were ten articles authored or co-authored by Dr. Herndon.

[18] In dismissing the motion with costs against the Plaintiff on July 31, 2018, Justice Ahmed held that Dr. Herndon was not properly qualified to provide expert evidence under the test set out by the Supreme Court of Canada in *R v Mohan*, [1994] 2 SCR 9 and *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23. Justice Ahmed therefore deemed the affidavit inadmissible. In particular, Justice Ahmed was satisfied that Dr. Herndon did not understand his obligations under the Code of Conduct for Expert Witnesses. Justice Ahmed also noted that he was not satisfied of the affidavit's relevance to the Plaintiff's claim (*Pelletier v Canada*, 2018 FC 805).

[19] An appeal from Justice Ahmed's decision was dismissed on May 30, 2019. In *Pelletier v Canada*, 2019 FCA 165, the Federal Court of Appeal determined that Justice Ahmed had not erred in refusing to admit the affidavit. However, the Court held that, as the underlying action was a proposed class action subject to Rule 334.39(1), no award of costs would be made.

[20] The motion to strike was set down for hearing on May 12, 2020, but adjourned *sine die* on April 4, 2020, due to the pandemic and general suspension of court operations. On July 29, 2020, by Order of the Chief Justice, it was scheduled for a virtual hearing by Zoom on September 3, 2020.

(c) *The Marquardt affidavit*

[21] On August 31, 2020, three days prior to the scheduled hearing date, the Court was informed that the Plaintiff requested a case management conference to discuss adjournment of the scheduled hearing and leave to file the affidavit of Darwin Marquardt. The Defendant opposed both requests. In the affidavit, Mr. Marquardt stated that he became aware of the proceedings in April 2020 from an online podcast and that he had contacted the Plaintiff's counsel shortly thereafter. According to Plaintiff's counsel, the delay between April and late August, without notice to the opposing party or the Court, was attributable to Mr. Marquardt having declined assistance in preparing his affidavit other than for its commissioning. In other words, they did not know what they were going to receive from him.

[22] In his affidavit, Mr. Marquardt states that he is 81 years old and a resident of the Bonnechere Valley in Ontario. Most of the content describes his life and work experience, personal opinions about the alleged Aerial Discharges and statements allegedly made to him by other persons, likely now deceased, during his working life. The affidavit concludes with his account of statements allegedly made to him by a former American agent, he believes to be now deceased, at a 1998 financial event in Mexico. Mr. Marquardt says the statements caused him "significant psychological and emotional trauma for several years."

[23] The Court convened a case management conference by telephone with counsel on September 1, 2020, during which oral submissions were received. At the conclusion of the conference, I refused leave to file the affidavit as it was out of time and because most of it consisted of inadmissible hearsay evidence and statements of Mr. Marquardt's personal beliefs contrary to Rule 81. Such evidence was neither reliable nor necessary to arrive at a just determination of the issues on the motion. Nor was it capable of being tested on cross-examination. Those portions of the affidavit that did not contain such hearsay evidence, such as Mr. Marquardt's account of his personal history, were not relevant.

[24] The form of the affidavit also gave rise to concern. Mr. Marquardt had altered the style of cause to identify the Defendant, Canada, by reference to what appears to be a number issued by the U.S. Securities and Exchange Commission (SEC). He described himself as "a private man and a Friend of the Court". These are indications that Mr. Marquardt subscribes to what have been aptly described as "pseudo-legal" theories: see *Meads v Meads*, 2012 ABQB 571 and *AVI v MHVB*, 2020 ABQB 489. The content of the affidavit further indicates a belief in conspiracy theories circulating on the Internet. Aside from these concerns, there was no reasonable explanation for why it had been submitted late even taking into account Mr. Marquardt's claim that he had learned about the action only in April 2020. Proffering such dubious evidence on the eve of the hearing was an indication of the weakness of the Plaintiff's case.

III. **Issues**

[25] The issues may be summarized as follows:

A. Is the Vander Zalm Access to Information document admissible as admitted fact?

B. Should the Amended Statement of Claim be struck out?

   i. Does the Amended Statement of Claim disclose a reasonable cause of action?

   ii. Is the Amended Statement of Claim scandalous, frivolous or vexatious?

C. If the Amended Statement of Claim is struck out, should the Plaintiff be granted leave to amend his pleadings?

D. If the Amended Statement of Claim is not struck out, should the Defendant be granted summary judgment?

E. Should costs be awarded?

IV. **Legal Framework**

[26] The following legislative provisions from the *Federal Courts Rules* are relevant to this motion:

Extension or abridgement	**Délai prorogé ou abrégé**
8 (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.	**8 (1)** La Cour peut, sur requête, proroger ou abréger tout délai prévu par les présentes règles ou fixé par ordonnance.
Content of affidavits	**Contenu**
81 (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.	**81 (1)** Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits,

avec motifs à l'appui.

Affidavits on belief

(2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.

Poids de l'affidavit

(2) Lorsqu'un affidavit contient des déclarations fondées sur ce que croit le déclarant, le fait de ne pas offrir le témoignage de personnes ayant une connaissance personnelle des faits substantiels peut donner lieu à des conclusions défavorables.

Use of solicitor's affidavit

82 Except with leave of the Court, a solicitor shall not both depose to an affidavit and present argument to the Court based on that affidavit.

Utilisation de l'affidavit d'un avocat

82 Sauf avec l'autorisation de la Cour, un avocat ne peut à la fois être l'auteur d'un affidavit et présenter à la Cour des arguments fondés sur cet affidavit.

Material facts

174 Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

Exposé des faits

174 Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.

Pleading law

175 A party may raise any point of law in a pleading.

Points de droit

175 Une partie peut, dans un acte de procédure, soulever des points de droit.

Particulars

181 (1) A pleading shall contain particulars of every allegation contained therein, including

(a) particulars of any

Précisions

181 (1) L'acte de procédure contient des précisions sur chaque allégation, notamment :

a) des précisions sur les

alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and

(b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.

fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;

b) des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibre mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.

Further and better particulars

(2) On motion, the Court may order a party to serve and file further and better particulars of any allegation in its pleading.

Précisions supplémentaires

(2) La Cour peut, sur requête, ordonner à une partie de signifier et de déposer des précisions supplémentaires sur toute allégation figurant dans l'un de ses actes de procédure.

Facts and evidence required

214 A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.

Faits et éléments de preuve nécessaire

214 La réponse à une requête en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l'instance. Elle doit énoncer les faits précis et produire les éléments de preuve démontrant l'existence d'une véritable question litigieuse.

If no genuine issue for trial

215 (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary

Absence de véritable question litigieuse

215 (1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense,

judgment accordingly.

Genuine issue of amount or question of law

(2) If the Court is satisfied that the only genuine issue is

(a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or

(b) a question of law, the Court may determine the question and grant summary judgment accordingly.

Powers of Court

(3) If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a claim or a defence, the Court may

(a) nevertheless determine that issue by way of summary trial and make any order necessary for the conduct of the summary trial; or

(b) dismiss the motion in whole or in part and order that the action, or the issues in the action not disposed of by summary

elle rend un jugement sommaire en conséquence.

Somme d'argent ou point de droit

(2) Si la Cour est convaincue que la seule véritable question litigieuse est :

a) la somme à laquelle le requérant a droit, elle peut ordonner l'instruction de cette question ou rendre un jugement sommaire assorti d'un renvoi pour détermination de la somme conformément à la règle 153;

b) un point de droit, elle peut statuer sur celui-ci et rendre un jugement sommaire en conséquence.

Pouvoirs de la Cour

(3) Si la Cour est convaincue qu'il existe une véritable question de fait ou de droit litigieuse à l'égard d'une déclaration ou d'une défense, elle peut :

a) néanmoins trancher cette question par voie de procès sommaire et rendre toute ordonnance nécessaire pour le déroulement de ce procès;

b) rejeter la requête en tout ou en partie et ordonner que l'action ou toute question litigieuse non tranchée par

judgment, proceed to trial or that the action be conducted as a specially managed proceeding.

jugement sommaire soit instruite ou que l'action se poursuive à titre d'instance à gestion spéciale.

Motion to strike

221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

Requête en radiation

221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :

(a) discloses no reasonable cause of action or defence, as the case may be,

a) qu'il ne révèle aucune cause d'action ou de défense valable;

(b) is immaterial or redundant,

b) qu'il n'est pas pertinent ou qu'il est redondant;

(c) is scandalous, frivolous or vexatious,

c) qu'il est scandaleux, frivole ou vexatoire;

(d) may prejudice or delay the fair trial of the action,

d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;

(e) constitutes a departure from a previous pleading, or

e) qu'il diverge d'un acte de procédure antérieur;

(f) is otherwise an abuse of the process of the Court,

f) qu'il constitue autrement un abus de procédure.

and may order the action be dismissed or judgment entered accordingly.

Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

Evidence

(2) No evidence shall be heard on a motion for an order under

Preuve

(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé

paragraph (1)(a).

Request to admit fact or document

255 A party may, after pleadings have been closed, request that another party admit a fact or the authenticity of a document by serving a request to admit, in Form 255, on that party.

Effect of request to admit

256 A party who is served with a request to admit is deemed to admit a fact or the authenticity of a document set out in the request to admit unless that party serves a response to the request in Form 256 within 20 days after its service and denies the admission, setting out the grounds for the denial.

No costs

334.39 (1) Subject to subsection (2), no costs may be awarded against any party to a motion for certification of a proceeding as a class proceeding, to a class proceeding or to an appeal arising from a class proceeding, unless

(a) the conduct of the party unnecessarily lengthened the duration of the proceeding;

(b) any step in the proceeding by the party was improper, vexatious

à l'alinéa (1)a).

Demande de reconnaître des faits ou des documents

255 Une partie peut, après clôture des actes de procédure, demander à une autre partie de reconnaître la véracité d'un fait ou l'authenticité d'un document en lui signifiant une demande à cet effet selon la formule 255.

Effet d'une telle demande

256 La partie qui reçoit signification d'une demande de reconnaissance est réputée reconnaître la véracité du fait ou l'authenticité du document qui en fait l'objet, sauf si elle signifie une dénégation établie selon la formule 256, avec motifs à l'appui, dans les 20 jours suivant la signification.

Sans dépens

334.39 (1) Sous réserve du paragraphe (2), les dépens ne sont adjugés contre une partie à une requête en vue de faire autoriser l'instance comme recours collectif, à un recours collectif ou à un appel découlant d'un recours collectif, que dans les cas suivants :

a) sa conduite a eu pour effet de prolonger inutilement la durée de l'instance;

b) une mesure prise par elle au cours de l'instance était inappropriée,

or unnecessary or was taken through negligence, mistake or excessive caution; or	vexatoire ou inutile ou a été effectuée de manière négligente, par erreur ou avec trop de circonspection;
(c) exceptional circumstances make it unjust to deprive the successful party of costs.	**c)** des circonstances exceptionnelles font en sorte qu'il serait injuste d'en priver la partie qui a eu gain de cause.
Individual claims	**Réclamations individuelles**
(2) The Court has full discretion to award costs with respect to the determination of the individual claims of a class member.	**(2)** La Cour a le pouvoir discrétionnaire d'adjuger les dépens qui sont liés aux décisions portant sur les réclamations individuelles de membres du groupe.

[27] The following legislative provisions from the *Charter* are relevant to this motion:

Fundamental freedoms	**Libertés fondamentales**
2. Everyone has the following fundamental freedoms:	**2.** Chacun a les libertés fondamentales suivantes :
(a) freedom of conscience and religion;	**a)** liberté de conscience et de religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;	**b)** liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
(c) freedom of peaceful assembly; and	**c)** liberté de réunion pacifique;
(d) freedom of association.	**d)** liberté d'association.

Life, liberty and security of person	**Vie, liberté et sécurité**
7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	**7.** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

V. **Analysis**

A. Is the Vander Zalm Access to Information document admissible as admitted fact?

[28] In the Request to Admit dated August 4, 2020, the Plaintiff sought an admission of authenticity from the Defendant in relation to the document received by Mr. Vander Zalm on March 13, 2014, in response to his Access to Information request. As indicated above, the exhibit to Mr. Vander Zalm's affidavit was one document consisting of a cover letter and 50 pages of reports and memoranda prepared by the Departments of Environment Canada and Natural Resources Canada regarding research studies into climate management related to global warming.

[29] In its response dated August 24, 2020, the Defendant refused to admit the authenticity of the document on the grounds that it was not relevant to the action and had been determined to be inadmissible by Justice Manson on April 26, 2018.

[30] The Plaintiff attempted to introduce the document a second time at the cross-examination of the Defendant's affiant, Colonel Ning Lew, on August 15, 2019. Colonel Lew could not speak to the contents of the document and could not, therefore, provide an evidentiary basis for its

inclusion in the record despite the efforts of Plaintiff's counsel to establish a link with the Department of National Defence. At best, the document indicated that the former Deputy Minister of that Department had attended an interdepartmental meeting at which the topics had been discussed.

[31] When this issue came up immediately prior to the hearing, I directed that the documents could be received for the purpose of oral argument. At the hearing, I advised the parties that while I would allow them to be used for that purpose, they were to provide me with post-hearing submissions in writing on the issue. Those submissions were received.

[32] The Plaintiff contends that the Defendant's Response to the Request to Admit was a comment on relevance or admissibility and not a proper Response. In accordance with Rule 256, the recipient party is therefore deemed to admit the authenticity of the document, the Plaintiff argued. It was contended that once the document is admitted by legal operation of the Rule, its taint of hearsay or reliability is purged, and the document is now in evidence. Justice Manson did not have the benefit of the full record, including the cross-examination of Colonel Lew, the Defendant's witness. Only this Court can make a completely informed decision as to weight and relevance, the Plaintiff submits.

[33] There is little jurisprudence on the interpretation of Rules 255 and 256. The parties submit and I accept that Rules 255 and 256 are analogous to Rule 51 of the *Ontario Rules of Civil Procedure*, RRO 1990, Reg 194 and that decisions interpreting that provision may be of assistance.

[34] The Plaintiff relies on *Canpotext Ltd v Graham*, [1985] OJ No 1324 (QL) (HCI) [*Canpotext*] and an article entitled "Strategic Uses of a Neglected Rule: Rule 51 Requests to Admit" *The Advocates' Quarterly*, Vol 32, page 247.

[35] The Defendant argues that the Plaintiff is attempting to do indirectly, that which he could not do directly – that is to introduce the document for the truth of its contents through the Request to Admit. Should it be admitted into the record as an authentic record, the lack of relevance and lack of reliability identified by Justice Manson have not been remedied and the document should be given no weight. Moreover, the question of admissibility falls within the doctrine of issue estoppel.

[36] The Defendant relies on *KD v Peel Children's Aid Society*, 2017 ONSC 7392, in which Justice Patillo noted that there was nothing requiring the party served with a Request to Admit to respond regardless of relevance and that a response of "not relevant" was a proper response.

[37] There is no dispute between the parties that the document in question was produced by a Crown department, Environment Canada, further to an Access to Information request. However, that does not resolve the controversy as to its use in these proceedings. A document determined to be authentic may be considered by the Court, as long as there are no other evidentiary objections to the document or its content such as relevance and admissibility. Here, there clearly were such objections and Justice Manson dealt with them in his ruling.

[38] In two decisions relied upon by the Defendant, the Ontario Rule has been interpreted as creating deemed admissions only: *Wunsche v Wunsche*, [1994] OJ No 816 at para 19; *Clarke v R*, [2000] FCJ No 475 at para 46. In the context of this case, that would mean that the admission of fact would extend only to the authenticity of the document and not to the facts contained therein. It does not make hearsay evidence admissible. Nor does it permit the Plaintiff to rely on his interpretation of the document without evidence of its reliability or necessity – an interpretation which is effectively immunized from cross-examination by the manner in which the document is introduced. Should the content of the document be admitted as fact, the Court would have no means of evaluating the evidence.

[39] In this instance, the Request to Admit amounts to a collateral attack on Justice Manson's ruling and is contrary to the rule that evidence in a summary judgment motion is to be led through affiants with direct knowledge of the matters to which they depose.

[40] I agree with the Plaintiff that Rules 255 and 256 were not intended to provide a party with the means to circumvent an adverse ruling on relevance and admissibility. They are meant to facilitate the just, most expeditious and least expensive determination of the proceeding on its merits by avoiding the tendering of unnecessary witnesses and evidence. They cannot be used to convert inadmissible hearsay into direct evidence in contravention of Rule 81(1).

[41] The Plaintiff has argued that this Court is not bound by Justice Manson's ruling. I disagree. In my view, I am bound by the principles of judicial comity and economy. It is not

open to a party dissatisfied with the outcome of a motion in a proceeding to seek a different ruling on the same issue from another judge of the same court.

[42] While it is not necessary for the disposition of this issue, having read the document and having questioned counsel about its content during the hearing, I see no reason to disagree with Justice Manson's conclusions. Nor is there anything in the cross-examination of Colonel Lew that could have persuaded Justice Manson, in my view, to arrive at a different conclusion. Notwithstanding the efforts of counsel to get him to agree with the propositions put to him, Colonel Lew held firmly to his evidence that he had found nothing in his search of records and his inquiries among branches of the Department of National Defence that it or the Canadian military are working with other nations or branches of government on the activities alleged to be occurring in these proceedings.

[43] For these reasons, I will not allow the document attached to the Vander Zalm affidavit to be admitted into evidence on this motion to strike and, in the alternative, for summary judgment.

B. Should the Amended Statement of Claim be struck out?

[44] The test for the Defendant to meet on this motion is whether it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action or, put another way, that it has no reasonable prospect of success: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17 [*Imperial Tobacco*]; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at p 980; *Sivak v Canada*, 2012 FC 272 at para 15 [*Sivak*].

[45] No evidence outside the pleadings may be considered on a motion to strike, and although allegations that are capable of being proven must be taken as true, the same does not apply to pleadings which are based on assumptions and speculation and those that are incapable of proof: *Imperial Tobacco* at para 22; *Operation Dismantle v The Queen*, [1985] 1 SCR 441, at p 455 [*Operation Dismantle*]; *AstraZeneca Canada Inc v Novopharm Ltd*, 2009 FC 1209 at paras 10-12. While the claim must be read as generously as possible with a view to accommodating any inadequacies due to drafting deficiencies, it is incumbent on the claimant to clearly plead the facts at the basis of the claim: *Imperial Tobacco* at para 22.

[46] As the Federal Court of Appeal highlighted in *Mancuso* at paras 16-17:

> It is fundamental to the trial process that a plaintiff pleads material facts in sufficient detail to support the claim and the relief sought. As the judge noted "pleadings play an important role in providing notice and defining the issues to be tried and that the Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action."
>
> The latter part of this requirement - sufficient material facts - is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues. The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.

[47] I agree with the Defendant that it is plain and obvious that the Amended Statement of Claim discloses no reasonable cause of action because:

> (a) The narrative of what happened and when it happened is insufficient to meet the requirements of the Rules: *Simon v Canada*, 2011 FCA 6 at para 18 [*Simon*];
>
> (b) The claim continues to lack the material facts to support the allegations against Canada including the Canadian military; and
>
> (c) The claim is purely speculative and is incapable of objective proof.

[48] The Plaintiff has failed to put forth material facts to support his claim that the individuals responsible for the alleged Aerial Discharges, an alleged phenomenon which is totally unsubstantiated in the pleadings, are members of the Canadian Military or parties authorized or contracted by it as the Amended Claim alleges. The Plaintiff speculates, without any foundation, that the types of aircraft he has observed from the ground are military aircraft, on the existence of the so-called "Project Cloverleaf" and on the basis for which Canada allegedly engaged in the discharge of substances from the air.

[49] There is no evidence on the record to support the Plaintiff's speculation. The photographs, which the Plaintiff has included in his Record, prove nothing in my view other than that, on many days, there are condensation trails (contrails) following aircraft high in the sky over Canada. To jump from that observation to the supposition offered by the Plaintiff requires a leap of faith in the existence of facts which remain entirely in the realm of speculation.

[50] The allegations of Charter infringement by Canada are based, in the Plaintiff's own words, on Canada's "possible" motive for conducting such alleged activities. The Plaintiff is incapable of providing material facts in support of Canada's "possible" motive and is therefore incapable of providing material facts in support of his Charter infringement claim.

[51] The alleged common law causes of action also fail by reason of the deficiencies in the pleadings. As stated in *Mancuso,* a properly pleaded tort claim identifies the particular nominate tort alleged and sets out the material facts needed to satisfy the elements of that tort.

[52] The *Crown Liability and Proceedings Act*, RSC 1985, c C-50 requires the Claimant to identify, as a material fact, the particular individuals, group of individuals or organizational branch who have allegedly engaged in tortious actions: *Merchant Law Group v Canada (Revenue Agency)*, 2010 FCA 184 at paras 36-38). As indicated in *Sivak* (para 48), the requirement to plead sufficient material facts in such matters is particularly important to ground negligence claims since key issues often arise, such as whether the alleged conduct constitutes policy or operational decisions.

[53] Here, the Plaintiff's Amended Statement of Claim fails to identify an individual, group of individuals or organizational branch involved in the alleged negligent conduct. It also fails to provide any details of the alleged negligent conduct.

[54] The Plaintiff has failed to remedy the deficiencies of the original claim with respect to the allegations of negligence. The Amended Claim continues to fail to substantiate the essential elements of negligence. The allegations remain a recitation of the generic steps in a negligence analysis, supplemented by a vague narrative. The claim for trespass has been reworded but is identical in substance to the one struck by Justice LeBlanc in *Pelletier I*. The claim for trespass in the Amended Claim remains speculative and unsupported by material facts.

[55] The Plaintiff lacks standing to bring a claim in public nuisance since the Plaintiff did not suffer a particular and peculiar damage distinct from that of the general public, if one existed. There is no evidence of the presence of particulates or chemicals in the airspace above the Plaintiff's property or on the property of any other potential class members. The photographs submitted by the Plaintiff do not provide such evidence.

[56] The Plaintiff has tried to answer the deficiencies in the original claim by disregarding prior court orders and referring to inadmissible evidence in its Fresh as Amended Memorandum of Fact and Law:

1) Despite the Herndon affidavit having been declared inadmissible, a ruling upheld by the Federal Court of Appeal, the Plaintiff attempts to rely on recently published articles by Dr. Herndon, which, among other things, rely on these proceedings as support for his theories.

2) Notwithstanding the ruling that the Vander Zalm affidavit with its exhibit was inadmissible, the Plaintiff relies heavily on the Access to Information documents from Environment Canada, which were included in that exhibit and are inadmissible on a motion to strike under Rule 221(2).

3) In an attempt to improperly introduce new evidence, the Plaintiff relies, in footnotes, on a series of news articles, unpublished articles available online and documentary films.

[57] Even assuming that the Environment Canada documents are admissible, which as stated above I do not accept, at most they support the existence of a body of scholarly research by scientists into the possible release of aerosols to address global warming. The documents relate to a presentation to senior government officials regarding the state of that research on climate modelling experiments and outlines specific international governance principles which prohibit real world application of such geoengineering techniques. There is nothing in the exhibit to support the Plaintiff's speculation that this has actually occurred in Canada, let alone that it has

been carried out by the Canadian military, as claimed in the Amended Statement. The Plaintiff's efforts to elicit some modicum of confirmation of this from the cross-examination of Colonel Lew failed completely.

[58] I also agree with the Defendant that the claim is scandalous, frivolous and vexatious as it has no factual basis and cannot reasonably succeed. It is so speculative and lacking material facts that it would be impossible for the Defendant to respond with anything more than a wholesale denial.

[59] In the result, I am satisfied that the Amended Statement of Claim should be struck out in its entirety.

C. Should the Plaintiff be granted leave to amend his pleadings?

[60] Leave to amend should normally be denied where the defect in the pleading is one that cannot be cured by amendment: *Simon* at para 8.

[61] In *Baird v Canada*, 2006 FC 205 [*Baird*], this Court found that a statement of claim containing "so many different allegations without specifics, and so many different types of relief, that it would be near impossible for the Court to regulate the trial" needed to be struck out without leave to amend as it was an abuse of process (*Baird* at para 12 and *Pelletier I* at para 28). A statement of claim should also be struck out without leave to amend if it is "beyond redemption": *Baird v Canada*, 2007 FCA 48.

[62] I agree with the Defendant that the Amended Statement of Claim is beyond redemption and has no chance of success. Where an amendment would merely result in another successful motion to strike for lack of legal foundation, the amendment should be refused: *Carom v Bre-X Minerals Ltd*, [1998] OJ No 4496 (QL) (Ont Gen Div).

[63] The Plaintiff was provided with an opportunity to provide this Court with material facts to support his allegations. Instead, he has chosen to rely on inadmissible evidence and unreliable sources.

[64] At the heart of the claim is a conspiracy theory fed by social media. The theory is incapable of proof by the evidence upon which the Plaintiff seeks to rely. He is unable to connect the theory to any action by the Canadian military or any other government body through anything other than bald allegations and unfounded speculation based on online materials and personal observations of contrails. Those efforts are doomed to fail, and the courts have expended too much time and effort on them over the past four years to allow the Plaintiff another attempt to do so.

[65] For these reasons, I decline to grant leave to amend.

D. If the Amended Statement of Claim is not struck out, should the Defendant be granted summary judgment?

[66] While my findings above are sufficient to dispose of this motion, for greater certainty I will also set out my views on the Defendant's alternative request for relief.

[67] The Court may grant summary judgment if it is satisfied that there is no genuine issue for trial. The test is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial: *Milano Pizza Ltd v 6034799 Canada Inc.*, 2018 FC 1112 at paras 33-40.

[68] As highlighted in *Miller v Canada*, 2018 FC 599, the general principles governing summary judgment in the Federal Court were laid out by Justice Tremblay-Lamer in *Granville Shipping Co v Pegasus Lines Ltd SA* (1996), [1996] 2 FC 853:

> 1. the purpose of the provisions is to allow the Court to summarily dispense with cases which ought not to proceed to trial because there is no genuine issue to be tried (*Old Fish Market Restaurants v 1000357 Ontario Inc. et al*, [1994] F.C.J. No. 1631, 58 C.P.R. (3d) 221 (TD));
>
> 2. there is no determinative test (*Feoso Oil Limited v. Sarla*) but Stone J. A. seems to have adopted the reasons of Henry J. in *Pizza Ltd. v. Gillespie* (Pizza Pizza). It is not whether a party cannot possibly succeed at trial, it is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial;
>
> 3. each case should be interpreted in reference to its own contextual framework (*Blyth* and *Feoso*);
>
> 4. provincial practice rules (especially Rule 20 of the Ontario Rules) can aid in interpretation (*Feoso* and *Collie*);
>
> 5. this Court may determine questions of fact and law on the motion for summary judgment if this can be done on the material before the Court (this is broader than Rule 20 of the Ontario Rules of Civil Procedure) (*Patrick*);
>
> 6. on the whole of the evidence, summary judgment cannot be granted if the necessary facts cannot be found or if it would be unjust to do so (*Pallman* and *Sears*);
>
> 7. in the case of a serious issue with respect to credibility, the case should go to trial because the parties should be cross-examined before the trial judge (*Forde* and *Sears*). The mere existence of apparent conflict in the evidence does not preclude summary judgment; the court should take a "hard look" at the merits and decide if there are issues of credibility to be resolved (*Stokes*).

[69] A party responding to the motion must set out specific facts and adduce the evidence showing that there is a genuine issue for trial (Rule 214). The Court shall grant summary judgment where it is satisfied that there is no genuine issue for trial (Rule 215(1)). The burden rests with the party presenting the motion but both parties must put their best foot forward: *MacNeil Estate v Canada (Department of Indian and Northern Affairs)*, 2004 FCA 50, 316 NR 349.

[70] If I had not found that the claim should be struck, I would conclude that the Defendant has met its burden for summary judgment. There is no genuine issue for trial, as the allegations in the Amended Statement of Claim are not based on material facts but inadmissible evidence and unreliable sources.

[71] The Plaintiff's pleadings do not identify a triable issue concerning the Canadian military or any other agent of the Federal Crown. They do not establish that Canada has engaged in the Aerial Discharge of chemicals, that Canada has ever been involved in a joint US-Canada military operation titled "Project Cloverleaf," or any other similar projects. Colonel Lew's evidence, supported by the extensive searches he conducted within the Department of National Defence and his inquiries of personnel, confirms that even if any entity was involved in an aerial spraying program in Canada, which the Plaintiff has been unable to establish, the Canadian military is not engaged in such a program, nor is it aware of such activity having ever taken place in Canada.

[72] I agree with the Defendant that the allegations put forward by the Plaintiff in his Amended Statement of Claim are based on online conspiracy theories and lack any foundation in

verifiable fact or reality. Given that this action discloses no genuine issue for trial and is likely to fail, absent the striking of the claim, summary judgment in favour of the Defendant would be the most just, most expeditious and least expensive determination of this case on the merits.

VI. **Costs**

[73] The Defendant has requested an award of costs pursuant to Tariff B of the Rules and has submitted a Bill of Costs.

[74] Rule 334.39 displaces the Court's broad discretion as to costs but has been the subject of little judicial consideration. At the hearing, the Defendant argued that a cost award would be appropriate and fell within the exceptions to the general principle set out in paragraphs 334.39 (1) (b) and (c).

[75] The general principle is that awards of costs in class proceedings, including preliminary motions and appeals, are to be exceptional. The "no costs" rule applies as soon as the parties to the action are made parties to the certification motion: *Campbell v Canada (Attorney General)*, 2012 FCA 45.

[76] In *Campbell,* the Motions Judge had decided that the defendant was entitled to costs up to but not including the motion for certification. The plaintiffs discontinued the action before the certification motion was heard. The Federal Court of Appeal set aside the order below and returned the matter to the Motions Judge for a decision as to whether the appellants' conduct fell within one of the exceptions to the Rule that would justify an award of costs.

[77] In *Wenham v Canada (Attorney General)*, 2020 FC 592, Justice Phelan held that the exception provision is important to the class proceeding regime and should be given a fair and liberal interpretation, which serves the purpose of disciplining inappropriate conduct by a party. In the result, Justice Phelan found that there were no exceptional circumstances to justify an award of costs against the defendant.

[78] Justice Hugessen awarded costs against the plaintiffs in a proposed class action in *Always Travel Inc v Air Canada*, 2004 FC 675 but that was in respect of their motion to lift a stay of the action against insolvent defendants. That motion, in the Court's view, was an unnecessary procedural step and should never have been brought.

[79] In this instance, the Notice of Motion for Certification - Proposed Class Proceeding was accepted for filing by Justice LeBlanc on May 22, 2018 but suspended pending the final outcome of the Defendant's Motion to Strike and for Summary Judgment. The cost awards by Justices LeBlanc and Manson predated that Order. The hearing before Justice Ahmed occurred a few days later and his decision dismissing the motion for leave to admit the Herndon affidavit with costs was issued on July 31, 2018. It appears that the application of Rule 334.39 was not raised before Justice Ahmed.

[80] When the appeal of Justice Ahmed's decision was before the Federal Court of Appeal, the Plaintiff submitted that an award of costs would be contrary to Rule 334.39. The Federal Court of Appeal made no cost award but did not comment further on whether such an award would be within the court's discretion in the circumstances.

[81] In my view, the conduct of the Plaintiff has unnecessarily lengthened the duration of the motion to strike and that the efforts to introduce inadmissible evidence were unnecessary. Accordingly, I am satisfied that an award of costs against the Plaintiff is justified as an exception to the general principle in Rule 334.39. Having reviewed the Plaintiff's Bill of Costs, I will award the lump sum of $3,500.00.

JUDGMENT IN T-431-16

THIS COURT'S JUDGMENT is that:

1. The motion to strike the Plaintiff's Amended Statement of Claim is granted without leave to amend; and

2. Costs are awarded to the Defendant in the amount of $3,500.00.

"Richard G. Mosley"
Judge

ANNEX "A"

AMENDED STATEMENT OF CLAIM

(Court File No. T-431-16)

FEDERAL COURT

BETWEEN:

DAN PELLETIER
Plaintiff

and

HER MAJESTY THE QUEEN
Defendant

(Court seal)

AMENDED STATEMENT OF CLAIM TO THE DEFENDANT

PROPOSED CLASS PROCEEDING

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 solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

March 11, 2016.

Issued by:_____

(Registry Officer)

Address of local office:

180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: HER MAJESTY THE QUEEN

CLAIM

Nature of the Proceeding:

1. This is a mass-tort and environmental ~~Proposed~~ proposed class proceeding ("Class Proceeding") in respect of the spraying into the atmosphere of ~~toxic~~ substances and particulates by the Defendant ~~that is dangerous~~, either directly or jointly with others, and which substances are toxic to human health~~,~~ and destructive to the environment~~, and has caused meaningful economic damages.~~.

The Parties:

2. Dan Pelletier ("Pelletier") is an individual resident in Didsbury, Alberta.

~~3. In respect of the *Canadian Environmental Protection Act*, the Crown is named as representative for the Minister of the Environment relative to the Minister's role of presiding over and carrying responsibility for the *Canadian Environmental Protection Act*, and in respect of all other causes of action, the Crown is named, *eo nomine*.~~

Relief Sought:

~~4.~~3. Pelletier claims on his own behalf and on behalf of all those similarly situated:

~~a.~~ A Declaration that the aerial discharge of coal fly ash and/or other contaminants contravenes the *Canadian ~~Environmental Protection Act~~* ~~and appurtenant Regulations;~~

~~b.~~a. ~~A Declaration that the aerial discharge of coal fly ash and/or other contaminants contravenes the *Canadian* Charter of Rights and Freedoms~~;

~~c.~~ An interlocutory and a final mandatory ~~order directing that the Defendant comply with the *Canadian Environmental Protection Act* and appurtenant Regulations;~~

~~d.~~b. ~~An interlocutory and a final mandatory order~~Order directing that the Defendant comply with the *Canadian Charter of Rights and Freedoms*;

~~e.~~c. An interlocutory and a final mandatory Order that the Defendant immediately cease and desist the ongoing aerial discharge of coal fly ash and/or other contaminants or substances;

~~f.~~d. An Order that the Defendant pay general damages greater than $50,000, in an amount to be proven at trial;

~~g.~~e. An Order that the Defendant pay Declaratory Relief greater than $50,000, in an amount to be proven at trial;

~~h.~~f. Pre-judgment and post-judgment interest on the amounts payable pursuant to subparagraphs (~~f~~d) and (~~g~~e);

~~i.~~g. Punitive, aggravated and exemplary damages in an amount that this Honourable Court deems just;

~~j.~~h. Costs of this action on ~~a substantial indemnity basis~~an appropriate scale plus applicable taxes;

~~k.~~i. The costs of administering the plan of distribution of the recovery in this action in such sum as this Honourable Court deems appropriate; and

~~l.~~j. Such further and other relief as may be required by Part 5.1 of the *Federal Courts Rules,* or as this Honourable Court may deem just.

Facts~~:~~

When is the Defendant releasing the Aerial Discharges? What are the Aerial Discharges, and How does the Defendant release the Aerial Discharges?

~~5.~~4. On various dates, ~~the~~ Plaintiff observed ~~that~~ certain aircraft ~~discharged~~, including what to the Plaintiff appeared to be tanker aircraft and retrofit passenger aircraft, (collectively "Aerosol Injection Aircraft", or "AI Aircraft") discharging trails comprising of white particulate like matter ("Aerial Discharge"), and which Aerial Discharge would persist and often span across the horizon and across the length of the sky.

5. ~~The~~ Plaintiff, more specifically, observed the AI Aircraft in the act of releasing such Aerial Discharges~~-~~, or the lingering Aerial Discharges themselves, in the southern Alberta (i.e. Didsbury) area, and on a continuing and ongoing basis, including, but not limited to, on the following specific dates and times (all times unless otherwise stated, mountain time).

Year	Month	Date	Time (hr:min)
2012	8	12	19:17
2013	11	24	15:58
	11	24	16:00
2014	6	4	16:08
	6	19	18:34
	6	21	16:30

	6	22	12:16
	7	31	12:39
	8	3	17:07
	8	30	19:59
	8	31	12:50
	9	18	16:56
	10	17	18:38
2015	1	24	14:48
	11	11	16:03
	11	12	11:05
	11	12	11:58
	11	13	8:23
	11	18	8:38
	11	26	8:29
	11	26	8:41
	11	26	10:10
	12	14	16:56
	12	21	10:08
2016	1	4	15:06
	1	10	14:51
	1	10	15:53
	1	20	16:29
	1	23	12:42
	2	23	7:27
	2	23	15:55
	2	24	14:35
	2	24	21:23
	3	4	11:15
	3	7	18:28

~~6.~~ Plaintiff pleads that the AI Aircraft release the Aerial Discharges primarily in the troposphere (generally defined to mean that area of altitude that is up to 10 kilometers above the earth's crust) and also in the stratosphere (generally, that area of altitude that is from 10 to 50 kilometers above the earth's crust) and that the Aerial Discharges slowly ~~dissipated, formed~~dissipate, and typically forms a thin, hazy film across the sky~~, and would obfuscate~~ that obfuscates the sun's rays~~.~~

7.6. ~~The~~, and that the Aerial Discharges dissipate across ranges of altitudes, including ~~lower~~very low altitudes. ~~Thus, the Aerial Discharges dissipate in the lower altitudes which include the~~ containing air ~~that~~ the Plaintiff~~, his family~~ and the potential members of the Class breath.

7. ~~The~~ Plaintiff, together with certain of Plaintiff's colleagues and acquaintances (each of whom are citizens of Canada) continue to observe, document and categorize past and ongoing Aerial Discharges in the southern Alberta area, and in various locations across Canada.

8. Plaintiff pleads that the Aerial Discharges are comprised of minute particles that are ~~toxic~~typically smaller than 2.5 microns, including nanoparticles (in the size of 1-100 nanometers), and~~/or~~ that such minute particles are ~~easily~~readily absorbed into the human body ~~and~~ by way of respiration, through the eyes, and through the skin.

9. Plaintiff also pleads that the Aerial Discharges infect and toxify the environment~~, and are thus dangerous when absorbed into the body~~ .

8.10. Plaintiff pleads, based in part on testing and lab analysis undertaken by various concerned individuals and scientists, both within Canada and outside of Canada, that the Aerial Discharges are comprised of various chemical and/or ~~the environment.~~other engineered agents, including but not limited to, the following:

a. ~~The~~ coal-fly-ash

b. aluminum oxide

c. barium salts

d. strontium

e. arsenic

f. carbon nanoparticle molecules, and

g. minute synthetic filaments and fibers.

Who is engaged in the release of the Aerial Discharges?

9.11. Plaintiff pleads that ~~the~~ Defendant, and/or her agent's or instrumentalities perform and release the Aerial Discharges over Canadian air space.

12. ~~The~~ Plaintiff pleads, more specifically, that the Canadian military, and parties authorized or contracted by the Canadian military, perform the Aerial Discharges in Canadian airspace, and that such Aerial Discharges are and have been pursued pursuant to various programs and initiatives, including but not necessarily limited to, a joint US-Canadian military operation involving the release of chemicals and particulates into the atmosphere above Canada ("**Project Cloverleaf**").

Why is the Defendant engaging in the Release of the Aerial Discharges?

13. Plaintiff pleads that the function and purpose behind the release of the Aerial Discharges as part of **Project Cloverleaf** and other like existing or past programs known and unknown, is to purposefully and intentionally seed and saturate the atmosphere with chemicals and particulates.

14. Plaintiff pleads that techniques by which to seed and saturate the atmosphere with chemicals and particulates are the subject of significant academic literature, and is often referred to in such academic literature as "**stratospheric aerosol geoengineering**" ("**SAG**"), "**stratospheric aerosol injection**" ("**SAI**") or "**solar radiation management**" ("**SRM**").

15. Plaintiff pleads that the purpose and objective of the chemical and particulate seeding by way of release of the Aerial Discharges, includes, but is not necessarily limited to, the following:

a. to facilitate the operations of High Frequency Active Auroral Research Program ("HAARP") , an ionospheric program, or other like programs, for various purposes including but not limited to

i. for the purpose of manipulating the weather, to preempt or mitigate in advance, accruing adverse weather events, arguably and objectively, a benevolent purpose;

ii. for the purpose of manipulating the weather and/or other natural phenomena (including tectonic phenomena)

1. to initiate adverse weather events and natural calamity (including tectonic calamity), possibly for use as an influencing, threatening or punishing mechanism, against governments and/or populations, foreign and/or domestic;

2. for utilizing same as a weapon of war;

b. possibly to engage in biological experimentation, on cities and on countryside, without public knowledge, authorization or consent; conduct which is consistent with clear and well documented past precedent of such type of non-consensual

experimentation undertaken in Canada, in the United States,[1] and in the United Kingdom;[2]

c. possibly to control or influence the viewpoint and reasoning capacity of a domestic or foreign population, through chemical and/or electromagnetic means, and

d. for other purposes yet unknown.

~~10.~~16. Plaintiff further pleads that ~~the~~ Defendant knows or ought to know that the Aerial Discharges are ~~dangerous.~~toxic and harmful to Plaintiff and to members of the Class, resulting in and contributing to, amongst other,

a. lowered levels of awareness and alertness;

b. neurological impairment;

c. respiratory distress; and

d. meaningful property damage by, amongst other,

i. toxifying the soil and

ii. degrading the integrity of the ozone layer thereby directly contributing to harmful levels of various forms of ultraviolet radiation, with associated adverse impact on crops, livestock and property.

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[1] "How the U.S. Government Tested Biological Warfare on America". Priceonomics. October 30, 2014. Retrieved 19 July 2016.
https://priceonomics.com/how-the-us-government-tested-biological-warfare-on/

"Top-secret, deadly chemical tests done in St. Louis during the Cold War by Army prove deadly years later", Monday, November 12, 2012 by: J. D. Heyes
http://www.naturalnews.com/037924_chemical_tests_Army_deaths.html#ixzz4VVynJXIR

Also more generally see: https://en.wikipedia.org/wiki/Unethical_human_experimentation_in_the_United_States

[2] "Millions were in germ war tests"
https://www.theguardian.com/politics/2002/apr/21/uk.medicalscience

Release of the Aerial Discharges by the Defendant contravenes Section 2 and Section 7 to the Canadian Charter of Rights and Freedoms ("Charter")

17. The Charter guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

18. Section 2 to the Charter guarantees, *inter alia,* the following fundamental freedoms, except in accordance with the principles of fundamental justice:

    a. freedom of **conscience** and religion;

    b. freedom of **thought, belief, opinion and expression**, including freedom of the press and other media of communication [emphasis added];

19. Plaintiff respectfully submits that to the extent Defendant engages in the release of Arial Discharges, to influence the viewpoint and reasoning capacity of the population, through chemical and/or electromagnetic means, that such conduct constitutes a breach of Plaintiff's fundamental rights to freedom of conscience, and freedom of thought, belief, opinion and expression, and as such, a breach of those fundamental freedoms guaranteed under Section 2 to the Charter.

20. Section 7 to the Charter guarantees everyone the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

21. Plaintiff submits that the scope of the interests protected under the phrase "life, liberty and security of the person" encompasses freedom from threats to one's physical integrity, including risks to health.

22. Plaintiff reiterates his prior pleadings, namely, that Defendant engages in the release of the Aerial Discharges in Canadian air space, that the Aerial Discharges are comprised of minute particulate including nanoparticles that are easily absorbed into the human body through respiration, through the eyes and through the skin, and that such minute particulates are toxic to the human body, when absorbed and as such, the release of the Aerial Discharges constitutes a threat to Plaintiff and potential Class members physical integrity, including health, and as such, the release of the Aerial Discharges contravenes Section 7 to the Charter.

Negligence

~~11.~~23. ~~The~~ Plaintiff relies on his pleadings above.

24. ~~The~~ Plaintiff pleads that the Defendant has a duty to not ~~perform~~undertake actions that are ~~dangerous~~harmful to the Plaintiff and to proposed ~~Members~~members of the Class. ~~The~~

~~12.~~25. Plaintiff reiterates his pleadings that the Defendant ~~engaged~~directly engages in the performance of the Aerial Discharges, that the Aerial Discharges are ~~dangerous~~comprised of minute particulate matter that is easily absorbed by the human body through respiration, through the eyes and through the skin, and that the Aerial Discharges are toxic to the human body when absorbed, and that the Defendant knew or ought to have known that the Aerial Discharges are ~~dangerous~~easily absorbed by and toxic to the human body when absorbed.

~~13.~~26. The Defendant has breached her duties to the Plaintiff and the proposed Class by engaging in the ~~performance~~release of the Aerial Discharges within Canadian airspace.

~~14.~~27. ~~The~~ Plaintiff further pleads that the Defendant's actions have caused meaningful damages to the Plaintiff and the proposed ~~Class Members. The damages include, *inter alia*,~~members of the Class.

~~a. serious injury and, in some cases, death;~~

~~b. emotional and psychological trauma;~~

~~c. non-pecuniary damages;~~

~~d. pecuniary damages; and~~

~~e. loss of income.~~

Nuisance ~~and Trespass~~

~~15.~~28. ~~The~~ Plaintiff relies on his pleadings above.

~~16. The~~ Plaintiff reiterates ~~his pleadings that the Aerial Discharges are performed by the Defendant in Canadian air space.~~

~~17. The Plaintiff also reiterates his pleadings that the Aerial Discharges dissipate into the lower atmosphere.~~

~~18.~~29. ~~As a result, the Plaintiff pleads~~ that the Aerial Discharges permeate and saturate the air ~~breathed in by~~that the Plaintiff and other potential Class ~~Members, and thus, cause serious health problems and injuries.~~members breath.

30. ~~Further, the~~ Plaintiff pleads that on certain days, the ingestion by way of respiration, of the Arial Discharges resulted in Plaintiff suffering respiratory distress, and in the Plaintiff and potential Class members avoiding or minimizing outdoor maintenance or leisure activity, in an attempt to minimize such respiratory distress.

31. Plaintiff reiterates that the Aerial Discharges are comprised of minute particulate including nanoparticles that are easily absorbed into the human body through respiration, through the eyes and through the skin, and that such minute particulates are toxic to the human body, when absorbed.

~~19.~~32. Plaintiff pleads that he and potential Class members have absorbed the toxic particulates that comprise the Aerial Discharges ~~also infect, saturate and damage the environment, public property and private property.~~.

33. ~~Additionally, the~~ Plaintiff pleads that the release of the Aerial Discharges results in a real interference with the comfort or convenience of living according to the standards of the reasonable man.

Tresspass

34. Plaintiff pleads and reiterates that the Defendant engages in the release of the of Aerial Discharges ~~interfere~~potentially for

a. biological experimentation, on cities and on countryside, without public knowledge, authorization or consent;

b. the purpose of controlling or influencing the viewpoint and reasoning capacity of the population, through chemical and ~~impede with the quiet use and enjoyment of the property of the Plaintiff~~/or electromagnetic means.

~~20.~~35. Plaintiff pleads that the release of the Aerial Discharges are, in particular where they are pursued for these purposes, intended to directly infect, saturate and intrude purposely and directly on the property of the Plaintiff and of the potential members of the Class ~~Members.~~.

~~21.~~36. ~~The~~ Plaintiff pleads that as a result of the foregoing, the Plaintiff and potential Class ~~Members~~members are entitled to the relief sought in paragraph ~~4~~ 3 herein.

~~22.~~37. The Plaintiff proposes that this action be tried in the City of Toronto.

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Signature

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-431-16
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PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	SEPTEMBER 3, 2020
JUDGMENT AND REASONS:	MOSLEY J.
DATED:	NOVEMBER 2, 2020

APPEARANCES:

Henry Juroviesky Tony Vacca	FOR THE PLAINTIFF
Jacob Pollice Victor Paolone	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Barristers & Solicitors Toronto, Ontario	FOR THE PLAINTIFF
Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANT