

(Court File No.: T-431-16)

FEDERAL COURT

BETWEEN:

DAN PELLETIER
Plaintiff

and

HER MAJESTY THE QUEEN
Defendant

(Court seal)

PROPOSED CLASS PROCEEDING

FRESH AS AMENDED MEMORANDUM OF FACT AND LAW

Part I: Overview and Statement of Facts

1. The Defendant's Memorandum of Fact and Law, at paragraph 1, succinctly reiterates the salient facts and chronology: On December 8, 2016, the Honourable Mr. Justice LeBlanc ordered the Statement of Claim issued on March 11, 2016, struck, and granted leave to the Plaintiff to amend his claim. Her Majesty the Queen ("Canada") now moves to strike the Amended Statement of Claim ("Amended Claim") in its entirety, without leave to amend on the basis that:

- a. a reasonable cause of action has not been properly pleaded, and
 - b. in the alternative, on a merits basis, Canada has never participated directly or indirectly in an atmospheric aerosol spraying program.
2. The Defendant's motion to dismiss the Amended Claim should be denied in its entirety.
3. In respect of whether the Plaintiff has properly pleaded a reasonable cause of action: The pleadings allege the requisite material facts for each of the alleged causes of action. The material facts are reasoned, founded and supported by (a) in excess of 600 hi-resolution digital photographs,¹ (b) the legal framework governing the conduct that is alleged, (c) an Access to Information Request ("ATIP") response delineating the DND and the government's actual participation in a stratospheric aerosol spraying program, for the purpose of assessing the viability of Solar Radiation Management ("SRM") to mitigate the effects of global warming,² at the very least on the experimental level,³ and by (d) numerous,⁴ and ever increasing,⁵ scientific, peer-reviewed articles, including one scientific, peer-reviewed article which evaluates the issue specifically from within Canada.⁶ The

¹ Affidavit of Dan Pelletier, sworn December 3, 2017 at paragraph 3. Affidavit of Tony Vacca, sworn December 7, 2017 and in particular, Exhibit A of such affidavit.

² We note that there is significant basis in the scientific peer-reviewed literature for the proposition that tropospheric particulate air pollution as the primary driver of any global warming. See for example, Herndon, J. Marvin "World War II Holds the Key to Understanding Global Warming and the Challenges Facing Science and Society" Journal of Geography, Environment and Earth Science International 23(4): 1-13, 2019; available at <http://nuclearplanet.com/ww2.pdf> and retrieved Thursday February 27, 2020.

³ Transcript for the cross examination of Col Lew – Exhibit A. Transcript for cross examination of Col Lew, Questions 91, 99, 121, and 143.

⁴ Affidavit of Tony Vacca, sworn December 7, 2017 Exhibit B.

⁵ See for example, Marvin Herndon, Raymond D. Hoisington and Mark Whiteside "Radiometric Evidence that Chemtrails are not Contrails" currently under scientific review, and available at <http://nuclearplanet.com/hhw.pdf> retrieved February 27, 2020.

⁶ Exhibit "B" to the transcript for the cross examination of Colonel Lew - "Aerosolized Coal Flay Ash: A Previously Unrecognized Primary Factor in the Catastrophic Global Demise of Bird Populations and Species" Asian Journal of Biology 6(4): 1-21, 2018 Article No. AJOB.44911 ISSN: 2456-7124, at page 3 wherein the author

material facts are not speculative, and they do not constitute bald allegations. The government has and is participating in particulate aerial spraying. This is not “science fiction”; rather it is a carefully considered, and gravely troubling reality.

4. In respect of the merits: The Defendant’s evidence is clearly insufficient to rule on a paper record that Canada itself has not participated in, co-ordinated and/or acquiesced to, the (near) daily, Canada wide program of discharging of toxic coal fly ash and/or other aerosols and particulates into Canadian airspace.
5. Even if taken as true (which is not admitted but denied), Canada’s evidence, at its best, speaks to the question of the direct involvement of the Department of National Defence (“DND”) only, to the extent such involvement may be within Colonel Lew (Canada’s affiant) personal sphere of knowledge, taking into consideration the access to information restrictions associated with the DND’s compartmentalized hierarchical structure,⁷ and its strict “chain of command / need to know”⁸ means of restricted information dissemination. Canada’s affiant does not speak for any other branch of the Canadian government, nor does he persuasively establish that neither the DND, nor any other branch of the Canadian government, has authorized the (near) daily, Canada wide spraying of toxic coal fly ash and/or other chemicals be undertaken by another, which authorization renders Canada liable as a joint tortfeasor.

documents Canadian aerial discharges, and at page 7, wherein the author evaluates the chemical composition of Canadian snow mold for aerial discharge residue and identifies residue in ratios that strongly suggests that toxic coal fly ash is a constituent component in the Canadian aerial spraying.

⁷ Transcript for cross-examination of Col Lew - questions 110 to 113 inclusive.

⁸ Transcript for cross-examination of Col Lew questions 124 to 127 inclusive and questions 159 to 163 inclusive.

6. In particular, and on the contrary, on cross-examination of the government's affiant, Col.

Lew, he admitted:

- a. The DND is charged with the task of protecting the national interests of Canada. This includes protecting the national interests against foreign actors, and also, depending on the issues and circumstances involved, domestic actors.
- b. The national interests of Canada include the protection of Canadians from acts of mass deliberate air pollution, of the nature that is alleged.
- c. Even if the deliberate air polluter is another branch of the government, the DND is in one way or another "involved", as it falls under the mandate of the DND to protect the skies, Canadians, and to a certain extent even the deliberate polluter themselves, by providing direct or indirect logistical support.⁹

7. Moreover, and also in respect of the merits, Canada's position is inconsistent with legal framework governing the conduct as alleged, and is inconsistent with and explicitly contradicted by Exhibit "A" to the Transcript for the cross-examination of Colonel Lew, being a March 13, 2014 fifty three page ATIP response of the Federal Government which explicitly confirms that

- a. the DND directly participated in a July 5, 2012 meeting, at which, *inter alia*, the DND (represented at the time by Mr. Rob Fonberg who, at the time, was Deputy

⁹ Transcript for Cross Examination of Colonel Lew, Questions 51, 52, 57, 61, 62, 65, 69, 74, 91, 99, 121, and 143.

- Minister of Defense) specifically considered the spraying of sulfate aerosols into the Canadian stratosphere (10 to 50 km above the earths' crust); and that
- b. scientists at Environment Canada's Canadian Centre for Climate Modelling and Analysis have been engaged in a long term, large scale aerial particulate spraying "modelling" experiment, wherein they have actually sprayed sulphate particulates into the Canadian atmosphere on a basis and frequency only known to the Defendant, and that this is a part of a coordinated effort with other branches of the government.¹⁰
 - c. This development, that is, the Defendant's participation, from at least 2012, in a long term, large scale experiment coordinated with other branches of government, in and of itself, constitutes a meaningful "triable issue", namely, what are the particulars, basis, nature, purpose and frequency of the heretofore unknown (and undiscovered by Col. Lew's due diligence) sulphur particulate aerial aerosol spraying program as part of the "modelling experiment" and any related programming?
8. The ATIP response evidences that clearly, from as early as 2012, Canada has intimately evaluated, at the very highest levels, the prospect of discharging aerosols and particulates, into Canadian airspace.
9. We note and highlight, however, a gravely troubling distinction between what Canada has on the paper record evaluated and/or documented, and what Plaintiff's evidence establishes in part.

¹⁰ Exhibit "A" to the Transcript for the Cross Examination of Colonel Ning Lew, at page 000019 (slide 15 of 26) and 000036-000037. See Cross Examination of Colonel Lew, Questions 91, 99, 121, and 143. Affidavit of Dan Pelletier, sworn December 3, 2017 at paragraph 3. Affidavit of Tony Vacca, sworn December 7, 2017 and in particular, Exhibit A of such affidavit.

10. Canada has, more specifically, and based on the paper record, evaluated the spraying of sulphur dioxide into the stratosphere, whose toxic effects are well studied and appreciated, and where such particulates stay aloft for 1-2 years, prior to settling,¹¹ whereas Plaintiff evidence in part establishes something gravely more troublesome and dramatically more toxic: the spraying of toxic coal fly ash into the lower troposphere, *directly into the air Canadians breathe*, and, with disturbing frequency, directly over densely populated Canadian urban centres.

11. To summarize, at its best, and if taken as true, Colonel Lew's (Canada's affiant) affidavit evidence speaks primarily to the direct involvement and participation of DND to the extent that it may, taking into consideration the access to information restrictions associated with the DND's tiered hierarchy of compartmentalization¹² and "chain of need to know" means of strict, information management,¹³ be within his personal sphere of knowledge. It does not, speak to the direct or indirect involvement of any other branch of the Canadian government, and it does not persuasively establish that the DND (or any other branch of the Canadian government) has authorized, facilitated and/or co-ordinated the release of the aerial discharges.¹⁴ Moreover, Canada's position of non-involvement is inconsistent with the legal framework governing the conduct as alleged, and is inconsistent with and explicitly contradicted by Exhibit 'A' to the transcript for the cross-examination of Colonel Lew, which

¹¹ Exhibit "A" to the Transcript for the Cross Examination of Colonel Lew, at 000019 (slide 15 of 26) and 000040 of the ATIP response.

¹² Transcript for Cross-Examination of Col Lew, questions 110 to 113 inclusive.

¹³ Transcript for Cross-Examination of Col Lew, questions 124 to 127 inclusive and 159-163 inclusive.

¹⁴ Transcript for Cross-Examination of Col Lew, Questions 147, 148, and 149.

documents the DND's direct involvement, at the very highest levels,¹⁵ in the discharging particulates (at least admitted to by the government on an "experimental" or "modelling" basis)¹⁶ into the Canadian atmosphere. This is not "science fiction" as alleged by Canada; rather it is a carefully considered, and gravely troubling reality.

12. Accordingly, the Defendant's motion should be denied in its entirety. If any claim or cause of action ultimately is determined to be deficient, leave to amend the Amended Claim should be granted. If the deficiency is one that cannot be cured, that deficient portion of the claim should be severed from the larger claim, and only that deficient portion should be struck.

Part II – Points in Issue

13. Should the Defendant's motion to strike the claim be granted?
14. Should the Defendant's motion for summary judgment be granted?

Part III – Submissions

15. Simply stated, this motion turns on whether or not Canada has participated in, co-ordinated and/or authorized the (near) daily atmospheric spraying of toxic coal fly ash and/or other chemicals and particulates, and whether this is capable of proof.

¹⁵ Transcript, describing levels and deputy minister.

¹⁶ See Cross Examination of Colonel Lew, Exhibit A, Slide 15 of 26, and Question 121.

16. Irrespective of whether the focal point is the pleaded causes of action or the merits, if Canada has participated in or authorized the spraying of toxic coal fly ash, and/or other aerosols and particulates, then the motion to dismiss should be denied.

17. First, even without Col. Lew's admission on cross-examination, there appears to be an admission, albeit tacit, in Col. Lew's Affidavit evidence, in respect of the forgoing.

18. Paragraph 10 of the Defendant's Notice of Motion (page 2 of the Defendant's motion record) states, *inter alia*, under "THE GROUNDS FOR THE MOTION":

Neither the Canadian Military nor any other arm of government has ever knowingly or negligently released any 'Aerial Discharges' into the atmosphere above southern Alberta or anywhere in Canada. **Canada has never had any involvement in any of the alleged activities discussed in this claim.** [Emphasis added]

19. At paragraph 51 of the Defendant's Memorandum of Fact and Law, the Defendant states, in relevant part:

The question for this Court on summary judgment is: Has **Canada** engaged in the aerial discharges as alleged. This single issue, if resolved, is dispositive of the entirety of the proposed class action. [Emphasis added]

20. Paragraph 52 of the Defendant's Memorandum of Fact and Law states:

Canada has not engaged in aerial discharges of any chemicals over Didsbury, Alberta.

Canada is not and has never been involved in a joint US-Canada military operation entitled ‘Project Cloverleaf’, or any such similar projects, as alleged. [Emphasis added]

21. To substantiate the above assertion, Canada cites in footnote 32 of its Memorandum of Fact and Law, “Affidavit of X, sworn September X, 2017.” Arguably an oversight, however, in the result, this is correct as Colonel Lew’s affidavit and transcript of cross examination testifies primarily to the DND, to the extent that it may, taking into consideration the information accessibility constraints associated with the DND tiered hierarchy chain of command ‘need to know’ method of information management be is within his personal sphere of knowledge.
22. Canada adduces limited evidence in respect of any other branch of the Government other than the DND. The core of the Government’s evidence is limited primarily to the DND and to its direct active engagement. Please see paragraphs 4, 5, 6, and 7, of the Colonel Lew affidavit (page 6 of the Defendant’s motion record).
23. Moreover, Canada’s position of non-involvement is inconsistent with the governing legal framework, and is explicitly contradicted by Exhibit “A” to the transcript for the cross examination of Col Lew, being a lengthy March 14, 2014 ATIP response which delineates the DND’s and, more broadly, Canada’s direct involvement with DND in the actual large scale “modelling experiment” of spraying of sulphuric aerosols into the Canadian atmosphere. Approximately 15% to 20% of the ATIP response is redacted. Canada’s affiant

Col Lew was unable to obtain information regarding this ATIP, or its redacted portions.¹⁷ Contextually, the redactions appear to contain sensitive information associated with the particulars of the length and breadth of the experimentation and roll out of an aerosol spraying program, and with geoengineering and with climate modification more broadly.

The Plaintiff has Adequately Pleaded all of the Requisite Elements of one or more Viable Causes of Action.

24. In order to survive a motion to strike, a statement of claim:

must contain allegations of material facts sufficient to support a viable cause of action: [Federal Courts Rules, S.O.R./ 98-106, Rule 174](#). Plaintiffs need not plead the particular legal label associated with a cause of action: [Rule 175](#); see also *Cahoon v. Franks*, [1967 CanLII 77 \(SCC\)](#), [1967] S.C.R. 455 at pages 458-459.¹⁸ Similarly, plaintiffs who choose to use a particular legal label are not struck out just because they chose the wrong label: *Sivak v. Canada*, [2012 FC 272 \(CanLII\)](#), 406 F.T.R. 115¹⁹ at paragraph 20; *J2 Global Communications Inc. v. Protus IP Solutions Inc.*, [2008 FC 759\(CanLII\)](#), 330 F.T.R. 176²⁰ at paragraphs

¹⁷ Transcript of cross-examination of Col Lew – questions 159-160.

¹⁸ Tab 1 of the Plaintiff's Book of Authorities.

¹⁹ Tab 2 of the Defendant's Book of Authorities.

²⁰ Tab 2 of the Plaintiff's Book of Authorities.

33-36; *Johnson & Johnson Inc. v. Boston Scientific Ltd.*, 2004 FC 1672 (CanLII), [2005] 4 F.C.R. 110²¹ at paragraph 54.

Instead, **on a motion to strike, it is necessary that one focus on whether the allegations of material facts in the claim, construed generously, give rise to a cause of action**: *Conohan v. Cooperators*, 2002 FCA 60 (CanLII), [2002] 3 F.C. 421²² at paragraph 15. **This means any cause of action** [emphasis added]: *Imperial Tobacco*, above at paragraph 21; *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959²³ at pages 979-80, 74 D.L.R. (4th) 321; *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441²⁴ at pages 486-87, 18 D.L.R. (4th) 481. ***Sometimes the pleading gives rise to more than one cause of action. It all depends on the substance of the pleading, not the labels.*** As Lord Denning M.R. explained in *In re Vandervell's Trusts (No. 2)*, [1974] Ch. 269 at pages 321-22 (C.A.):

It is sufficient for the pleader to state the material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to what he has stated. He can present, in argument, any legal consequence of which the facts present.”²⁵

²¹ Tab 3 of the Plaintiff's Book of Authorities.

²² Tab 4 of the Plaintiff's Book of Authorities.

²³ Tab 5 of the Plaintiff's Book of Authorities.

²⁴ Tab 10 of the Defendant's Book of Authorities.

²⁵ *Paradis Honey Ltd. v. Canada*, [2016] 1 FCR 446, 2015 FCA 89 (CanLII), at paragraph 113.- 114. Tab 6 of the Plaintiff's Book of Authorities.

[Emphasis added]

25. The Plaintiff respectfully submits that a material fact should not constitute a bald allegation, or a speculation, where the fact is one that is logically inferred from (A) the magnitude of the activity in question and from the legal framework governing the conduct that is alleged, and (B) from documented involvement by the Defendant, at the highest of levels, and from at least 2012, in activities that intimately involve or contemplate, the spraying of aerosols and particulates into Canadian airspace.

Magnitude of the Activity in Question, and the Governing Legal Framework:

Regulatory Authority Lies with Canada

26. The Plaintiff at paragraph 12 of the Amended Claim²⁶ pleads, amongst other, that Canada (defined to include the Federal government, including its departments and ministries) jointly with others participates in, has contracted for, or has authorized the release of the Aerial Discharges into Canadian airspace.

27. Where Canada together with any other party engages in, contracts for or authorizes the release of the Aerial Discharges, Canada constitutes a joint tortfeasor, and liability attaches thereto.

²⁶ Defendant's Motion Record, Tab 4, page 45.

28. The activities that are the subject of the Amended Claim are extra-provincial, that is, national (and international) in scope²⁷ and they are occurring on a (near) daily basis.²⁸ Regulatory jurisdiction lies therefore with Canada.
29. Under the *Constitution Act 1867* Canada has exclusive jurisdiction for national defence,²⁹ and for the safe and efficient use of Canadian air space.³⁰
30. Canada has enacted various Acts to govern, administer, and discharge the duties imposed upon it under the *Constitution Act 1867*.
31. In respect of the national defence of Canada, Canada has enacted the *National Defence Act* (RSC 1985, c N-5). Pursuant to section 4 of the *National Defence Act*, the Minister of National Defence is tasked with the management and direction of the Canadian Forces and with ‘all matters relating to national defence.’³¹
32. In respect of the regulation of the safe and efficient use of Canadian air space, including the safety and security of air passengers, aircraft and of Canadian airports and aviation facilities, Canada has enacted the *Canada Transportation Act* (S.C. 1996, c. 10), and the *Aeronautics Act* (R.S.C. 1985, c. A-2). Pursuant to section 4.2 of the *Aeronautics Act*, the Minister is

²⁷ Affidavit of Tony Vacca, sworn December 7, 2017 and in particular, Exhibit B of such affidavit.

²⁸ Affidavit of Dan Pelletier, sworn December 3, 2017 at paragraph 3. Affidavit of Tony Vacca, sworn December 7, 2017 and in particular, Exhibit A of such affidavit.

²⁹ Affidavit of Col. Ning Lew - paragraph 3.

³⁰ with the possible exception of activities exclusively involving intra-provincial air space. *Constitution Act 1867* sections 91 and 92.

³¹ Affidavit of Col. Ning Lew.

tasked with the “development and regulation of aeronautics and the supervision of *all matters connected with aeronautics*”.

33. The activities that are the subject of the Amended Claim are extra-provincial, that is, national (and international) in scope³² and they are occurring on a (near) daily basis.³³ Regulatory jurisdiction lies with Canada.

Canada held a meeting of, inter alia, Deputy Ministers, specifically to consider the spraying of sulfate aerosols into the Canadian stratosphere, and Canada is directly participating in a co-ordinated international program to better understand the unintended consequences of injecting aerosols and particulates into the atmosphere

34. Exhibit “A” to the transcript for the cross examination of Colonel Lew is a lengthy, March 14, 2014 ATIP response which documents Canada’s direct and intimate involvement in the actual “experimental modelling” of spraying of sulphuric aerosol particulates into the Canadian skies to assess the efficacy of SRM; that is, of spraying sulphur dioxide into the Canadian stratosphere, to reflect a portion of the sun’s rays. Approximately 15% to 20% of the ATIP response is redacted. Col Lew was unable to obtain information regarding this ATIP response, or its redacted portions.³⁴ Contextually, the redactions appear to contain sensitive information associated with the experimentation and roll out of an aerosol spraying program, and, with geoengineering and with climate modification more broadly.

³² Affidavit of Tony Vacca, sworn December 7, 2017 and in particular, Exhibit B of such affidavit.

³³ Affidavit of Dan Pelletier, sworn December 3, 2017 at paragraph 3. Affidavit of Tony Vacca, sworn December 7, 2017 and in particular, Exhibit A of such affidavit.

³⁴ Transcript for cross-examination of Col Lew – questions 159-160.

35. The ATIP response also partly reveals, in particular, that on July 5, 2012, from 10:30 am to 12:00 pm EST, there occurred a meeting of, *inter alia*, Deputy Ministers, to consider the prospect of spraying sulphur dioxide into the Canadian stratosphere. Attendees included
- a. Ms. Clair Dansereau, Deputy Minister, Fisheries and Oceans;
 - b. Mr. Morris Rosenberg, Deputy Minister, Foreign Affairs and International Trade;
 - c. Mr. Richard Fadden, Director, Canadian Security Intelligence Services;
 - d. Mr. Stephen Rigby, National Security Advisor to the Prime Minister (Privy Council Office) and
 - e. Mr. Rob Fonberg, Deputy Minister, Defence.**

36. The ATIP response also documents that scientists at Environment Canada's Canadian Centre for Climate Modelling and Analysis are engaged and a part of a coordinated international climate "modelling" "experiment" involving the spraying of sulphuric aerosols into the Canadian skies to test its efficacy for SRM; the "Geo-Engineering Model Inter-Comparison Project" (GEOMIP).³⁵

37. Clearly Canada, and the DND, have been intimately involved in a project, from at least July 5, 2012, and at the very highest levels, that includes the "experimental" spraying of aerosols into Canadian airspace. The particulars of this involvement are a triable issue.

38. We note, however a gravely troubling distinction between what Canada has on the paper record evaluated and/or documented, and what Plaintiff's evidence documents in part.

³⁵ Exhibit "A" to the Transcript for the Cross Examination of Colonel Ning Lew, at page 41.

39. In particular, Canada and the DND has, more specifically, participated in the spraying of sulphur dioxide into the stratosphere (ostensibly on an experimental basis, the particulars of which are only known to the government but appears to be a large scale, and long term project), whose toxic effects are well studied and appreciated, and where such particulates stay aloft for 1-2 years, prior to settling,³⁶ whereas Plaintiff evidence in part establishes something gravely more troublesome and dramatically more toxic: the spraying of toxic coal fly ash into the lower troposphere, *directly into the air Canadians breathe*, and, with disturbing frequency, directly over densely populated Canadian urban centres. This is not “science fiction” as alleged by Canada, rather it is a carefully considered and gravely troubling reality.

This results in a Triable Issue: To What Extent is Canada and the DND engaging in the alleged conduct directly, and to what extent has it contracted for or authorized that the alleged activities be undertaken, which renders Canada and the DND joint tortfeasors.

40. Canada is responsible for the defence of Canada, and for the regulation and oversight of Canadian airspace, to ensure the safe and efficient use of same. The (near) daily, cross-Canada seeding of the atmosphere with toxic coal fly ash and/or other chemicals and particulates falls within the mandate and purview of the DND and, more broadly, of Canada. On cross-examination, Col. Lew acknowledged that the DND’s mandate includes the

³⁶ Exhibit “A” to the Transcript for the Cross Examination of Colonel Lew, 000019 (slide 15 of 26) and 000040 of the ATIP response.

protection of Canadians from acts of mass deliberate air pollution, of the nature that is alleged.

41. This is also factually buttressed, and results in a triable issue concerning, Canada's and the DND's direct and intimate involvement and consideration of the issue at the very highest level (July 5, 2012 Deputy Ministers meeting), and by Canada's and the DND's participation in the actual spraying of aerosol particulates into Canadian airspace as part of an international working group (GEOMIP) designed to assess and better understand the implications of injecting aerosols and particulates into the atmosphere.

42. At the very least, the length and breadth of this "experiment" is a triable issue.

43. Even where Canada is not itself directly engaging in the activity, but where Canada aids, abets, encourages, co-ordinates or authorizes the tortious conduct of another, or where Canada is merely present as a conspirator in the wrong that is done, Canada and the DND are, in law, a joint tortfeasor.³⁷

The Alleged Torts have been Appropriately Pleaded

44. At paragraphs 38 and 39 of its Memorandum of Fact and Law, the Defendant suggests the Plaintiff lacks standing to bring a claim in nuisance, on the basis that Plaintiff has pleaded a

³⁷ *Anmore Development Corp. v. The City of Burnaby et. al.*, 2005 BCSC 1477 (CanLII), at paragraphs 122 and 123, Tab 7 of the Plaintiff's Book of Authorities. Also see *Barnstead v. Ramsay*, [1996] B.C.J. No. 970 (S.C.), Tab 8 of the Plaintiff's Book of Authorities; and *Horseshoe Bay Retirement Society v. S.I.F. Development Corp. et. al.* (1990), [1990 CanLII 8047 \(BC SC\)](#), 66 D.L.R. (4th) 42 (B.C.S.C.), Tab 9 of the Plaintiff's Book of Authorities.

public nuisance, for which the Plaintiff lacks standing, since Plaintiff did not suffer ‘special’ damage in respect of the public nuisance.

45. The Plaintiff respectfully submits that the Defendant has incorrectly stated the law on the issue, and the Plaintiff cites *The Law of Nuisance in Canada* [Second Edition], at pages 43-44, wherein the author directly considers and addresses the confusion that has arisen on the distinction between a public nuisance, and a widespread private nuisance, and in which the author provides the following clarifying comment.

. . . an unfortunate confusion has developed because of the view that public nuisance may arise either : (1) from damage to or interference with public rights (“common interests”); and (2) from widespread damage or interference to an occupier’s use and enjoyment of his land (“private interests combined”). Despite some creditable authority for the latter proposition [footnote 43], it is respectfully submitted that this is an erroneous conception of the tort and that **only (1) is truly “public nuisance”. The cases caught in (2) are not public nuisances, but widespread private nuisances and ought to be treated as such. [footnote 44].**”³⁸

[Emphasis added]

46. We respectfully submit, therefore, that the claim in nuisance is a claim that is good at law.

³⁸ Pun, Gregory S., Hall, Margaret I., Knapp, Ian M. “The Law of Nuisance in Canada [Second Edition]”, LexisNexis Canada Inc., 2015, Tab 10 of the Plaintiff’s Book of Authorities.

47. With respect to the Defendant's comments in respect of trespass, we respectfully submit that the claim is appropriately pleaded.

48. The tort of trespass involves a 'direct interference with another's land, person or goods.' Ultimately the motivation for the alleged trespass (i.e. *potentially* for non-consensual biological experimentation etc.) is not an essential element of the tort, though motivation can be supportive. What is required is that the chemicals and particulates that are the subject of the alleged discharges settle directly (as opposed to indirectly) upon the Plaintiff's land, or even that aircraft and the aerial discharges unreasonably restricts the enjoyment of the airspace above the Plaintiff's land.³⁹

49. Here what is alleged as a natural corollary of the allegations is that coal fly ash and/or the particulates in question are settling directly upon the Plaintiff's land, and is also obstructing the airspace above his property in a way that unduly restricts the enjoyment of the Plaintiff's land. The claim for trespass therefore is also adequately pleaded and a good claim, at law.

³⁹ *Lewvest Ltd. v. Scotia Towers Ltd.* (1981), 126 DLR (3d) 239 (Nfld. T.D.), Tab 11 of the Plaintiff's Book of Authorities; *Didow v. Alberta Power Ltd.* [1988] 5 W. W.R. 606 (Alta C.A.), Tab 12 of the Plaintiff's Book of Authorities.

Section 7 to the Charter: Principles of Fundamental Justice that have been Breached

50. The Plaintiff respectfully submits that Canada’s conduct and involvement in the Aerial Discharges violates each of the following principles of fundamental justice: Arbitrariness, Gross Disproportionality, Overbreadth and Shock the Conscience.⁴⁰

Support for the Motivations for the Alleged Aerial Discharges

51. At paragraph 34 of Defendant Memorandum of Fact and Law, Defendant claims that Plaintiffs assertions as to possible motivations are purely speculative in nature.

52. While the objectives behind the release of the aerial discharges (and which aerial discharges are not necessarily comprised of uniform or consistent formulas of chemicals and particulates, but rather can vary) are potentially varied, certain of the objectives (i.e. weather control, mind control), and the need for such chemicals and particulates to be deployed to achieve such objectives, have been convincingly documented, in ‘main stream’ (i.e. “traditional”) media,⁴¹ in print,⁴² and in more progressive (i.e. independent) media,⁴³ and are evidenced by numerous patents in the area.

⁴⁰ Mendes, Erro and Beaulac, Stephane “Canadian Charter of Rights and Freedoms” 5th Edition, LexisNexis Canada Inc., 2013 at pages 681 to 686 inclusive for a succinct overview, Tab 13 of the Plaintiff’s Book of Authorities.

⁴¹ “That’s Impossible! Weather Warfare” (TV Episode 2009) - A&E Networks, from the 17 minute mark with aerial discharges being specifically contemplated at the 27 minute mark. We encourage Counsel for the Defendant and for the court to consider this episode. <https://archive.org/details/HistoryChannelsThatsImpossibleWeatherWarfare> retrieved January 27, 2020.

⁴² Dr. Nick Begich and Jeanne Manning, “Angels Don’t Play this HAARP: Advances in Tesla Technology” 1995 Earth Pulse Press. Freeland, Elana, “Chemtrails, HAARP, and the Full Spectrum Dominance of Planet Earth”, June 10 2014 Feral House.

⁴³ See, for example, www.geoengineeringwatch.org, retrieved February 28, 2020.

Non-consensual biological experimentation also has clear and well documented past precedent of having occurred in Canada

53. At paragraph 26 of its Memorandum of Fact and Law, the Defendant highlights that the Plaintiff provides no support for ‘clear and well documented past precedent of such type of non-consensual activity in Canada’.

54. On this point we refer to non-consensual mind control and brain washing experiments undertaken at Allan Memorial Institute in Montreal, where in excess of one hundred unsuspecting Canadians were made the subject of such experiments, all without their knowledge, authorization or consent, and in respect of which Canada has been “quietly” settling claims. The issue has and continues to be extensively considered by the Canadian Broadcasting Corporation (“CBC”),⁴⁴ and by other media.⁴⁵

⁴⁴ “Federal government quietly compensates daughter of brainwashing experiments victim” CBC News, posted October 27, 2017 <http://www.cbc.ca/news/politics/cia-brainwashing-allanmemorial-mentalhealth-1.4373590> retrieved January 27, 2020.

⁴⁵ “MK-ULTRAViolence Or, how McGill pioneered psychological torture” The McGill Daily, September 6, 2012 <https://www.mcgilldaily.com/2012/09/mk-ultraviolence/> retrieved January 27, 2020. “Declassified: Mind Control at McGill” The McGill Tribune- <http://www.mcgilltribune.com/mind-control-mcgill-mk-ultra/> retrieved January 27, 2020.

Failure of Provincial Environmental Monitoring Agencies to Identify and to Alert as to the existence of the Toxic Airborne Contaminants

55. Canadian provincial environmental monitoring agencies have to our knowledge failed to identify or to alert the Canadian public as to the ongoing existence of these toxic and dangerous airborne contaminants.

56. The potential reasons for this reckless and inexcusable failure is persuasively probed in the recent, European based, 2016 independent, multi-award winning⁴⁶ documentary ‘Overcast’⁴⁷. We respectfully encourage Defendant counsel and the Court to view this documentary.

Conclusion:

57. The Plaintiff respectfully submits that:

- a. He has adequately pleaded reasonable causes of action.
- b. Canada’s evidence denying involvement in an atmospheric aerosol program is woefully inadequate because:
 - i. There are meaningful triable issues that emanate as a result of Col. Lew’s cross-examination.

⁴⁶ The documentary has been awarded numerous accolades, including the 2016 Humanitarian Award – Award of Distinction, and the 2016 Diamond Award – California Film Awards, amongst many others.

⁴⁷ Available at: <https://www.overcast-the-movie.com/> and at <https://www.youtube.com/watch?v=FUBP7dMVoww> both links retrieved January 27, 2020.

- ii. The ATIP response at the very least appears to document the actual spraying of aerosols into Canadian skies, on a long-term, large scale basis, with such spraying being coordinated between different branches of government, including the DND.
- iii. Col. Lew admitted that prevention of mass deliberate air pollution of the nature that is alleged falls within the mandate and responsibilities of the DND relative to both foreign and domestic actors.
- iv. At its best, the Defendant's affidavit evidence covers only the DND, and does so only to the extent it is within the affiant's personal sphere of knowledge, taking into consideration the severe information access restrictions associated with the DND's compartmentalized tiered hierarchy and "need to know chain of command" strict means of information restriction, and as such, is of limited value.
- v. For example, Col. Lew actually attempted to request the ATIP Exhibit A slides from his counterparts in the DND (keeping in mind that the Deputy Minister of the DND attended the secret July 5, 2012 meeting on Geoengineering and SRM), and Col. Lew failed to locate the ATIP Exhibit A slides.
- vi. While Col. Lew's affidavit evidence denying DND involvement in Geoengineering, SRM and aerosol spraying was undoubtedly made in good faith, the evidence is of limited value, and is clearly wrong and inaccurate.

- c. This is not “science fiction” as alleged by Canada, rather it is a carefully considered and gravely troubling reality.
- d. The Plaintiff’s allegations are, thus, grounded in reality and more importantly are capable of proof.
- e. Accordingly, this matter should proceed to be adjudicated on the merits, and the Defendant’s motion should be dismissed.

Part IV - Orders Sought:

- 58. An Order dismissing the Defendant’s motion.
- 59. If any portion of the Plaintiff’s Amended claim is struck, leave to Amend.
- 60. Any other relief that this Honourable Court deems just and appropriate.
- 61. Costs fixed on an appropriate scale.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this February 28, 2020.

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Part V – List of Authorities

1. *Cahoon v. Franks*, 1967 CanLII 77 (SCC), [1967] S.C.R. 455 at pages 458-459.
2. *J2 Global Communications Inc. v. Protus IP Solutions Inc.*, 2008 FC 759(CanLII), 330 F.T.R. 176 at paragraphs 33-36.
3. *Johnson & Johnson Inc. v. Boston Scientific Ltd.*, 2004 FC 1672 (CanLII), [2005] 4 F.C.R. 110 at paragraph 54.
4. *Conohan v. Cooperators*, 2002 FCA 60 (CanLII), [2002] 3 F.C. 421 at paragraph 15.
5. *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959 at pages 979-80, 74 D.L.R. (4th) 321.
6. *Paradis Honey Ltd. v. Canada*, [2016] 1 FCR 446, 2015 FCA 89 (CanLII), at paragraph 113.- 114.
7. *Anmore Development Corp. v. The City of Burnaby et al*, 2005 BCSC 1477 (CanLII), at paragraphs 122 and 123.
8. *Barnstead v. Ramsay*, [1996] B.C.J. No. 970 (S.C.) at paragraphs 14, 16, 17 and 19.
9. *Horseshoe Bay Retirement Society v. S.I.F. Development Corp. et al* (1990), 1990 CanLII 8047 (BC SC), 66 D.L.R. (4th) 42 (B.C.S.C.) at pages 6-8.
10. *Pun, Gregory S., Hall, Margaret I., Knapp, Ian M.* “The Law of Nuisance in Canada [Second Edition]”, Lexis Canada Inc., 2015, at pages 43-44.
11. *Lewvest Ltd. V. Scotia Towers Ltd.* (1981), 126 DLR (3d) 239 (Nfld. T.D.) at paragraphs 7,9,12 and 16.
12. *Didow v. Alberta Power Ltd.* [1988] 5 W.W.R. 606 (Alta C.A.) paragraphs 6,8,19 and 24.
13. *Mendes, Erro and Beaulac, Stephane* “Canadian Charter of Rights and Freedoms” 5th Edition, LexisNexis Canada Inc., 2013 at pages 681 to 686.

Appendix A – Statutes and Regulations

- 1) *National Defence Act*, RSC 1985, c N-5, Section 4.
- 2) *The Constitution Act, 1867*, 30 & 31 Vict, c 3, Sections 91 and 92.
- 3) *Aeronautics Act* (R.S.C. 1985, c. A-2), Section 4.2.

National Defence Act, RSC 1985, c N-5, Section 4.

Minister

Duties

4 The Minister holds office during pleasure, has the management and direction of the Canadian Forces and of all matters relating to national defence and is responsible for

(a) the construction and maintenance of all defence establishments and works for the defence of Canada; and

(b) research relating to the defence of Canada and to the development of and improvements in materiel.

R.S., 1985, c. N-5, s. 4; R.S., 1985, c. 6 (4th Supp.), s. 10.

The Constitution Act, 1867, 30 & 31 Vict, c 3, Sections 91 and 92.

91.

It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1.

Repealed.

1A.

The Public Debt and Property.

2.

The Regulation of Trade and Commerce.

2A.

Unemployment insurance.

3.

The raising of Money by any Mode or System of Taxation.

4.

The borrowing of Money on the Public Credit.

5.

Postal Service.

6.

The Census and Statistics.

7.

Militia, Military and Naval Service, and Defence.

8.

The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9.

Beacons, Buoys, Lighthouses, and Sable Island.

10.

Navigation and Shipping.

11.

Quarantine and the Establishment and Maintenance of Marine Hospitals.

12.

Sea Coast and Inland Fisheries.

13.

Ferries between a Province and any British or Foreign Country or between Two Provinces.

14.

Currency and Coinage.

15.

Banking, Incorporation of Banks, and the Issue of Paper Money.

16.

Savings Banks.

17.

Weights and Measures.

18.

Bills of Exchange and Promissory Notes.

19.

Interest.

20.

Legal Tender.

21.

Bankruptcy and Insolvency.

22.

Patents of Invention and Discovery.

23.

Copyrights.

24.

Indians, and Lands reserved for the Indians.

25.

Naturalization and Aliens.

26.

Marriage and Divorce.

27.

The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28.

The Establishment, Maintenance, and Management of Penitentiaries.

29.

Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

92.

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1.

Repealed.

2.

Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3.

The borrowing of Money on the sole Credit of the Province

4.

The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5.

The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6.

The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7.

The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8.

Municipal Institutions in the Province.

9.

Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

10.

Local Works and Undertakings other than such as are of the following Classes:

(a)

Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

(b)

Lines of Steam Ships between the Province and any British or Foreign Country:

(c)

Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11.

The Incorporation of Companies with Provincial Objects.

12.

The Solemnization of Marriage in the Province.

13.

Property and Civil Rights in the Province.

14.

The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15.

The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16.

Generally all Matters of a merely local or private Nature in the Province.

Aeronautics Act (R.S.C. 1985, c. A-2), Section 4.2.

Responsibilities of Minister

Minister's responsibilities respecting aeronautics

4.2 (1) The Minister is responsible for the development and regulation of aeronautics and the supervision of all matters connected with aeronautics and, in the discharge of those responsibilities, the Minister may

- (a) promote aeronautics by such means as the Minister considers appropriate;
- (b) construct, maintain and operate aerodromes and establish and provide other facilities and services relating to aeronautics;
- (c) establish and provide facilities and services for the collection, publication or dissemination of information relating to aeronautics and enter into arrangements with any person or branch of government for the collection, publication and dissemination of that information;
- (d) undertake, and cooperate with persons undertaking, such projects, technical research, study or investigation as in the opinion of the Minister will promote the development of aeronautics;
- (e) control and manage all aircraft and equipment necessary for the conduct of any services of Her Majesty in right of Canada;
- (f) establish aerial routes;
- (g) cooperate with officers of Her Majesty in right of Canada and assist them in providing any services under their jurisdiction that may require any aerial work and collaborate with officers employed in aviation services of Her Majesty in such extension of their work as the development of aeronautics may require;
- (h) take such action as may be necessary to secure by international regulation or otherwise the rights of Her Majesty in right of Canada in international air traffic;
- (i) cooperate with officers of Her Majesty in right of Canada on all matters relating to defence;
- (j) cooperate or enter into administrative arrangements with aeronautics authorities of other governments or foreign states with respect to any matter relating to aeronautics;
- (k) investigate, examine and report on the operation and development of commercial air services in, to or from Canada;
- (l) provide financial and other assistance to persons, governments and organizations in relation to matters pertaining to aeronautics;

(m) for the purposes of providing aviation weather services that will ensure the safety, regularity and efficiency of aircraft operation, enter into arrangements with any branch of the Government of Canada that is capable of and responsible for providing those services or, where those arrangements cannot be made, enter into arrangements with any person or organization with respect to the provision of those services in such form and manner and at such places as the Minister considers necessary;

(n) subject to subsection (2), investigate matters relating to aviation safety; and

(o) undertake such other activities in relation to aeronautics as the Minister considers appropriate or as the Governor in Council may direct.

Exception — investigations of military-civilian occurrences

(2) Investigations of military-civilian occurrences, as defined in Part II, shall be carried out in accordance with that Part by the Airworthiness Investigative Authority, designated by the Minister under section 12.

R.S., 1985, c. 33 (1st Supp.), s. 1; 2014, c. 29, s. 11.