

STATEMENT OF CLAIM

(Court File No. _____)

FEDERAL COURT

BETWEEN:

DAN PELLETIER
Plaintiff

and

HER MAJESTY THE QUEEN
Defendant

(Court seal)

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 10, 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 Class Proceeding in respect of the spraying into the atmosphere of toxic substances and particulates by the Defendant that is dangerous to human health, 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. 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 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. An interlocutory and a final mandatory order directing that the Defendant comply with the *Canadian Charter of Rights and Freedoms*;
- e. 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. An Order that the Defendant pay general damages greater than \$50,000, in an amount to be proven at trial;
- g. An Order that the Defendant pay Declaratory Relief greater than \$50,000, in an amount to be proven at trial;
- h. Pre-judgment and post-judgment interest on the amounts payable pursuant to subparagraphs (f) and (g);
- i. Punitive, aggravated and exemplary damages in an amount that this Honourable Court deems just;
- j. Costs of this action on a substantial indemnity basis plus applicable taxes;
- k. 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. 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:

5. On various dates, the Plaintiff observed that certain aircraft discharged 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.
6. The Aerial Discharges slowly dissipated, formed a thin, hazy film across the sky, and would obfuscate the sun’s rays.
7. The Aerial Discharges dissipate across ranges of altitudes, including lower altitudes. Thus, the Aerial Discharges dissipate in the lower altitudes which include the air that the Plaintiff, his family and the potential members of the Class breath.
8. The Plaintiff pleads that the Aerial Discharges are comprised of minute particles that are toxic and/or are easily absorbed into the body and the environment, and are thus dangerous when absorbed into the body or the environment.
9. The Plaintiff pleads that the Defendant, and/or her agent’s or instrumentalities perform the Aerial Discharges over Canadian air space.
10. The Plaintiff further pleads that the Defendant knows or ought to know that the Aerial Discharges are dangerous.

Negligence

11. The Plaintiff relies on his pleadings above.
12. The Plaintiff pleads that the Defendant has a duty to not perform actions that are dangerous to the Plaintiff and proposed Members of the Class. The Plaintiff reiterates his pleadings that the Defendant engaged in the performance of the Aerial Discharges, the Aerial Discharges

are dangerous, and that the Defendant knew or ought to have known that the Aerial Discharges are dangerous.

13. The Defendant has breached her duties to the Plaintiff and the proposed Class by engaging in the performance of the Aerial Discharges.
14. 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*,
 - 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. 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. As a result, the Plaintiff pleads that the Aerial Discharges permeate and saturate the air breathed-in by the Plaintiff and potential Class Members, and thus, cause serious health problems and injuries.
19. Further, the Plaintiff pleads that the Aerial Discharges also infect, saturate and damage the environment, public property and private property.

20. Additionally, the Plaintiff pleads that the Aerial Discharges interfere and impede with the quiet use and enjoyment of the property of the Plaintiff and the potential Class Members.
21. The Plaintiff pleads that as a result of the foregoing, the Plaintiff and potential Class Members are entitled to the relief sought in paragraph 4 herein.
22. The Plaintiff proposes that this action be tried in the City of Toronto.

Henry Juroviesky
Barrister and Solicitor
469 Lawrence Ave., West
Toronto, Ontario M5M 1C6

LSUC # 53233S

Henry Juroviesky
Signature

Lawyer for the Plaintiff