

FEDERAL COURT

BETWEEN:

DAN PELLETIER

**Plaintiff
(Responding Party)**

and

HER MAJESTY THE QUEEN

**Defendant
(Moving Party)**

WRITTEN REPRESENTATIONS OF THE DEFENDANT

OVERVIEW

1. The Defendant moves to strike out the Plaintiff's Statement of Claim without leave to amend. The Plaintiff has brought a proposed class proceeding against the Crown in which he alleges numerous causes of action with respect to his purported observance of airplanes discharging particulate-like matter in the sky. The causes of action alleged in the Claim either do not exist at law, or they are unaccompanied by the necessary material facts to disclose a cause of action. Accordingly, the entire claim must fall.

2. The Claim is so replete with vague assertions and conclusions, and is so devoid of factual material, that it remains impossible for the Defendant to meaningfully plead a defence. Even a statement of claim with a coherent narrative will be struck if the requisite facts are not pleaded to support the alleged causes of action. In this case, there is not even a coherent narrative. Accordingly, this Claim should also be struck for being scandalous, frivolous, and vexatious.

3. The Claim should be struck without leave to amend, as there is not a scintilla of a cause of action.

PART I – STATEMENT OF FACTS

4. This is a proposed class proceeding by the Plaintiff, Dan Pelletier. The Plaintiff claims against Her Majesty the Queen for breach of statute, breach of *Charter* rights, negligence, nuisance and trespass.

5. The Plaintiff seeks multiple interlocutory and mandatory orders, general damages, payment of ‘declaratory relief’, punitive damages, aggravated damages, exemplary damages, legal costs of the action, and costs of administering a plan of distribution of the recovery in the action.¹

PART II – POINT IN ISSUE

6. Should the Statement of Claim be struck without leave to amend?

PART III – SUBMISSIONS

A. STATEMENT OF CLAIM SHOULD BE STRUCK WITHOUT LEAVE TO AMEND

1) The Law Applicable to Motions to Strike

7. The two principal functions of pleadings are to clearly define the issues between litigants and to give fair notice of the case which has to be met by the other side.²

¹ Plaintiff’s Statement of Claim, Motion Record of the Defendant (“Defendant’s Motion Record”), Tab 2, page 6, para 4.

² *Sivak v Canada*, 2012 FC 272 [“*Sivak*”], Book of Authorities of the Defendant (“Defendant’s Authorities”), Tab 19, at para 11.

8. Rule 174 requires that a pleading 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 proven³. Rule 181 requires that a pleading shall contain particulars of every allegation⁴.

9. Rule 221(1) permits a defendant to move to strike a statement of claim if, among other things, it discloses no reasonable cause of action, or is scandalous, frivolous or vexatious⁵. The Supreme Court of Canada has noted that the power to strike out a statement of claim that has no reasonable prospect of success is a “valuable housekeeping measure essential to effective and fair litigation.”⁶

10. Specifically, on a motion to strike out a pleading, a Court will consider whether it is plain and obvious that the Claim discloses no reasonable cause of action.⁷

11. A claim fails to disclose a reasonable cause of action where insufficient material facts are pleaded in support of the allegations. It is not sufficient for a claim to contain assertions and conclusions without facts upon which to base those assertions and conclusions.⁸ As stated by the Federal Court of Appeal in *Mancuso v. Canada*:

16 It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought. As the judge noted “pleadings play an important role in providing notice and defining the issues to be

³ Rule 174 of *Federal Courts Rules*, Part VI to Defendant’s Written Representations

⁴ Rule 181 of *Federal Courts Rules*, Part VI to Defendant’s Written Representations

⁵ Rule 221 of *Federal Courts Rules*, Part VI to Defendant’s Written Representations

⁶ *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42, Defendant’s Authorities, Tab 18, at paras. 17, 19.

⁷ *Kisikawpimootewin v Canada*, 2004 FC 1426, Defendant’s Authorities, Tab 10, para. 4.

Defendant’s Authorities, Tab 3, at para 10; aff’d 2010 FCA 112.

⁸ *Sivak, supra*, Defendant’s Authorities, Tab 19, at paras 18, 21; *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184, Defendant’s Authorities, Tab 14, at para 34.

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."

17 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.

18 There is no bright line between material facts and bald allegations, nor between pleadings of material facts and the prohibition on pleading of evidence. They are points on a continuum, and it is the responsibility of a motions judge, looking at the pleadings as a whole, to ensure that the pleadings define the issues with sufficient precision to make the pre-trial and trial proceedings both manageable and fair.

19 What constitutes a material fact is determined in light of the cause of action and the damages sought to be recovered. The plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability.⁹

12. Justice Lemieux of this Court used similar language in 2006 in *Baird v. Canada*:

8 Fundamentally, as framed, I am of the view that the Plaintiff's statement of claim lacks material facts and particulars which are necessary to permit the Defendant to plead intelligently in response. A few examples suffice.

9 First, the Plaintiff's claims span over a 16-year period -- 1989 to 2005. The Plaintiff fails to identify the material facts and particulars supporting his claims or causes of action or to specify a time when the offending activities giving rise to his claims or causes of action took place. It may be that some of these activities are time-barred or *res judicata*.

10 Second, the Plaintiff fails to identify any Crown servant who may be responsible for the actions he complains of.

11 In other words, in my view, the Plaintiff's statement of claim is fatally flawed because he does not tell the Defendant who, when, where, how and what gives rise to the Crown's liability to him. Counsel for HMQ is correct in stating that what the Plaintiff pleads are allegations and conclusions, not the essential facts grounding his claims or causes of action ...

⁹*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, Defendant's Authorities, Tab 13, at paras. 16-20

12 There is another fundamental reason for striking the statement of claim. This statement of claim is an abuse of process. It contains 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. ...¹⁰

13. While material facts must be taken as true for the purposes of a motion to strike, and while the claim must be read as generously as possible, allegations based on assumptions and speculation need not be taken as true.¹¹ Furthermore, the courts have repeatedly held that it is improper to bring an action on speculation hoping that sufficient facts to substantiate the pleadings may be gleaned on discovery.¹²

14. A claim alleging a cause of action unknown at law has no reasonable prospect of success and will be struck.¹³ If a pleading is not good as a matter of law, no amendments or particulars can save it, and it should be struck without leave to amend.¹⁴

15. Under Rule 221(1)(c), a Court will consider whether a pleading is so deficient in factual material that it is consequently scandalous, frivolous or vexatious.¹⁵ A scandalous, frivolous or vexatious pleading includes those in which there is no rational argument in support of the claim, or where a pleading is so deficient that it cannot lead to any practical result.¹⁶ This Court has observed that a scandalous, vexatious or

¹⁰ *Baird v Canada*, 2006 FC 205, Defendant's Authorities, Tab 4, at paras. 8-12, affirmed 2007 FCA 48, Defendant's Authorities, Tab 4, at paras. 1-3.

¹¹ *Operation Dismantle Inc v Canada*, [1985] 1 S.C.R. 441, Defendant's Authorities, Tab 16, at para 27.

¹² *AstraZeneca Canada Inc. v. Novopharm Ltd*, 2009 FC 1209, Defendant's Authorities, Tab 3, at para. 17 aff'd 2010 FCA 112 at para. 5; see also *Imperial Tobacco (S.C.C.)*, *supra*, Defendant's Authorities, Tab 18, at para. 22.

¹³ *Holland v Saskatchewan*, 2008 SCC 42, Defendant's Authorities, Tab 9, at paras. 8-9.

¹⁴ *Sivak*, *supra*, Defendant's Authorities, Tab 19, at paras 23, 94-95.

¹⁵ *Kisikawpimootewin*, *supra*, Defendant's Authorities, Tab 10, paras. 5-9.

¹⁶ *Steiner v R*, [1996] FCJ No 1356 (QL), Defendant's Authorities, Tab 20, at para 16.

frivolous action is one that consists solely of bare allegations that leave the defendant unable to respond and the Court unable to regulate the proceeding.¹⁷

16. The law is settled that motions to strike may be brought prior to certification hearings.¹⁸ As stated by Justice Russell of this Court in *Sivak v. Canada*, “Deficient pleadings do not promote the just, most expeditious and least expensive determination on the merits. In fact, they promote the opposite”.¹⁹

2) This Claim discloses no reasonable cause of action

17. The Plaintiff’s Claim consists of a series of bald allegations, arguments, theories, and conclusions, but is devoid of material facts necessary to support those assertions. For example, in the “relief sought” section of the Claim, the Plaintiff seeks broad and undefined declarations that the alleged aerial discharge of coal fly ash and/or other contaminates contravenes the *Canadian Environmental Protection Act* (the “Act”)²⁰ and the *Charter of Rights and Freedoms*.²¹ He also seeks mandatory and final orders directing compliance with the *Act* and *Charter*. Neither the *Act*²² nor the *Charter* are mentioned again.

¹⁷ *Ceminchuk v Canada*, [1995] FCJ No 914 (QL), Defendant’s Authorities, Tab 7, at paras. 3, 10 and 23.

¹⁸ *Pearson v. Canada*, 2008 FC 62 (Proth) at paras. 23-26, Defendant’s Authorities, Tab 17; *Merchant Law Group v. Canada* 2008 FC 1371, Defendant’s Authorities, Tab 14 (third decision at Tab 14), at paras. 28-30.

¹⁹ *Sivak, supra*, Defendant’s Authorities, Tab 19, at para. 8; See also Rule 3 of *Federal Courts Rules*, Part VI to the Defendant’s Written Representations

²⁰ SC 1999, c 33.

²¹ Statement of Claim, Defendant’s Motion Record, Tab 2, page 6, at para 4(b).

²² The *Act* is mentioned in the paragraph preceding the ‘Relief Sought’ section, but only in relation to naming the parties.

18. With respect to the *Charter*, the Plaintiff fails to specify which of the *Charter* rights have been infringed. He similarly fails to plead any basic facts regarding the circumstances in which the infringement allegedly occurred, such as the government actor involved or the basic factual context of the alleged *Charter* breach. As stated by the Federal Court of Appeal in *Mancuso*: "...a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provision in question. This is no mere technicality, 'rather, it is essential to the proper presentation of Charter issues': *Mackay v. Manitoba*".²³

19. The Plaintiff also fails to plead or factually substantiate the essential elements of the tort of negligence. The essential elements include a duty of care, a specific breach of that duty, a causal connection between the breach of duty and the injury, and an actual loss. The Federal Court of Appeal in *Mancuso* held, "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."²⁴

20. The Plaintiff's Claim pleads simply that "the Defendant has a duty to not perform actions that are dangerous the Defendant engaged in the performance of the Aerial Discharges...and the Defendant knew or ought to have known that the Aerial Discharges are dangerous."²⁵ On the issue of damages, the Claim pleads "the

²³ *Mancuso, supra*, Defendant's Authorities, Tab 13, at para. 21; *MacKay v Manitoba*, [1989] 2 SCR 357 [*MacKay*], Defendant's Authorities, Tab 12, at para. 9

²⁴ *Mancuso, ibid*, Defendant's Authorities, Tab 13, at para. 26; see also *Lana International Ltd. v. Menasco Aerospace Ltd.*, [1996] O.J. No. 1448, Defendant's Authorities, Tab 11, at para. 16.

²⁵ Statement of Claim, Defendant's Motion Record, Tab 2, page 8, at para 12.

Defendant's actions have caused meaningful damages to the Plaintiff and the proposed Class Members."²⁶

21. This pleading discloses nothing beyond bare conclusions, and merely recites the steps in a generic negligence analysis. The Plaintiff does not identify the individuals involved in the alleged negligent conduct, nor does he explain their roles or responsibilities giving rise to a purported duty to the Plaintiff. Similarly, no details are provided with respect to the acts or omissions in question—the “performance of Aerial Discharges”—such as when they occurred, how these acts breached the purported duty to the Plaintiff, or what type of damage they caused. As such, it would be impossible to conduct the necessary analysis to determine whether liability for negligence could be established.

22. This Court emphasized in *Sivak v Canada* that material facts are especially important to ground negligence claims against government actors, as issues may arise as to whether public law discretionary powers establish private law duties owed to particular individuals or whether the decisions in question were policy decisions or operational decisions. Accordingly, detailed factual pleadings are required in order to properly determine whether a cause of action exists.²⁷ As the Plaintiff has failed to plead the material facts necessary to ground a cause of action, the claim in negligence ought to be struck.

²⁶ Statement of Claim, Defendant's Motion Record, Tab 2, page 9, at para 14.

²⁷ *Sivak, supra*, Defendant's Authorities, Tab 19, at para 48.

23. The Plaintiff's Claim for nuisance and trespass is also unsupported by material facts. A claim for nuisance requires that a plaintiff plead facts to establish a substantial and unreasonable interference with the use or enjoyment of his or her land.²⁸ A cause of action in trespass requires that a plaintiff plead facts capable of establishing a direct and physical intrusion onto land in the plaintiff's possession.²⁹ The Plaintiff's Claim, however, simply asserts that aerial discharges "infect, saturate and damage the environment, public property and private property" before concluding that the quiet use and enjoyment of his property and that of putative class members have been impeded.³⁰ Absent from the pleading are particulars concerning the location of the lands in question, the time and date of the interference in question, and the nature of the interference or intrusion. Further there are no material facts pleaded to support the actual causes of action grounded in trespass and nuisance.

24. Finally, the Plaintiff's Claim of breach of the *Canadian Environmental Protection Act* should be struck. Not a single fact – material or otherwise – is provided to explain why this statute is even being mentioned; rather, the Claim contains a bald conclusion that the *Act* has been breached. In *Holland v Saskatchewan*, the Supreme Court of Canada definitively held that no action lies against a public authority for breach of statute.³¹ Similarly, the Supreme Court of Canada has noted that a "breach of

²⁸ *Antrim Truck Centre Ltd v Ontario (Transportation)*, 2013 SCC 13, Defendant's Authorities, Tab 2, at para 19.

²⁹ *Canada (Attorney General) v. MacQueen*, 2013 NSCA 143, Defendant's Authorities, Tab 5, at paras. 88, 93; leave to appeal denied [2014] S.C.C.A. No. 51.

³⁰ Statement of Claim, Defendant's Motion Record, Tab 2, pages 9-10, at paras. 19-20.

³¹ *Holland v Saskatchewan*, *supra*, Defendant's Authorities, Tab 9, at para 9.

statute is neither necessary nor is it sufficient to ground a private cause of action.”³²

Notwithstanding that the sparse and disjointed pleadings make it impossible to glean the details of the purported breach of the statute in question, no cause of action can lie based solely on this allegation, and the Claim should be struck accordingly. As stated by the Federal Court of Appeal, “The bald assertion of a conclusion is not a pleading of a material fact.”³³

3) The Claim is Scandalous, Frivolous and Vexatious

25. The Claim should also be struck, under Rule 221(1)(c), on the basis that it is scandalous, frivolous and vexatious. The pleadings disclose nothing more than a bare allegation that on various unspecified dates at various unspecified places “the Defendant, and/or her agent’s or instrumentalities perform the Aerial Discharges over Canadian air space”³⁴ resulting in some unstipulated damage to the Plaintiff and putative class members.

26. This Court has observed that speculative, unsupported allegations amount to a scandalous, frivolous and vexatious pleading.³⁵ In *George v Harris*, Justice Epstein, then a judge of the Ontario Superior Court, identified various indicia of scandalous, frivolous or vexatious documents. She noted that such indicia include: a complete absence of material facts; bare allegations; or, documents replete with conclusions or

³² *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62, Defendant’s Authorities, Tab 6, at paras. 28-29.

³³ *Mancuso, supra*, Defendant’s Authorities, Tab 13, at para. 27.

³⁴ Statement of Claim, Defendant’s Motion Record, Tab 2, **page 8**, para. 9.

³⁵ *Oleynik v Canada (Attorney General)*, 2014 FC 896, Defendant’s Motion Record, Tab 15, at para 21.

expressions of opinion.³⁶ Each of these indicia is present in this Claim. Indeed, the Plaintiff's allegations are simply so vague and deficient that the exact nature of the question to be tried cannot be ascertained and the Defendant cannot know how to answer, which renders this litigation impossible to regulate.³⁷

27. This Claim bears all the hallmarks of a scandalous, frivolous and vexatious proceeding, and ought to be struck out accordingly.

4) No Leave to Amend

28. For the foregoing reasons, it is plain and obvious that the Plaintiff has failed to plead a viable cause of action and, as such, there is nothing to be gained from any attempts to rehabilitate this Claim.

29. In *Baird*, Justice Létourneau of the Federal Court of Appeal described the Claim there as "beyond redemption and amendments are simply not possible"³⁸. These words are apt in this case. Accordingly, the Crown seeks to have the Claim struck without leave to amend.

B. EXTENSION TO FILE A STATEMENT OF DEFENCE

30. In the event this motion is dismissed, the Defendant seeks an order that the Statement of Defence be delivered after the disposition of the certification motion. A statement of defence is not essential, and is likely to be of little assistance, in

³⁶ *George v. Harris*, [2000] OJ No 1762 (QL), Defendant's Authorities, Tab 8, at para 20.

³⁷ *Ceminchuk*, *supra*, Defendant's Authorities, Tab 7, para. 10 and 23.

³⁸ *Baird (FCA)*, *supra*, Defendant's Authorities, Tab 4, at para. 3.

determining the issues in a certification motion.³⁹ Moreover, postponing the delivery of the Statement of Defence until after certification results in no prejudice to the Plaintiff and it ensures a speedier and less costly resolution of the issues. As such, an Order granting the Defendant an extension of time to file its Statement of Defence would be warranted in these circumstances⁴⁰.

C. COSTS

31. If the Defendant's motion is granted, in whole or in part, the Defendant requests costs pursuant to Rule 400(3)(a),(g),(i) and (k) of the *Federal Courts Rules*.⁴¹ The Defendant, as the successful party, is entitled costs. The Claim is so clearly devoid of material facts that costs are justified in this case.

32. Rule 334.39 states that generally "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 any appeal arising from a class proceeding"⁴². However, this motion is being brought prior to the service and filing of certification materials and, accordingly, costs may be awarded⁴³.

PART IV – ORDER SOUGHT

³⁹ *Always Travel Inc. v Air Canada*, 2003 FCT 212, Defendant's Authorities, Tab 1, para. 6.

⁴⁰ Rule 8 of *Federal Courts Rules*, Part VI to the Defendant's Written Representations

⁴¹ Sections 27 and 28 of *Crown Liability and Proceedings Act*, Part VI to Defendant's Written Representations; Rule 400(3)(a),(g),(i) and (k) of *Federal Courts Rules*, Part VI to Defendant's Written Representations.

⁴² Rule 334.39 of *Federal Courts Rules*, Part VI to the Defendant's Written Representations

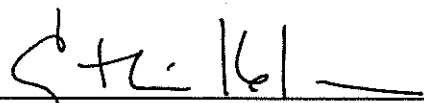
⁴³ *Campbell v. Canada* 2012 FCA 45, Defendant's Authorities, Tab 21, at para. 45.

1. **The Defendant respectfully requests an order:**

- (a) Under Rule 221 striking out the Statement of Claim (the "Claim") without leave to amend;
- (b) Costs of the motion;
- (c) In the alternative, in the event the Claim is struck with leave to amend, an Order requiring delivery of the amended Claim within 30 days of the date of the Court's Order on this motion;
- (d) In the further alternative, in the event this motion is dismissed, an Order extending the time to file a Statement of Defence until after the hearing and disposition of the certification motion;
- (e) Such further relief as counsel may advise and the Court considers just and appropriate in the circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 28th day of July 2016.



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PART V – LIST OF AUTHORITIES

Tab	Description
1.	<i>Always Travel Inc v Air Canada</i> , 2003 FCT 212
2.	<i>Antrim Truck Centre Ltd v Ontario (Transportation)</i> , 2013 SCC 13
3.	<i>AstraZeneca Canada Inc. v. Novopharm Ltd.</i> , 2009 FC 1209, <i>aff'd</i> 2010 FCA 112
4.	<i>Baird v Canada</i> , 2006 FC 205, <i>aff'd</i> 2007 FCA 48
5.	<i>Canada (Attorney General) v. MacQueen</i> , 2013 NSCA 143, leave to appeal denied [2014] S.C.C.A. No. 51
6.	<i>Canada (Attorney General) v TeleZone Inc</i> , 2010 SCC 62
7.	<i>Ceminchuk v Canada</i> , [1995] FCJ No 914
8.	<i>George v Harris</i> , [2000] OJ No 1762
9.	<i>Holland v Saskatchewan</i> , 2008 SCC 42
10.	<i>Kisikawpimootewin v Canada</i> , 2004 FC 1426
11.	<i>Lana International Ltd. v. Menasco Aerospace Ltd.</i> , [1996] O.J. No. 1448
12.	<i>MacKay v Manitoba</i> , [1989] 2 SCR 357
13.	<i>Mancuso v Canada (National Health and Welfare)</i> , 2015 FCA 227, <i>aff'd</i> [2016] S.C.C.A No. 92
14.	<i>Merchant Law Group v. Canada</i> , 2010 FCA 184 <i>aff'g</i> 2009 FC 755; also 2008 FC 1371
15.	<i>Oleynik v Canada (Attorney General)</i> , 2014 FC 896
16.	<i>Operation Dismantle Inc v Canada</i> , [1985] 1 S.C.R. 441
17.	<i>Pearson v. Canada</i> , 2008 FC 62 (<i>Proth</i>); 2008 FC 1161 (<i>Proth</i>) <i>aff'd</i> 2008 FC 1367, <i>aff'd</i> 2009 FCA 359
18.	<i>R v Imperial Tobacco Canada Ltd</i> , 2011 SCC 42
19.	<i>Sivak v Canada</i> , 2012 FC 272
20.	<i>Steiner v R</i> , [1996] FCJ No 1356
21.	<i>Campbell v. Canada</i> 2012 FCA 45

PART VI – STATUTES AND REGULATIONS

<i>Crown Liability and Proceedings Act,</i> R.S.C. 1985, c. C-50	<i>Loi sur la responsabilité civile de l'État et le contentieux administratif,</i> L.R.C. (1985), ch. C-50
Sections 27 & 28	
Rules of court 27 Except as otherwise provided by this Act or the regulations, the rules of practice and procedure of the court in which proceedings are taken apply in those proceedings.	Règles de pratiques 27 Sauf disposition contraire de la présente loi ou de ses règlements, les instances suivent les règles de pratique et de procédure du tribunal saisi.
Costs 28 (1) In any proceedings to which the Crown is a party, costs may be awarded to or against the Crown. Costs awarded to Crown (2) Costs awarded to the Crown shall not be disallowed or reduced on taxation by reason only that the solicitor or counsel who earned the costs, or in respect of whose services the costs are charged, was a salaried officer of the Crown performing those services in the discharge of the officer's duty and was remunerated therefor by a salary, or for that or any other reason was not entitled to recover any costs from the Crown in respect of the services so rendered.	Adjudication 28 (1) Dans toute poursuite à laquelle l'État est partie, les dépens peuvent aussi bien lui être adjugés que mis à sa charge. Dépens adjugés à l'État (2) Les dépens adjugés à l'État ne peuvent être refusés ni réduits lors de la taxation au seul motif que l'avocat pour les services duquel ils sont justifiés ou réclamés était un fonctionnaire salarié de l'État, et à ce titre rémunéré pour les services qu'il fournissait dans le cadre de ses fonctions, ou bien n'était pas, de par son statut ou pour toute autre raison, admis à prélever les dépens sur l'État pour les services ainsi rendus.
<i>Federal Courts Rules, SOR/98-106</i>	<i>Règles des Cours fédérales, DORS/98-106</i>
Rules 3, 8, 174, 181, 221, 334.39, 369, 384.1, 385, 400(3)(a),(g),(i) and (k)	
General principle 3 These Rules shall be interpreted and applied so as to secure the just, most	Principe general 3 Les présentes règles sont interprétées et appliquées de façon à permettre

<p>expeditious and least expensive determination of every proceeding on its merits.</p>	<p>d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.</p>
<p>Extension or abridgement 8 (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.</p>	<p>Délai prorogé ou abrégé 8 (1) La Cour peut, sur requête, proroger ou abréger tout délai prévu par les présentes règles ou fixé par ordonnance.</p>
<p>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.</p>	<p>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.</p>
<p>Particulars 181 (1) A pleading shall contain particulars of every allegation contained therein, including</p> <p style="padding-left: 40px;">(a) particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and</p> <p style="padding-left: 40px;">(b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.</p>	<p>Précisions 181 (1) L'acte de procédure contient des précisions sur chaque allégation, notamment :</p> <p style="padding-left: 40px;">a) des précisions sur les fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;</p> <p style="padding-left: 40px;">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.</p>
<p>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</p> <p style="padding-left: 40px;">(a) discloses no reasonable cause of action or defence, as the case may be,</p> <p style="padding-left: 40px;">(b) is immaterial or redundant,</p>	<p>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 :</p> <p style="padding-left: 40px;">a) qu'il ne révèle aucune cause d'action ou de défense valable;</p> <p style="padding-left: 40px;">b) qu'il n'est pas pertinent ou qu'il est redondant;</p>

<p>(c) is scandalous, frivolous or vexatious,</p> <p>(d) may prejudice or delay the fair trial of the action,</p> <p>(e) constitutes a departure from a previous pleading, or</p> <p>(f) is otherwise an abuse of the process of the Court,</p> <p>and may order the action be dismissed or judgment entered accordingly.</p> <p>Evidence</p> <p>(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).</p>	<p>c) qu'il est scandaleux, frivole ou vexatoire;</p> <p>d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;</p> <p>e) qu'il diverge d'un acte de procédure antérieur;</p> <p>f) qu'il constitue autrement un abus de procédure.</p> <p>Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.</p> <p>Preuve</p> <p>(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).</p>
<p>No costs</p> <p>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</p> <p>(a) the conduct of the party unnecessarily lengthened the duration of the proceeding;</p> <p>(b) any step in the proceeding by the party was improper, vexatious or unnecessary or was taken through negligence, mistake or excessive caution; or</p> <p>(c) exceptional circumstances make it unjust to deprive the successful party of costs.</p>	<p>Sans dépens</p> <p>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 :</p> <p>a) sa conduite a eu pour effet de prolonger inutilement la durée de l'instance;</p> <p>b) une mesure prise par elle au cours de l'instance était inappropriée, vexatoire ou inutile ou a été effectuée de manière négligente, par erreur ou avec trop de circonspection;</p> <p>c) des circonstances exceptionnelles font en sorte qu'il serait injuste d'en priver la partie qui a eu gain de cause.</p>
<p>Motions in writing</p> <p>369 (1) A party may, in a notice of motion, request that the motion be</p>	<p>Procédure de requête écrite</p> <p>369 (1) Le requérant peut, dans l'avis de requête, demander que la décision à</p>

<p>decided on the basis of written representations.</p> <p>Request for oral hearing</p> <p>(2) A respondent to a motion brought in accordance with subsection (1) shall serve and file a respondent's record within 10 days after being served under rule 364 and, if the respondent objects to disposition of the motion in writing, indicate in its written representations or memorandum of fact and law the reasons why the motion should not be disposed of in writing.</p> <p>Reply</p> <p>(3) A moving party may serve and file written representations in reply within four days after being served with a respondent's record under subsection (2).</p> <p>Disposition of motion</p> <p>(4) On the filing of a reply under subsection (3) or on the expiration of the period allowed for a reply, the Court may dispose of a motion in writing or fix a time and place for an oral hearing of the motion.</p>	<p>l'égard de la requête soit prise uniquement sur la base de ses prétentions écrites.</p> <p>Demande d'audience</p> <p>(2) L'intimé signifie et dépose son dossier de réponse dans les 10 jours suivant la signification visée à la règle 364 et, s'il demande l'audition de la requête, inclut une mention à cet effet, accompagnée des raisons justifiant l'audition, dans ses prétentions écrites ou son mémoire des faits et du droit.</p> <p>Réponse du requérant</p> <p>(3) Le requérant peut signifier et déposer des prétentions écrites en réponse au dossier de réponse dans les quatre jours après en avoir reçu signification.</p> <p>Décision</p> <p>(4) Dès le dépôt de la réponse visée au paragraphe (3) ou dès l'expiration du délai prévu à cette fin, la Cour peut statuer sur la requête par écrit ou fixer les date, heure et lieu de l'audition de la requête.</p>
<p>Class proceedings</p> <p>384.1 A proceeding commenced by a member of a class of persons on behalf of the members of that class shall be conducted as a specially managed proceeding.</p>	<p>Recours collectif</p> <p>384.1 L'instance introduite par un membre d'un groupe de personnes au nom du groupe est une instance à gestion spéciale.</p>
<p>Powers of case management judge or prothonotary</p> <p>385 (1) Unless the Court directs otherwise, a case management judge or a prothonotary assigned under paragraph 383(c) shall deal with all matters that arise prior to the trial or</p>	<p>Pouvoirs du juge ou du protonotaire responsable de la gestion de l'instance</p> <p>385 (1) Sauf directives contraires de la Cour, le juge responsable de la gestion de l'instance ou le protonotaire visé à l'alinéa 383c) tranche toutes les</p>

hearing of a specially managed proceeding and may

- (a) give any directions or make any orders that are necessary for the just, most expeditious and least expensive determination of the proceeding on its merits;
- (b) notwithstanding any period provided for in these Rules, fix the period for completion of subsequent steps in the proceeding;
- (c) fix and conduct any dispute resolution or pre-trial conferences that he or she considers necessary; and
- (d) subject to subsection 50(1), hear and determine all motions arising prior to the assignment of a hearing date.

Order for status review

(2) A case management judge or a prothonotary assigned under paragraph 383(c) may, at any time, order that a status review be held in accordance with this Part.

Order to cease special management

(3) A case management judge or a prothonotary assigned under paragraph 383(c) may order that a proceeding, other than a class proceeding, cease to be conducted as a specially managed proceeding, in which case the periods set out in these Rules for taking any subsequent steps apply.

questions qui sont soulevées avant l'instruction de l'instance à gestion spéciale et peut :

- a) donner toute directive ou rendre toute ordonnance nécessaires pour permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible;
- b) sans égard aux délais prévus par les présentes règles, fixer les délais applicables aux mesures à entreprendre subséquemment dans l'instance;
- c) organiser et tenir les conférences de règlement des litiges et les conférences préparatoires à l'instruction qu'il estime nécessaires;
- d) sous réserve du paragraphe 50(1), entendre les requêtes présentées avant que la date d'instruction soit fixée et statuer sur celles-ci. Ordonnance d'examen de l'état de l'instance

Ordonnance d'examen de l'état de l'instance

(2) Le juge responsable de la gestion de l'instance ou le protonotaire visé à l'alinéa 383c) peut, à tout moment, ordonner que soit tenu un examen de l'état de l'instance en conformité avec la présente partie.

Ordonnance

(3) Sauf s'il s'agit d'un recours collectif, le juge responsable de la gestion de l'instance ou le protonotaire visé à l'alinéa 383c) peut ordonner qu'une instance ne soit plus considérée comme une instance à gestion spéciale, auquel cas les délais prévus aux présentes

	règles s'appliquent aux mesures prises subséquemment.
<p>Factors in awarding costs</p> <p>400 (3) In exercising its discretion under subsection (1), the Court may consider</p> <ul style="list-style-type: none">(a) the result of the proceeding;(g) the amount of work;(i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding;(k) whether any step in the proceeding was<ul style="list-style-type: none">(i) improper, vexatious or unnecessary, or(ii) taken through negligence, mistake or excessive caution;	<p>Facteurs à prendre en compte</p> <p>400 (3) Dans l'exercice de son pouvoir discrétionnaire en application du paragraphe (1), la Cour peut tenir compte de l'un ou l'autre des facteurs suivants :</p> <ul style="list-style-type: none">a) le résultat de l'instance;g) la charge de travail;i) la conduite d'une partie qui a eu pour effet d'abrégé ou de prolonger inutilement la durée de l'instance;k) la question de savoir si une mesure prise au cours de l'instance, selon le cas:<ul style="list-style-type: none">(i) était inappropriée, vexatoire ou inutile,(ii) a été entreprise de manière négligente, par erreur ou avec trop de circonspection;