PAYMENT IN LIEU OF TAXES COURT CHALLENGE

** Main documents and court filings follow this chronological summary of the effort to have the Director of the Land Titles system in Ontario and then the Federal Court and Federal Court of appeal honour this legislation. The Supreme Court of Canada refused to hear the Application and Appeal from those decisions.

For indepth discussion about the corruption of the Courts and how they cover over and protect all levels of government by changing, ignoring or outright dismissing the law, please see **CORRUPT JUDICIARY** ON THIS WEBSITE.

1. May 29, 2017 letter to City regarding making their application for Payment in Lieu of Taxes

2. June 14, 2017 letter from City illegally changing the wording of the legislation and claiming private property does not qualify, and closing the file.

3. Sept 29/2017 - Statement of Claim filed in Federal Court (Ottawa) Court File #T1480-17

4. October 13th, 2017 - Motion by Attorney General to have claim dismissed

5. October 25, 2017 – Motion Response by Plaintiff

6. November 15, 2017 - Decision of Judge LeBlanc to Dismiss Claim

7. November 29, 2017 – Notice of Appeal to Federal Court of Appeal of Judge LeBlanc Dismissal of Claim #T1480-17

8. February 5, 2018 - Memorandum of Fact and Law of the Plaintiff/Appellant Appeal Court File #A390-17

9. March 5, 2018 - Memorandum of Fact and Law of the Respondent/Attorney General Appeal Court File #A390-17

10. Transcript of Proceedings before the Federal Court of Appeal Sept 19, 2018

11. September 20, 2018 - Decision of 3-Judge Federal Court of Appeal File #A390-17

12. Application to the Supreme Court of Canada for Leave to Appeal the Federal Court of Appeal and Court of Appeal decisions – Legal Arguments only

13. Dismissal of Application for Leave to the SCC. No further recourse possible.

May 29, 2017

[redacted]

Mayor, City of [redacted]
169 [redacted]
[redacted] ON K[redacted]



Subject: Demand to Comply, Payments in lieu of taxation [redacted] Street Roll #12 08 060 [redacted] and [redacted] Catharine Street Roll #12 08 [redacted] 01000.0020, Belleville Ontario

1. It is my position that the City of [redacted] has failed in their duty to the Federal enactment designated '*Payments in Lieu of Taxation Act, 1985.*

2. As a result of the operation of law, my property qualifies as federal property and therefore I, the owner, qualify for payments in lieu of taxation.

***Payments in Lieu of Taxes Act,* R.S.C., 1985, c. M-13**

An Act respecting payments in lieu of taxes to municipalities, provinces and other bodies exercising functions of local government that levy real property taxes.

Purpose

2.1 The purpose of this Act is to **provide for the fair and equitable administration of payments in lieu of taxes**. 2000, c. 8, s. 4.

Minister means the Minister of Public Works and Government Services; (*ministre*)

minister of the Crown means a member of the Queen's Privy Council for Canada in that member's capacity of managing and directing or having responsibility for a department; (*ministre fédéral*)

federal property means, subject to subsection (3),

- **(a)** real property and immovables owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown,
- **(b)** real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,

- **(c)** immovables held under emphyteusis by Her Majesty in right of Canada that are under the administration of a minister of the Crown,
- **(d)** a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and
- **(e)** real property and immovables occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province; (*propriété fédérale*)

Property not included in the definition federal property

(3) For the purposes of the definition federal property in subsection (1), **federal property does not include**

(a) **any structure or work, unless** it is

(i) **a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property,**

(iv) a driveway for a single-family dwelling,

taxable property means **real property and immovables in respect of which a person may be required by a taxing authority to pay a real property tax** or a frontage or area tax; (*propriété imposable*)

Taxing authority means

(a) **any municipality**, province, municipal or provincial board, commission, corporation or other authority **that levies and collects a real property tax** or a frontage or area tax pursuant to an Act of the legislature of a province,

Deemed authority for purposes of the definition taxing authority

(2) For the purposes of the definition taxing authority in subsection (1), where one authority collects a real property tax or a frontage or area tax that is levied by another authority, the authority that collects the tax shall be deemed to be the authority that levies and collects the tax.

Authority to make payments

3 (1) The Minister may, **on receipt of an application in a form provided or approved by the Minister, make a payment out of the Consolidated Revenue Fund to a taxing authority applying for it**

- **(a) in lieu of a real property tax for a taxation year**, and

- **(b)** in lieu of a frontage or area tax

in respect of federal property situated within the area in which the taxing authority has the power to levy and collect the real property tax or the frontage or area tax.

Regulations by Governor in Council

9 (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without restricting the generality of the foregoing, may make regulations

Regulations by Minister

10 The Minister may make regulations

(a) **establishing a form of application for a payment** under this Act;

Authority to make payments

(2) Notwithstanding anything in this Act, **if real property or immovables are prescribed to be included in the definition *federal property* under paragraph 9(1)(d) or (e), a payment may be made in respect of that property for the entire taxation year** in which the prescription is made.

3. It is my understanding that the City of [redacted] is an authority empowered to assess and tax real property in its territorial jurisdiction.

Municipal Assessment Act of Ontario

"Minister" means the Minister of Finance; ("ministre")

Regulations

2 (1) The Lieutenant Governor in Council may make regulations,

Regulations by the Minister

(2) The Minister may make regulations,

Property assessable and taxable, exemptions

3 (1) All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation:

Crown lands

1. Land owned by Canada or any Province.

Municipal Property Assessment Corporation Act, 1997

Corporation continued

2. (1) The Ontario Property Assessment Corporation is hereby continued under the name Municipal Property Assessment Corporation in English and Société d'évaluation foncière des municipalités in French. 2001, c. 8, s. 196.

Members

(2) The Corporation is composed of its members. Every municipality in Ontario is a member of the Corporation. 1997, c. 43, Sched. G, s. 2 (2).

Crown agency

(3) The Corporation is not a Crown agent. 1997, c. 43, Sched. G, s. 2 (3).

Duties of the Corporation

9 (1) The Corporation shall perform the duties assigned to it under the Assessment Act or any other Act and assigned to property assessors under any other Act. 2006, c. 33, Sched. Z.3, s. 21 (1).

Memorandum of understanding

11 (1) The Corporation shall enter into a memorandum of understanding with the Minister concerning the transfer of responsibility for the delivery of assessment services from the Ministry to the Corporation. 1997, c. 43, Sched. G, s. 11 (1).

4. I have received a statement of account from the City of [redacted] under the *Municipal Assessment Act*. The amount of tax is calculated from the assessments by the Municipal Property Assessment Corporation (MPAC).

Duties of the Corporation

9 (1) The Corporation shall perform the duties assigned to it under the *Assessment Act* or any other Act and assigned to property assessors under any other Act. 2006, c. 33, Sched. Z.3, s. 21 (1).

Memorandum of understanding

11 (1) The Corporation shall enter into a memorandum of understanding with the Minister concerning the transfer of responsibility for the delivery of assessment services from the Ministry to the Corporation. 1997, c. 43, Sched. G, s. 11 (1).

Same

(2) The Corporation shall comply with the requirements of the memorandum of understanding. 1997, c. 43, Sched. G, s. 11 (2).

5. Through this interaction, the municipality has declared that I have taxable property and that I have the obligation to pay the taxation account.

6. By way of this correspondence, I am advising you that the property that was assessed by MPAC ***is Federal property as described in the Payments in Lieu of Taxes enactment.***

7. **Federal property is a building, designed primarily for the shelter of people or living things.**

8. My house is a building that was designed primarily for the shelter of a human being, which of course has a heartbeat and is breathing and therefore is living.

Payment in Lieu of Taxes Act, 1985

Purpose Article 2.1 **The purpose of this Act is to provide for the fair and equitable administration of payments in lieu of taxes.**

Authority to make payments

3 (1) The Minister may, ***on receipt of an application in a form provided or approved by the Minister, make a payment out of the Consolidated Revenue Fund to a taxing authority*** *applying for it*

(a) in lieu of a real property tax for a taxation year, *and*

in respect of federal property situated within the area in which the taxing authority has the power to levy and collect the real property *tax or the frontage or area tax.*

(3) For the purposes of the definition federal property in subsection (1), ***federal property does not include***

(a) any structure or work, unless it is

(i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property,

(iv) a driveway for a single-family dwelling,

9. It was the Municipality's responsibility to make the application on my behalf to the Minister for a payment out of the Consolidated Revenue Fund to the taxing authority (City of [redacted] since clearly, my property meets the definition of *federal property*.

10. By failing to make the application on my behalf and instead demanding payment from me, the municipality of the City of [redacted] as denied me a privilege and has caused me damage, a tort. The account is still active and your municipality is seeking payment, contrary to the *Payment in Lieu of Taxes Act, 1985*.

11. Black's Law Definition of **TORT**: A tort is a legal wrong. It may be either (a) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual.

12. I therefore request that you make the application to the Minister forthwith that is necessary in order to obtain a payment in lieu of taxes out of the Consolidated Revenue Fund in the amount of the outstanding balance of the account your municipality seeks payment for: [redacted] (copy of your account attached as **Appendix 'A'**)

13. I also request that you make the application to the Minister forthwith that is necessary in order to obtain a payment in lieu of taxes out of the Consolidated Revenue Fund, *payable to me,* in the amount of [redacted] as reimbursement for the payment that I have already made (See **Appendix 'A', 'Less Interim Billing'**)

14. Should the municipality (City of [redacted] not fulfill its obligations to me under the *Payment in Lieu of Taxes* enactment, and comply with my requests, I will seek remedy for this tort, together with interest and costs in a court of competent jurisdiction (Superior Court of Justice).

City [redacted]

Finance Department
City Hall
Phone:
Fax No.: [redacted]

June 14, 2017

Ms [redacted]

Dear Ms [redacted]

RE: [redacted] Ontario

Thank you for your letter of May 29, 2017 to Mayor Christopher regarding payments in lieu of taxation for your properties located at [redacted] Belleville, Ontario. I am the Director of Finance for the City [redacted] and authorized to respond on behalf of the City.

The answer to your letter is that you do not qualify for payments in lieu of taxation. This is because your property is not owned or occupied by the Federal government. Payment in lieu of taxation does not apply to property owned by private citizens. It only applies to certain properties that are owned by the Federal government. As such, you, along with all other private property owners in [redacted] must pay your own property taxes and do so on time.

Turning to your detailed analysis, your letter focused on a section of the legislation that says for a property to qualify for payment in lieu of taxes, it must be both owned by the Federal government **and** designed primarily "for the shelter of living things . . .". You interpreted this to mean that every building designed primarily "for the shelter of living things" qualifies for payment in lieu of property taxes regardless of whether the Federal government owns it or not. This is incorrect. Again, only property owned by the Federal government qualifies for payment in lieu of taxes.

We now consider that this matter is closed. The City will not make any application on your behalf under the Act.

In your letter, you threatened to bring legal action against the City. We strongly suggest you consult with a legal advisor before doing so. We hope that this will not be necessary.

Yours very truly,

[redacted] MA
Treasurer

COPY

COURT SEAL

FORM 171A – Rule 171

Court File No. T-14[redacted]

"SIMPLIFIED ACTION"
(Rule 292)

FEDERAL COURT

[redacted]

Plaintiff

and

Her Majesty in Right of Canada

Defendant

STATEMENT OF CLAIM

(Pursuant to s.17(1), (2)(d) and 5(b) of ***Federal Courts Act*** *and s24(1)* of ***Constitution Act, 1982)***

FACTS

1. The Plaintiff is a 'natural person' as defined by *s.2.1 of the Crown Liability and Proceedings Act, 1985,* (hereinafter termed *CLPA*), being of full age and capacity, born June 4th, [redacted] in the City of [redacted] Ontario.

2. Proceedings against the Crown may be taken in the name of the Attorney General of Canada, pursuant to s. 23 (1) of the *CLPA*.

3. Pursuant to s. 22 (1) of the *CLPA*, the Crown may make an order declaratory of the rights of the Plaintiff.

4. The Corporation of the City [redacted] hereinafter referred to as 'City of [redacted]', a taxing authority for the purposes of the *Payments In Lieu of Taxes Act, 1982* (hereinafter referred to as *PLTA*), is a 'servant' of the Crown, as defined in the *CLPA*:

5. The Plaintiff states and it is fact, that pursuant to s. 3 of the *CLPA*, the Crown is liable for torts committed by its servants and representatives.

6. The Plaintiff was at all material times the registered owner of [redacted] properties (hereinafter referred to as 'properties') (Carres Plan 291 [redacted] St):

   (a) [redacted] Ontario, identified as Municipal Roll # 1208 060 [redacted] and

   (b) [redacted] Ontario identified as Municipal Roll # 1208 060 [redacted].

7. The Plaintiff states and it is fact, that pursuant to s. 4(1) of the *Municipal Act (Ontario), 2001,* the Plaintiff is deemed an incorporated inhabitant of the body corporate known as the City [redacted]

8. Pursuant to the *International Covenant on Civil and Political Rights (herein referred to as "ICCPR"), Article 1.2*, and the *International Covenant on*

Economic, Social and Cultural Rights (hereinafter referred to as "ICESCR"), Article 1.2, to which Her Majesty is a signee, and which are guaranteed by the *Constitution Act, 1982,* the Plaintiff has a right to freely dispose of her wealth and resources for her own ends.

9. Pursuant to *ICCPR, Article 2*, Her Majesty was legally obligated to provide legislative measure(s) by which the Plaintiff could fully exercise her right to freely dispose of her wealth and resources.

10. Pursuant to s. 26 of the *Canadian Charter of Rights and Freedoms, 1982*, the State Party's legal obligations under the *ICCPR* and the *ICESCR* are guaranteed.

11. The Plaintiff states and the fact is that pursuant to article 17 of the Universal Declaration of Human Rights (*hereinafter referred to as "UDHR"*), everyone in Canada has the inherent fundamental right to own property alone, to be free from coercion and servitude and interference with their property and these rights are codified in the *ICCPR* and *ICESCR* and guaranteed by the *Canadian Charter of Rights and Freedoms*:

12. The Plaintiff states, and the fact is that Her Majesty, in compliance with her obligations under *ICCPR, Article 2.2,* provided the measure titled *Payments in Lieu of Taxes, R.S.O. 1985, (PLTA)* that enables the Plaintiff to exercise her rights under *ICCPR Article 2.2* and *ICESCR Article 2.2:*

13. The City [redacted] a taxing authority, is required to make application to the Minister of Public Works and Government Services for payment in lieu of taxes when a taxable property in its territory meets the definition of 'Federal Property' as defined in s. 2(1), 2(3)(a), 2(3)(h), and 9 (1) of the *PLTA*, thereby allowing the

Plaintiff to fully exercise her right to be free from forced disposition of her wealth and resources to the City of Belleville:

14. The Plaintiff states, and the fact is that her properties meet the definition of **Federal Property** enumerated at paragraphs 2(3) (a) (i), and (iv) and 2(3)(h) of the *PLTA* because:

(i) the Plaintiff's [redacted] is a building that was designed, and which is used, primarily for the shelter of human beings;

(ii) the properties consist of a driveway for a single-family dwelling,

(iii) the properties have been and will be occupied by and/or leased to a person or persons that are not a department, and

(iv) the condition *'unless otherwise prescribed'* found in paragraph 2(3)(h) is satisfied by the prescribed specific inclusion of ***'buildings designed primarily for the shelter of people, living things, fixtures, personal property or movable property and/or driveways for single-family dwellings'*** in the definition of ***Federal Properties*** found at paragraph 2(3)(a)(i) and (iv).

15. The Plaintiff also claims that the condition enumerated in paragraph 3.1(b) of the *PLTA* is also met by her properties.

16. The Plaintiff states, and the fact is that the City [redacted] cannot collect the tax account on her properties unless it violates the Crown's legal obligations to her under the *Constitution Act, 1982* and *UDHR* and *ICCPR/ICESCR*. Interference with her properties, such as in the form of confiscation for taxes

would constitute a direct act aimed at the destruction of the Plaintiff's fundamental human rights as codified in superior law, specifically *ICCPR Article 5*.

17. The Plaintiff's properties meet the *PLTA*'s definition of **taxable property** and have been subjected to real property tax levies annually by the City [redacted]

18. The City [redacted] has the responsibility to make an application to the Minister of Public Works and Government Services (hereinafter "Minister") on the Plaintiff's behalf, for a payment out of the Consolidated Revenue Fund (hereinafter 'CRF"), with respect to the Plaintiff's properties. By doing so, the Crown would be fulfilling its international legal obligations to <u>create</u> conditions that allow the Plaintiff to exercise her right to freely dispose of her wealth and resources, for her own ends, as codified in *ICCPR/ICESCR Article 1*.

19. In order to prevent fear of interference in her life and security of person by the City [redacted] for the balance of 2017, the Plaintiff, by letter dated May 29th, 2017 and sent by registered mail, requested that the City [redacted] make the required application for a payment out of the CRF for the taxation year to
(a) satisfy the balance on the tax account associated to the Plaintiff's properties in the amount of [redacted] and
(b) to reimburse the Plaintiff the amount of [redacted] at she paid unwillingly to the City [redacted] because it failed to make the required application to the Minister for the payment in lieu of taxes.

20. The City [redacted] by letter dated June [redacted] refused the Plaintiff's request and advised it was closing its file. The Crown's servant's position is that the *PLTA* applies only to properties owned or occupied by the Federal government and not to private citizens.

21. The City [redacted]s letter response also states that the definition of **'Federal Property'** means that the property must be BOTH owned by the Federal government AND designed primarily for the shelter of living things. The letter states that only property owned by the Federal government qualifies for payment in lieu of taxes and the City [redacted] will not make any application under the *PLTA* at any time.

22. The Plaintiff states that there is no operation of law that permits the City of [redacted] to arbitrarily insert terms into legislation, such as **'and'**, in order to force on the Plaintiff its preferred interpretation of the *PLTA,* thereby abridging her right to be free from forced disposition of her wealth and financial resources. The *Payment in Lieu of Taxes Act (PLTA)* contains no provisions which state that (i) taxable property must be owned by the Federal government to be eligible, (ii) taxable property must be owned AND occupied by the Federal Government to be eligible, and/or

    (iii) no private citizen can be eligible for payment in lieu of taxes.

23. The Plaintiff states that there is no operation of law that prevents the City of [redacted] from making application to the Minister for a payment in lieu of taxes under the *PLTA* and its refusal to do so is contrary to and in violation of s. 2.1 of the *PLTA*, which is the stated Purpose of the *PLTA*:

24. The Plaintiff further states that there is no operation of law that permits the City [redacted] to deny or abridge her constitutionally-guaranteed fundamental human right to freely dispose of her monies for her own ends by choosing not to pay property tax levies, particularly when Her Majesty took measures pursuant to her international legal obligations that allow the Plaintiff to exercise that right.

25. The Plaintiff claims that the demand by the Crown's servant, the City of [redacted], that the Plaintiff pay property tax levies against her will under the penalty of confiscation of her properties by the City [redacted] if she failed to do so, seeks to place the Plaintiff in a position of servitude to the taxing authority.

26. The Plaintiff states, and it is a fact that by refusing to allow the Plaintiff to exercise her right to freely dispose of her wealth for her own ends by making application to the Minister for payment in lieu of taxes on her properties, this Crown's servant is engaged in an action directly aimed at the destruction of the Plaintiff's right in this regard. This action is a direct violation of the *International Covenants, Article 5,* and the *Constitution Act, 1982* which guarantees these rights, including the right to be free from servitude and forced disposition of her wealth and resources.

RELIEF SOUGHT

27. The Plaintiff seeks

(a) a declaration that the Plaintiff's properties are deemed to meet the definition of **Federal Property** as provided in the *PLTA*;

(b) declaratory relief from the inactions of the Crown's servant, the City of [redacted] in regards to making application to the Minister of Public Works and Government Services for a payment in lieu of taxes on her properties for 2017. Such relief would have the effect of preventing continuing damage to the Plaintiff in the form of fear and loss of enjoyment of her property and life;

(c) declaratory relief in the form of an order that the Crown's servant refund to the Plaintiff the amount of $[redacted] which represents the amount of monies she unwillingly paid in property tax levies to date in 2017,

(d) due to the refusal of the City [redacted] to allow further discussions that might have resolved this issue without forcing the Plaintiff to resort to this action, her costs of this action (to be determined); and

(e) such further or other relief this Court deems just.

28. The Plaintiff proposes that this action be tried at [redacted] Ontario.

Dated at [redacted] the 29 day [redacted]

[redacted]

Mailing Address:

[redacted]

Telephone: 613-[redacted]
NO FAX AVAILABLE

issued by : [signature]
C. MARTIN
REGISTRY OFFICER
AGENT DU GREFFE

SEP 2 9 2017

90 Sparks Street / 90, rue Sparks
Ottawa, Ontario / Ottawa (Ontario)
K1A 0H9

Court File No.:

"Simplified Action"

FEDERAL COURT

B E T W E E N:

[redacted]

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

(Pursuant to s.17(1) and (2)(d) ***Federal Courts Act***, and *s24(1)* of the ***Charter***)

(Filed this ___day of July 2017)

[redacted]
Ottawa, ON [redacted]
Tel: (613) [redacted]
No Fax available

Court File No. T-[redacted]

FEDERAL COURT

BETWEEN:

[redacted]

Plaintiff/Respondent

-and-

HER MAJESTY THE QUEEN

Defendant/Moving Party

MOTION RECORD OF THE DEFENDANT/MOVING PARTY

Motion in writing pursuant to Rule 369

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario K1A 0H8

Per: Jennifer Bond
Tel: (613) 670-6335
E-mail: Jennifer.Bond@justice.gc.ca

Counsel for the Defendant,
Attorney General of Canada

Court File No.: T-[redacted]

FEDERAL COURT

BETWEEN:

[redacted]

Plaintiff/ Responding Party

-and-

ATTORNEY GENERAL OF CANADA

Defendant/ Moving Party

NOTICE OF MOTION

TAKE NOTICE THAT the Attorney General of Canada, on behalf of Her Majesty the Queen in Right of Canada, will make a motion to the Court in writing pursuant to Rule 369 of the *Federal Courts Rules*.

THE MOTION IS FOR:

1. An order pursuant to Rules 221(1)(a) and 298(2)(b) of the *Federal Courts Rules* striking out the Plaintiff's claim, without leave to amend; or

2. In the alternative, if all or part of the Statement of Claim remains, the Defendant requests a 30 day extension of time for filing its Statement of Defence.

THE GROUNDS FOR THE MOTION ARE:

1. This Court does not have jurisdiction over the Plaintiff's claims for declaratory relief and damages against the City [redacted], a provincial municipality.

2. Further, even if this Court did have jurisdiction, the Plaintiff's Statement of Claim is devoid of material facts to underpin its allegations, and discloses no reasonable cause of action. Thus, it is plain and obvious that the Plaintiff's Statement of Claim has no chance of success and should be struck without leave to amend.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Statement of Claim filed by the Plaintiff on September 29, 2017

October 13, 2017

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario
K1A 0H8
Fax: (613) 954-1920

Per: Jennifer S. Bond
Tel: (613) 670-6335
Email: Jennifer.Bond@justice.gc.ca

Solicitor for the Defendant/Moving Party

TO: [redacted]

Plaintiff/Respondent

TAB	DOCUMENT
1.	Notice of Motion
2.	Defendant/Moving Party Written Submissions
3.	Appendix "A" - Statement of Claim dated September 29, 2017

Court File No. T-[redacted]

FEDERAL COURT

BETWEEN:

[redacted]

Plaintiff/Respondent

-and-

HER MAJESTY THE QUEEN

Defendant/Moving Party

WRITTEN REPRESENTATIONS OF THE DEFENDANT/MOVING PARTY

Motion in writing pursuant to Rule 369

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario K1A 0H8

Per: Jennifer Bond
Tel: (613) 670-6335
E-mail: Jennifer.Bond@justice.gc.ca

Counsel for the Defendant,
Attorney General of Canada

OVERVIEW

The Defendant seeks an order striking out the Plaintiff's claim without leave to amend. This Court does not have jurisdiction over the Plaintiff's claims for declaratory relief and damages against the City [redacted], a provincial municipality.

Further, even if this Court did have jurisdiction, the Plaintiff's Statement of Claim is devoid of material facts to underpin its allegations, and discloses no reasonable cause of action. Thus, it is plain and obvious that the Plaintiff's Statement of Claim has no chance of success and should be struck without leave to amend.

PART I – FACTS

Background facts alleged by the Plaintiff

1. The Plaintiff is the registered owner of two properties in [redacted] Ontario.[1]

2. The Plaintiff alleges that by way of a May 29, 2017 letter, she requested that the City [redacted] "make the required application" pursuant to the *Payment in Lieu of Taxes Act* ["*PLTA*"] for payment in lieu of taxes for her properties, and also that the City of Belleville reimburse her for the amount of [redacted] at she "paid unwillingly" to the City because it failed to make an application to the Minister for the payment in lieu of taxes.[2]

3. On June [redacted] the Plaintiff alleges that the City [redacted] refused the Plaintiff's request, on the basis that the *PLTA* applies only to properties owned or occupied by the Federal government and not to private citizens.[3]

4. The Plaintiff claims that her two properties meet the definition of "federal property", pursuant to subsection 2(3) of the *PLTA*.[4] As a result, she states that the *PLTA* requires the City [redacted] to make a request to the federal Minister of Public Works and Government Services for payment in lieu of taxes from the Consolidated Revenue Fund, in order that the Plaintiff may "fully exercise her right

---

[1] Statement of Claim at para 6, Defendant's Motion Record ["DMR"], TAB X, p. 19.
[2] Statement of Claim at para 19, DMR p. 22.
[3] Statement of Claim at para 20, DMR p. 22.
[4] Statement of Claim at para 14, DMR p. 21.

to be free from forced disposition of her wealth and resources to the City [redacted]

Claimed causes of action

5. The claimed causes of action are not entirely clear from the pleadings. The Plaintiff makes mention in the claim for relief of the "inactions" of the "Crown's servant, the City [redacted]

6. The Plaintiff also claims that "it is fact" that "the Crown is liable for torts committed by its servant, the City [redacted][7], but does not specify any particular torts in the Statement of Claim.

7. The only discernable cause of action listed in the Statement of Claim is that by refusing to make a request to the Federal Government under the *PLTA* for payment in lieu of taxes for the Plaintiff's properties, the City [redacted] has breached the Plaintiff's rights pursuant to the *Canadian Charter of Rights and Freedoms.*[8] The Plaintiff characterizes these rights as "the right to be free from servitude and forced disposition of her wealth and resources."[9]

---

[5] Statement of Claim at paras 13-18, DMR p. 20-22
[6] Statement of Claim at para 27(b), DMR p. 24
[7] Statement of Claim at para 5, DMR, p. 19.
[8] Statement of Claim at para 26, DMR p. 24.
[9] Statement of Claim at para 26, DMR p. 24.

Relief sought

8. In the Statement of Claim, the Plaintiff seeks the following relief:

    a. A declaration that the Plaintiff's properties are deemed to meet the definition of "federal property", as provided in the *PLTA*;

    b. "Declaratory relief from the inactions of the City [redacted];

    c. "Declaratory relief in the form of an order that the City [redacted] efund th[redacted]he Plaintiff paid in property taxes"; and

    d. costs.

PART II – ISSUES

9. The issues in this motion are:

    a. Whether the Statement of Claim should be struck, without leave to amend;

    b. In the alternative, whether the Defendant should be granted a thirty (30) day extension to file a Statement of Defence.

PART III – ARGUMENTS

10. This Court does not have the jurisdiction to adjudicate allegations of tortious acts committed by the City [redacted] As a result, the Statement of Claim should be struck in its entirety.

11. In the alternative, the Statement of Claim fails to disclose any reasonable cause of action, and should be struck without leave to amend.

Test on a Motion to Strike

12. The Defendant brings this motion pursuant to Rules 221(1) and 298(2)(a) and (b) of the *Federal Courts Rules* ["*the Rules*"].[10]

13. Rule 221 provides for striking pleadings in an action pursuant to a 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
>
> **(*a*) discloses no reasonable cause of action or defence, as the case may be,**
>
> and may order the action be dismissed or judgment entered accordingly.[11] [emphasis added]

14. Objections to a Statement of Claim for want of jurisdiction may properly be made pursuant to Rule 221(1).[12]

15. Rule 298 prescribes when a motion to strike may be brought in a simplified action:

> **298. (2)** A motion may be brought, within the time set out in rule 204 for the service and filing of a statement of defence,
>
> **(*a*) to object to the jurisdiction of the Court**; or
>
> **(*b*) to strike a statement of claim, on the ground that it discloses no reasonable cause of action.**[13] [emphasis added]

16. On a motion to strike a Statement of Claim under the *Rules*, the applicable test is whether it is "plain and obvious" that the claim discloses no reasonable cause of action.[14]

---

[10] *Federal Courts Rules*, SOR/98-106, Rules 221(1) and 298, Defendant's Book of Authorities ["DBOA"] Tab 3.
[11] *Federal Courts Rules*, Rule 221(1), DBOA Tab 3,
[12] *Hodgson v Ermineskin Indian Band No. 942*, 180 FTR 285 at para 9, DBOA Tab 9.
[13] *Federal Courts Rules*, Rule 298(2), DBOA Tab 3.
[14] *Hunt v. Carey Inc.*, [1990] 2 SCR 959 at p. 980, DBOA Tab 10.

17. In determining whether the pleadings disclose a reasonable cause of action, the facts as pleaded are taken to be true and the statement of claim is to be read generously with a view to accommodating any inadequacies in the allegations.[15]

18. In order to disclose a reasonable cause of action, a statement of claim must plead each constituent element of a cause of action with sufficient particularity, with each allegation supported by material facts capable of being proven.[16]

19. The power to strike out claims with no reasonable prospect of success is a valuable housekeeping tool, essential to effective and fair litigation. It ensures only those claims with a chance of success to proceed to trial.[17]

Application of the law to the Plaintiff's Statement of Claim

1) *No jurisdiction of the court*

20. It is plain and obvious that the Federal Court does not have jurisdiction over the matter at issue in the Statement of Claim.

21. In order for the Federal Court to have jurisdiction over a particular cause of action or claim to relief, there must exist: (a) a statutory grant of jurisdiction by Parliament; (b) an existing body of federal law essential to the disposition of the case; and (c) the law must be a law of Canada.[18]

---

[15] *Condon v. Canada,* 2015 FCA 159, at paras. 13, 21, DBOA Tab 7.
[16] *Operation Dismantle v. The Queen*, [1985] 1 SCR 441, at p. 447, DBOA Tab 12; *Federal Courts Rules*, Rule 174, DBOA Tab 3; *Federal Courts Rules*, Rule 181, DBOA Tab 3.
[17] *R. v. Imperial Tobacco Canada Ltd.,* 2011 SCC 42, at para. 19, DBOA Tab 15.
[18] *Robertson v. Beauvais*, 2011 FC 378, para. 8, DBOA, Tab 16; *Federal Courts Act*, RSC 1985, c F-7, s.17, DBOA, Tab 2; *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s.3, DBOA, Tab 1.

22. The Plaintiff seeks damages and declaratory relief due to the actions of the "City [redacted]", without naming a specific individual.

23. The Plaintiff has characterized the City [redacted] as a "servant of the Crown" under the *Crown Liability and Proceedings Act* ["*CLPA*"].[19] Paragraph 3(b)(i) of the *CLPA* states that the Crown is liable for the damages for which, if it were a person, it would be liable in respect of a tort committed by a servant of the Crown.[20]

24. Paragraph 17(2)(d) of the *Federal Courts Act* states that the Federal Court has concurrent original jurisdiction, except as otherwise provided, in all cases in which a claim is for damages under the *CLPA*.[21] Thus, in the normal course, where it is alleged that a servant of the Crown is liable for damages against an individual, the Federal Court would have jurisdiction to hear the claim.

25. In the present case, however, the "City [redacted]" is not a servant of the Crown pursuant to paragraph 3(b)(i) of the *CLPA*.

26. This court in *Ayangma* found that a servant of the Crown, for the purposes of section 3 of the *CLPA*, is "anyone who is employed by the Crown, or acts as an agent for the Crown."[22] Section 2 of the *CLPA* defines the "Crown" as "Her Majesty in right of Canada."[23]

---

[19] Statement of Claim at para 4, DMR p. XX
[20] *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, s. 3(b)(i), DBOA Tab 1.
[21] *Federal Courts Act* (R.S.C., 1985, c. F-7), s. 17(2)(d), DBOA Tab 2.
[22] *Ayangma v Canada*, 1998 CanLII 8926 (FC) at para 12, DBOA Tab 6.
[23] *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, s. 2, DBOA Tab 1.

27. The City [redacted] is a municipality located in the Province of Ontario. The Plaintiff acknowledges this in the Statement of Claim when she characterizes the City [redacted] as a "taxing authority" for the purposes of the *PLTA*, located in Ontario.[24] A taxing authority is defined in the *PLTA* as:

> any municipality, province, municipal or provincial board, commission, corporation or other authority that levies and collects a real property tax or a frontage or area tax pursuant to an Act of the legislature of a province.[25]

28. Municipalities in Ontario are created by virtue of section 2 of the *Municipal Act*, 2001, a provincial statute.[26] There is no indication in the *Municipal Act*, or in the material facts as plead by the Plaintiff in the Statement of Claim, that the "City of [redacted] is employed by Her Majesty in right of Canada, or was acting as an agent for her, when decided not to seek payment in lieu of taxes for the Plaintiff's properties.

29. As the "City [redacted] is not a Crown servant as defined in the *CLPA*, there is no statutory grant of jurisdiction that would permit the Federal Court to adjudicate this matter. The matter should therefore be dismissed.

2) *No reasonable cause of action*

30. In the alternative, should this Court find that it does have jurisdiction to adjudicate the Plaintiff's claim, the Statement of Claim should still be struck pursuant to Rule 221(1) as it discloses no reasonable cause of action.

---

[24] Statement of Claim at paras 4 and 6, DMR p. 19.
[25] *Payment in Lieu of Taxes Act*, (R.S.C., 1985, c. M-13), s. 2, DBOA Tab 5.
[26] *Municipal Act, 2001*, S.O 2001. C. 25, s.2 DBOA Tab 4.

i) Failure to make a request under the PLTA

31. A generous reading of the Statement of Claim reveals that the Plaintiff claims compensable damages for the failure of the City [redacted] to make a request under the *PLTA* for payment in lieu of taxes for her properties.

32. In *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, the Supreme Court of Canada described the *PLTA* in the following way:

> Property owned by the Federal Crown is constitutionally exempt from provincial and municipal taxation. However, in the interest of fairness, Parliament has established a regime of discretionary payments in lieu of taxes to provinces and municipalities: *Payments in Lieu of Taxes Act*.[27]

33. In essence, the *PLTA* exists so that municipalities and provinces may recoup funds from the Federal government for properties and land that the municipalities and provinces cannot otherwise tax in the normal course.

34. Subsection 3(1) of the *PLTA* permits the Minister of Public Works and Government Services to make a payment in lieu of a real property tax or frontage or area tax to a requesting municipality in respect of federal property.

35. Federal property is defined in section 2 of the *PLTA* as:

> a. real property and immovables **owned by Her Majesty in right of Canada** that are under the administration of a minister of the Crown,
> b. real property and immovables **owned by Her Majesty in right of Canada** that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,
> c. immovables **held under emphyteusis by Her Majesty in right of Canada** that are under the administration of a minister of the Crown,
> d. a building **owned by Her Majesty in right of Canada** that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and

---

[27] *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 at para 2, DBOA Tab 8.

e. real property and immovables occupied or **used by a minister of the Crown and administered and controlled by Her Majesty in right of a province.** [emphasis added]

36. There are no mandatory provisions in the *PLTA*, either for the request of a payment in lieu of taxes, or in the provision of a requested payment.[28]

37. The Plaintiff has not pleaded any material facts that would suggest that her properties are owned by Her Majesty in right of Canada, or administered and controlled by Her Majesty in right of Canada. Thus, she has not shown that her properties fall under the ambit of the *PLTA*. In any event, there is no cause of action found in the *PLTA* against municipalities that choose not to make a request under the legislation. As a result, it is plain and obvious that the Plaintiff's claim in this regard cannot succeed and should be struck.

ii) Allegations of tortious conduct

38. The Plaintiff also alleges in the Statement of Claim that the Defendant is liable for "torts."[29] The Plaintiff does not specify, however, which torts are alleged, nor can the Defendant discern any torts that may arise from the facts as presented in the Statement of Claim.

39. Without particularity as to a specific cause of action, and allegations of the material facts that underlie it, the claim must be struck.

iii) Breach of the Plaintiff's Charter rights

40. The Plaintiff further alleges that by not making a request for payment under the *PLTA*, the Defendant has breached the Plaintiff's rights under the *Charter*,

---

[28] *Payment in Lieu of Taxes Act* (R.S.C., 1985, c. M-13), s. 3(1), DBOA Tab 5.
[29] Statement of Claim at para 5, DMR p. 19.

including "the right to be free from servitude and forced disposition of her wealth and resources."[30]

41. The *Charter* does not specifically enumerate the right "to be free from servitude and forced disposition of wealth and resources." Even if one were to read the Statement of Claim generously, and find that the Plaintiff was alleging a breach of her section 7 *Charter* rights to life, liberty, and security of the person, courts at various levels have consistently found that neither section 7, nor any provision of the *Charter* safeguards economic rights.[31] The Plaintiff has also not plead any material facts that would suggest that her *Charter* rights have been otherwise violated.

42. As a result, the Plaintiff has not provided the foundation for a reasonable cause of action regarding the breach of her section 7 *Charter* rights, and the claim should be struck.

The Plaintiff should not be permitted to amend the pleadings

43. Leave to amend a claim that is struck should not be granted where the pleadings are incurable.[32]

44. For example, in *Piedra*, the Ontario Court of Appeal upheld the decision to refuse leave to amend on the basis that the pleadings contained "radical defects", and because the addition of other facts would not remedy the deficiencies in the

---

[30] Statement of Claim at para 26, DMR p. 24.
[31] *McGuire v The Queen*, 1999 CanLII 497 (TCC) at para 33, DBOA Tab 11; *Vysek v Nova Gas International Ltd.*, 2002 ABCA 112 at para 13, DBOA Tab 18; *Pavlis v HSBC Bank Canada*, 2009 BCCA 450 at para 9, DBOA Tab 13.
[32] *Simon v Canada* 2011 FCA 6 at para 8, DBOA Tab 17.

pleadings.[33] The same conclusion is applicable here. No amendment will cure the fact that this Court does not have jurisdiction to adjudicate the Plaintiff's claim. Even if this Court determines it has jurisdiction, there is no discernable cause of action that could be plead.

Request for an extension of time

45. In the event that the requested relief is not granted, the Defendant requests an extension of time for filing its Statement of Defence pursuant to Rule 8(1) of the *Federal Courts Rules*.[34] If the Statement of Claim is not struck, the Defendant fully intends to defend this action on the ground that the claim is without merit. There is no prejudice to the Plaintiff in granting a thirty (30) day extension to file a defence in this matter.

---

[33] *Piedra v Copper Mesa Mining Corporation*, 2011 ONCA 191 at paras 93-97, DBOA Tab 14.

[34] *Federal Courts Rules*, Rule 8(1), DBOA Tab 3.

PART IV – ORDER REQUESTED

46. The Defendant respectfully requests that this Honourable Court order that:

(a) The Statement of Claim be struck out in its entirety, without leave to amend; or

(c) In the alternative, the Defendant requests a 30 day extension of time for filing its Statement of Defence.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of October, 2017.

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario
K1A 0H8
Fax: (613) 954-1920

Per: Jennifer S. Bond
Tel: (613) 670-6335
Email: Jennifer.Bond@justice.gc.ca
Solicitor for the Defendant/Moving Party

TO: [redacted]
Plaintiff/Respondent

PART V – LIST OF AUTHORITIES

Ayangma v Canada, 1998 CanLII 8926 (FC)

Condon v. Canada, 2015 FCA 159

Halifax (Regional Municipality) v Canada (Public Works and Government Services), 2012 SCC 29

Hodgson v Ermineskin Indian Band No. 942, 180 FTR 285

Hunt v. Carey Inc., [1990] 2 SCR 959

McGuire v The Queen, 1999 CanLII 497 (TCC)

Operation Dismantle v. The Queen, [1985] 1 SCR 441

Pavlis v HSBC Bank Canada, 2009 BCCA 450

Piedra v Copper Mesa Mining Corporation, 2011 ONCA 191

R v Imperial Tobacco Canada Ltd., 2011 SCC 42

Robertson v Beauvais, 2011 FC 378

Simon v Canada 2011 FCA 6

Vysek v Nova Gas International Ltd., 2002 ABCA 112

COPY

COURT SEAL

FORM 171A – Rule 171

Court File No. T-[redacted]

"SIMPLIFIED ACTION"
(Rule 292)

FEDERAL COURT

[redacted]

Plaintiff

and

Her Majesty in Right of Canada

Defendant

STATEMENT OF CLAIM

(Pursuant to s.17(1), (2)(d) and 5(b) of ***Federal Courts Act*** *and s24(1)* of ***Constitution Act, 1982)***

FACTS

1. The Plaintiff is a 'natural person' as defined by *s.2.1 of the Crown Liability and Proceedings Act, 1985,* (hereinafter termed *CLPA*), being of full age and capacity, born June 4th, [redacted] in the City [redacted] Ontario.

2. Proceedings against the Crown may be taken in the name of the Attorney General of Canada, pursuant to s. 23 (1) of the *CLPA*.

3. Pursuant to s. 22 (1) of the *CLPA*, the Crown may make an order declaratory of the rights of the Plaintiff.

4. The Corporation of the City [redacted] (hereinafter referred to as 'City of [redacted] a taxing authority for the purposes of the *Payments In Lieu of Taxes Act, 1982* (hereinafter referred to as *PLTA*), is a 'servant' of the Crown, as defined in the *CLPA*:

5. The Plaintiff states and it is fact, that pursuant to s. 3 of the *CLPA*, the Crown is liable for torts committed by its servants and representatives.

6. The Plaintiff was at all material times the registered owner of two properties (hereinafter referred to as 'properties') [redacted] St):

(a) [redacted] Ontario, identified as Municipal Roll # 1208 060[redacted] and

(b) [redacted] Ontario identified as Municipal Roll # 1208 060[redacted].

7. The Plaintiff states and it is fact, that pursuant to s. 4(1) of the *Municipal Act (Ontario), 2001,* the Plaintiff is deemed an incorporated inhabitant of the body corporate known as the City of Belleville.

8. Pursuant to the *International Covenant on Civil and Political Rights (herein referred to as "ICCPR"), Article 1.2*, and the *International Covenant on*

Economic, Social and Cultural Rights (hereinafter referred to as "ICESCR"), Article 1.2, to which Her Majesty is a signee, and which are guaranteed by the *Constitution Act, 1982,* the Plaintiff has a right to freely dispose of her wealth and resources for her own ends.

9. Pursuant to *ICCPR, Article 2*, Her Majesty was legally obligated to provide legislative measure(s) by which the Plaintiff could fully exercise her right to freely dispose of her wealth and resources.

10. Pursuant to s. 26 of the *Canadian Charter of Rights and Freedoms, 1982*, the State Party's legal obligations under the *ICCPR* and the *ICESCR* are guaranteed.

11. The Plaintiff states and the fact is that pursuant to article 17 of the Universal Declaration of Human Rights (*hereinafter referred to as "UDHR"*), everyone in Canada has the inherent fundamental right to own property alone, to be free from coercion and servitude and interference with their property and these rights are codified in the *ICCPR* and *ICESCR* and guaranteed by the *Canadian Charter of Rights and Freedoms*:

12. The Plaintiff states, and the fact is that Her Majesty, in compliance with her obligations under *ICCPR, Article 2.2,* provided the measure titled *Payments in Lieu of Taxes, R.S.O. 1985, (PLTA)* that enables the Plaintiff to exercise her rights under *ICCPR Article 2.2* and *ICESCR Article 2.2:*

13. The City [redacted] a taxing authority, is required to make application to the Minister of Public Works and Government Services for payment in lieu of taxes when a taxable property in its territory meets the definition of 'Federal Property' as defined in s. 2(1), 2(3)(a), 2(3)(h), and 9 (1) of the *PLTA*, thereby allowing the

Plaintiff to fully exercise her right to be free from forced disposition of her wealth and resources to the City [redacted]

14. The Plaintiff states, and the fact is that her properties meet the definition of **Federal Property** enumerated at paragraphs 2(3) (a) (i), and (iv) and 2(3)(h) of the *PLTA* because:

(i) the Plaintiff's [redacted] is a building that was designed, and which is used, primarily for the shelter of human beings;

(ii) the properties consist of a driveway for a single-family dwelling,

(iii) the properties have been and will be occupied by and/or leased to a person or persons that are not a department, and

(iv) the condition *'unless otherwise prescribed'* found in paragraph 2(3)(h) is satisfied by the prescribed specific inclusion of ***'buildings designed primarily for the shelter of people, living things, fixtures, personal property or movable property and/or driveways for single-family dwellings'*** in the definition of ***Federal Properties*** found at paragraph 2(3)(a)(i) and (iv).

15. The Plaintiff also claims that the condition enumerated in paragraph 3.1(b) of the *PLTA* is also met by her properties.

16. The Plaintiff states, and the fact is that the City [redacted] cannot collect the tax account on her properties unless it violates the Crown's legal obligations to her under the *Constitution Act, 1982* and *UDHR* and *ICCPR/ICESCR*. Interference with her properties, such as in the form of confiscation for taxes

would constitute a direct act aimed at the destruction of the Plaintiff's fundamental human rights as codified in superior law, specifically *ICCPR Article 5*.

17. The Plaintiff's properties meet the *PLTA*'s definition of **taxable property** and have been subjected to real property tax levies annually by the City [redacted]

18. The City [redacted] has the responsibility to make an application to the Minister of Public Works and Government Services (hereinafter "Minister") on the Plaintiff's behalf, for a payment out of the Consolidated Revenue Fund (hereinafter 'CRF"), with respect to the Plaintiff's properties. By doing so, the Crown would be fulfilling its international legal obligations to create conditions that allow the Plaintiff to exercise her right to freely dispose of her wealth and resources, for her own ends, as codified in *ICCPR/ICESCR Article 1*.

19. In order to prevent fear of interference in her life and security of person by the City [redacted] for the balance [redacted], the Plaintiff, by letter dated May [redacted] and sent by registered mail, requested that the City [redacted] make the required application for a payment out of the CRF for the taxation year to
(a) satisfy the balance on the tax account associated to the Plaintiff's properties in the amount of [redacted] and
(b) to reimburse the Plaintiff the amount of [redacted] that she paid unwillingly to the City [redacted] because it failed to make the required application to the Minister for the payment in lieu of taxes.

20. The City [redacted], by letter dated June [redacted], refused the Plaintiff's request and advised it was closing its file. The Crown's servant's position is that the *PLTA* applies only to properties owned or occupied by the Federal government and not to private citizens.

21. The City [redacted]s letter response also states that the definition of **'Federal Property'** means that the property must be BOTH owned by the Federal government AND designed primarily for the shelter of living things. The letter states that only property owned by the Federal government qualifies for payment in lieu of taxes and the City o[redacted] will not make any application under the *PLTA* at any time.

22. The Plaintiff states that there is no operation of law that permits the City of [redacted]o arbitrarily insert terms into legislation, such as **'and'**, in order to force on the Plaintiff its preferred interpretation of the *PLTA,* thereby abridging her right to be free from forced disposition of her wealth and financial resources. The *Payment in Lieu of Taxes Act (PLTA)* contains no provisions which state that (i) taxable property must be owned by the Federal government to be eligible, (ii) taxable property must be owned AND occupied by the Federal Government to be eligible, and/or

(iii) no private citizen can be eligible for payment in lieu of taxes.

23. The Plaintiff states that there is no operation of law that prevents the City of [redacted]from making application to the Minister for a payment in lieu of taxes under the *PLTA* and its refusal to do so is contrary to and in violation of s. 2.1 of the *PLTA*, which is the stated Purpose of the *PLTA*:

24. The Plaintiff further states that there is no operation of law that permits the City [redacted]to deny or abridge her constitutionally-guaranteed fundamental human right to freely dispose of her monies for her own ends by choosing not to pay property tax levies, particularly when Her Majesty took measures pursuant to her international legal obligations that allow the Plaintiff to exercise that right.

(d) due to the refusal of the City [redacted] to allow further discussions that might have resolved this issue without forcing the Plaintiff to resort to this action, her costs of this action (to be determined); and

(e) such further or other relief this Court deems just.

28. The Plaintiff proposes that this action be tried at [redacted] Ontario.

Dated at Ottawa, the 29 [redacted]

[redacted]

Telephone: 613-[redacted]
NO FAX AVAILABLE

issued by: Catherine

C. MARTIN
REGISTRY OFFICER
AGENT DU GREFFE

SEP 2 9 2017

90 Sparks Street / 90, rue Sparks
Ottawa, Ontario / Ottawa (Ontario)
K1A 0H9

Court File No.:

"Simplified Action"

FEDERAL COURT

B E T W E E N:

[redacted]

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

(Pursuant to s.17(1) and (2)(d) *Federal Courts Act*, and *s24(1)* of the *Charter*)

(Filed this ___day of [redacted])

[redacted]

No Fax available

SERVICE OF A TRUE COPY HEREOF
SIGNIFICATION DE COPIE CONFORME
Admitted the 01 day
Acceptée le jour
of Oct 2017
de
for
pour Me Nathalie G. Drouin, Ad.E.
Deputy Minister of Justice
and Deputy Attorney General of Canada
Sous-Ministre de la Justice
et Sous-procureure générale du Canada

Department of Justice Canada

Ministère de la Justice Canada

Civil Litigation Section
National Litigation Sector
Department of Justice Canada
50 O'Connor Street, Room 500
Ottawa, Ontario
K1A 0H8

Telephone: 613-70-6335
Fax: (613) 954-1920
Email: jennifer.bond@justice.gc.ca

October 13, 2017

Our File Number: [redacted]

BY COURIER

[redacted]
Ontario
[redacted]

Dear Ms. [redacted]:

Re: [redacted]51

Please be advised that I have been assigned carriage of this file. Please forward any future correspondence and documents to my attention.

Please find our Motion Record and Book of Authorities which is hereby served upon you pursuant to the *Federal Courts Rules*.

Yours truly,

Jennifer Bond
Counsel
Civil Litigation Section

Enclosure

Canada

Court File No. T-[redacted]

"SIMPLIFIED ACTION"
(Rule 292)

FEDERAL COURT

BETWEEN:

[redacted]

Plaintiff/Responding Party

and

HER MAJESTY IN RIGHT OF CANADA
(ATTORNEY GENERAL OF CANADA)

Defendant/Moving Party

WRITTEN SUBMISSION OF THE RESPONDING PARTY
(Response in writing pursuant to Rule 365(2) and 369(2))

[redacted]

[redacted]

Telephone: [redacted]
NO FAX AVAILABLE

TAB	**DOCUMENT**
1.	Plaintiff/Respondent Written Representations
2.	Appendix ‘A’ – Statement of Claim dated Sept 29, 2017 as filed and served

Court File No. T[redacted]

"**SIMPLIFIED ACTION**"
(Rule 292)

FEDERAL COURT

BETWEEN:

[redacted]

Plaintiff/Responding Party

and

HER MAJESTY IN RIGHT OF CANADA
(ATTORNEY GENERAL OF CANADA)

Defendant/Moving Party

WRITTEN SUBMISSION OF THE RESPONDING PARTY
(Response in writing pursuant to Rule 365(2) and 369(2)

OVERVIEW

1. The Defendant/Moving Party motion seeks to have the Plaintiff's Statement of Claim struck without leave to amend. This would appear tantamount to seeking Summary Judgement without stating so, since there would be no way for this matter to be heard, other than by appealing to have this matter heard by a trial judge.

2. The Statement of Claim was filed 'Simplified Action' pursuant to Rule 292 of the *Federal Court Rules.*[1]

3. This motion is prohibited by s. 297 of the *Federal Court Rules*[2]

   Simplified Action – federal court

   Motion for Summary judgment or summary trial

   297 No motion for summary judgment or summary trial may be brought in a simplified action.

4. The Defendant/Moving Party seeks to have the Court provide a Summary Judgment claiming that there is no reasonable cause of action disclosed, when in fact, the cause of action is stated clearly in the Statement of Claim and the Moving Party admits there is a cause of action 'discerned'.[3]

5. The Defendant/Moving Party has omitted an important page from the filed and served original Statement of Claim that the Defendant submitted as Appendix 1 of Defendants Motion Record. The entire Statement of Claim as filed and served by the Plaintiff is attached to this Response as Appendix 1 in order to correct the situation and to ensure the Court has the entire document.

1. Federal Court Rules, R Bk of Authorities, Tab 2
2. Federal Court Rules, R Bk of Authorities, Tab 2
3. Defendant's Motion Record, para 3 and 7

6. The Moving Party has omitted from it's Book of Authorities, at Tab 5, pivotal portions of the definition of 'federal property' in the *Payment in Lieu of Taxes Act,* and specifically s. 2(2) which forms the remaining portion of the definition of 'federal property'.[4]

7. This Court has already established jurisdiction in the matter of the federal legislation titled '*Payment in Lieu of Taxes'*.

4. Payment in Lieu of Taxes, R Bk of Authorities, Tab 4

PART I - FACTS

Background facts alleged by the Moving Party and disputed by Respondent

1. The Moving Party alleges that the Plaintiff/Respondent's properties do not meet the definition of 'federal property' in the *Payment in Lieu of Taxes Act (PLTA*), and supports this claim by removing the 2nd part of the definition of 'federal property' in the *PLTA*, both in its motion record and it's Book of Authorities[5].

2. The Moving Party incorrectly suggests that a municipality is not a 'servant' of Her Majesty[6].

3. The Moving Party also alleges that the Federal Court is not the proper jurisdiction to hear matters regarding the *PLTA,* which is federal legislation[7].

4. On one hand the Defendant/Moving Party insists that the motion is brought because there is no cause of action pleaded[8]; on the other hand, the Moving Party notes that *"the claimed causes of action are not entirely clear"*[9] and also that *"The only discernable cause of action…"*[10]. The Moving Party has admitted that there is a cause of action, albeit, one that it is not clear about, perhaps because the party has chosen to omit

5. Moving Party Motion Record, para 35 and Book of Authorities Tab 5
6. Moving Party Motion Record, para 25
7. Moving Party Motion Record, para 20, 21 and 29
8. Moving Party Motion Record, para 30
9. Moving Party Motion Record, para 5
10. Moving Party Motion Record, para 7

an important part of the definition of ‘federal properties’ from it’s consideration.

Claimed Causes of Action

5. The Plaintiff/Respondent’s claim meets the criteria for a valid claim as defined by Black’s Law Dictionary:

   Black’s Law 9th, 5th & 3rd editions:

   Claim: The aggregate of operative facts giving rise to a right enforceable by a Court; assertion of an existing right; to demand as one’s own or as one’s right; to assert; to urge; to insist; to demand the possession or enjoyment of something rightfully one’s own and wrongly withheld.

6. The Statement of Claim articulates the operative facts of the matter, explains the rights that exist for the Plaintiff, asserts the existing rights, shows that the right is enforceable by law and demands the enjoyment of the right that is wrongfully abridged.

7. The State Party Canada took measures as legally obligated to do pursuant to s. 2.2 of the *ICCPR*[11] and *ICESCR*[12] to ensure that the Plaintiff/Respondent could exercise her fundamental human rights to be free of servitude and free of forced disposal of her wealth and resources. Those measures are in evidence in the form of the *PLTA*.

11 International Covenant on Civil and Political Rights, R Bk of A, Tab 5
12 International Covenant on Economic, Social and Cultural Rights, R Bk of A, Tab 6

8. In *Divito v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 47, [20131 3 S.C.R. 157 at paragraph 25*[13] and *R. v. Hape, [2007] 2 SCR 292, 2007 SCC 26 (CanLII)*[14] the Courts have made it clear that the *ICCPR* and the *ICESCR* are legally binding on all State players and they do not exclude municipalities.

9. The municipality has refused to act in a manner that would permit the Plaintiff/Respondent to exercise her rights enumerated in Article 1.2 of the *ICCPR* and guaranteed by s.26 of the *Charter*. Protection from such actions aimed at the destruction of my right(s) that are guaranteed by Her Majesty are actionable pursuant to Article 2.3 (a) and (b) of the *ICCPR*[15] and s. 24 of the *Charter*[16] when they occur.

10. Given the details provided in the Plaintiff's letter to the municipality outlining her guaranteed fundamental rights, which included the applicable laws that exist in Canada, the Municipality was reckless in it's decision not only to interpret federal legislation in a manner not consistent with the actual wording of the *PLTA*, but in closing the file without permitting any possibility of effective remedy or rebuttal to its action of adding words to the *PLTA* to suit itself. The Municipality clearly was aware that closing the file abruptly based on its unilateral interpretation of federal law would cause the Plaintiff to be unable to exercise her fundamental rights.

13. Divito v. Canada (Public Safety and Emergency Preparedness, R Bk of A, tab11
14. R. v. Hape, [2007], R Bk of A, tab 16
15. International Covenant on Civil and Political Rights, R Bk of A, tab 5
16. Canadian Charter of Rights and Freedoms, R. Bk of A, tab 7

11. Misfeasance in public office is regarded as the common law's only truly public tort and is used by a Plaintiff when there has been misuse of power by a public office-holder and maladministration[17]. The Municipality was aware of the consequences to the Plaintiff of their actions but did not care. It is a misuse of power when the Director of Finance/Treasurer of a municipality chooses to change the wording of federal legislation to suit its needs and further prevents a challenge to such behavior by abruptly closing the file. The Plaintiff's letter to the municipality made it clear that the municipality's inaction would cause significant abridgement of the Plaintiff's rights.

12. The municipality and all of it's staff (office holders/officers), are 'servants' of her majesty. Pursuant to the *Public Service of Ontario Act, 2006 Ontario Regulation 373/07 - OATHS AND AFFIRMATIONS*, and the *Oaths of Allegiance Act, RSC 1985*, must swear allegiance to Her Majesty and are under her control by operation of these laws.[18]

Black's Law Dictionary, 9th Edition

servant. (l3e) A person who is employed by another to do work under the control and direction of the employer. • A servant, such as a full-time employee, provides personal services that are integral to an employer's business, so a servant must submit to the employer's control of the servant's time and behavior. "**A servant, strictly speaking, is a person who. by** contract **or operation of law**, is for a limited period **subject to the authority or control of another person** in a particular trade. business or occupation ....

17. Misfeasance in Public Office, Mark Aronson, Melbourne Law Review 2011, R Bk of A, tab 10
18. Public Service of Ontario Act, 2006 Ontario Regulation 373/07 - OATHS AND AFFIRMATIONS, and the Oaths of Allegiance Act, RSC 1985, R Bk of A, tab 9

The word servant, in our legal nomenclature, has a broad significance, and embraces all persons of whatever rank or position who are in the employ, and **subject to the direction or control of another in any department** of labor or business. Indeed it may, in most cases, be said to be synonymous with employee. H.G. Wood, A Treatise on the Law of Master and Servant § 1, at 2 (2d ed. 1886).

13. The municipality is bound by the *Charter* as confirmed by *Godbout v. Longueuil (City), [1997] 3 SCR 844, 1997 CanLii 335 (SCC)*[19]. Authority is conferred on it by the Province and subject to the *Charter*. The Province created municipalities in Ontario by Statute called *Municipal Act*, 2001.

14. *Nemeth v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281* at point 34,[20] makes clear that statutes should be interpreted in a way which makes their provisions consistent with Canada's international treaty obligations and principles of international law. *Nemeth v. Canada* cites many binding Supreme Court Decisions such *as R. v. Hape*, *Zingre v. The Queen*, etc. Therefore, the definition of 'federal properties' in the *Payment in Lieu of Taxes Act* should be interpreted in a way that permits the Plaintiff to exercise her fundamental right to dispose of her resources freely and for her own ends. There is no operation of law installed in domestic law other than the *PLTA* that provides such measures regarding the payment of property tax.

19. Godbout v. Longueuil (City), [12997] 3 SCR 844, R Bk of A, tab13
20. Nemeth v. Canada (Justice), 2010 SCC 56, R Bk of A, tab 14

Relief Sought

15. The issue around the definition of 'federal properties' as regards private property has not yet been decided by a court of competent jurisdiction. The Federal Court has, however, decided in favor of non-Crown business property owners thereby establishing that 'federal property' is not limited to property owned and controlled by Her Majesty/CROWN.[21]

16. If the courts will not allow this issue to be heard, the representatives of Her Majesty would be in dishonor of the legally binding obligations of the State under Articles 3 (a) and 3(b) of the *ICCPR* and guaranteed by s.24 and s. 26 of the *Constitution Act, 1982* to provide an effective remedy and venue of competent jurisdiction.

17. *Gauthier (Gisborn) v. The Queen, 2006 TCC 290 (CanLII)*[22] clarified the elements of a claim required if the claim is to succeed. The Plaintiff's claim meets all of the criteria: it expresses clearly the nature of the human rights claimed, the actions taken to exercise the right(s), the infringing behaviors of Her Majesty's representatives and the historical background, including enumerated and guaranteed human rights laws.

    [20] For the Appellants' claim to succeed they must plead:

    (i) the exact nature of the right claimed

    (ii) the actions taken by the party pursuant to that right;

21. Halifax Reg Municipality v. Canada and City of Montreal v. Attorney General of Canada, and The Corporation of the City of Mississauga v. Minister of Public Works and Government Services Canada, R Bk of A, tab 17
22. Gauthier (Gisborn) v. The Queen, 2006 TCC 290 (CanLII), R Bk of A, tab15

(iii) the infringing statute, legislation, regulation, rule, by-law; and

(iv) the historical background to establish the right.

PART II - ISSUES

18. The courts have held that where a question regarding *Charter* rights is involved, the threshold for striking out a claim for disclosing no reasonable cause of action is particularly high.

19. The Plaintiff/Respondent's claim discloses a clear cause of action in that her right to exercise her fundamental human rights as enumerated in the *International Covenant on Civil and Political Rights (ICCPR)*[24] and guaranteed by the *Constitution Act, 1982 (Canadian Charter of Rights and Freedoms)* has been denied due to reckless inaction and conscious maladministration by Her Majesty's representatives, who administer the municipality in which her properties are situated.

20. Pursuant to the definition of 'municipality' in s. 1 of the *Municipal Act, 2001*[25], the Plaintiff is an incorporated inhabitant of the Municipality and therefore the Municipality exerts control over the property. Its actions and inactions are binding on Her Majesty. Recklessly changing the wording of a definition found in federal legislation and carelessly closing the file to prevent a challenge of actions that there is no operation of law that permits them to engage in, meets the criteria for an action against the Crown pursuant to s. 3 (b) (i) and (ii) of the *CLPA*.[26]

24. International Covenant on Civil and Political Rights, R Bk of A, tab 5
25. Municipal Act, 2001, s. 1, R Bk of A, tab 8
26. Crown Liability and Proceedings Act, s. 3(b) (i) and (ii), R. Bk of A, tab 3

21. The Defendant/Moving Party has already admitted that there is a discernible cause of action. Since there is a discernable cause of action, and given that other challenges to the manner in which municipalities unilaterally and recklessly interpret the *PLTA* have succeeded, there is not only a reasonable chance of success of this Plaintiff's claim, but a highly probable likelihood.

22. The Plaintiff/Respondent has no objections to an extension of time for the Defendant to file its Statement of Defence, however does feel that fifteen (15) days would be adequate given the extensive resources at the Defendant's disposal and that s.7(2) of the Federal Court Rules[27] would have limited the extension to fifteen (15) days if the extension had been by consent.

27. Federal Court Rules, s. 7, R Bk of A, tab 2

PART III – ARGUMENTS

23. The Federal Court has previously heard and decided issues around definitions of 'federal property' as found in the *PLTA: Halifax Regional Municipality v. Canada (Public Works and Government Services) 2012 SCC 29,* which is a decision on appeal from the Federal Court of Appeal and *City of Montreal v. Attorney General of Canada and Minister of Public Works and Government Services Canada, 2007 FC 702 (CanLii),* and *The Corporation of the City of Mississauga v. Minister of Public Works and Government Services Canada, 2011 FC 162 (CanLii)*[28]

24. There seem to be no records available to the public of cases brought by individual private property owners. It is just and fair that this issue of private property and the definition of 'federal properties' in the *Payment in lieu of Taxes Act* be decided by a trial Judge, and not left to municipalities to unilaterally interpret as they wish.

Test on Motion to Strike

25. *Nygård International Partnership v. Canadian Broadcasting Corp. et al., 2012 MBCA 8 (CanLII)*[29] illustrates the high bar courts have set throughout Canada when it comes to disposition without trial. In Ontario, pursuant to *Dawson v Rexcraft Storage and Warehouse Inc, 164 DLR (4th) 257,*[29] the jurisprudence exhibits a similarly high

28. Halifax Regional Municipality v. Canada, and City of Montreal v. Attorney General of Canada and Minister of Public Works and Government Services Canada,, and The Corporation of the City of Mississauga v. Minister of Public Works and Government Services Canada), R Bk of A, tab 17
29. Nygård International Partnership v. Canadian Broadcasting Corp. et al., 2012 MBCA 8 (CanLII) and Dawson v Rexcraft Storage and Warehouse Inc, 164 DLR (4th) 257, R Bk of A, tab 18

standard for striking a statement of claim. The Moving Party has not provided any evidence or law to support its contention that there is no cause of action or reasonable chance of success. It has not provided any law that supports that a Municipality has the authority to change definitions in legislation or to unilaterally interpret federal legislation.

26. Since the Moving Party itself has admitted a cause of action *is* discernable in the Statement of Claim, it cannot also claim that there is no reasonable cause of action, which is exactly what it has done.

27. It is not 'plain and obvious' that there is no cause of action when one assesses the entire definition of 'federal property' as found in the *PLTA*.

28. Each element of the Statement of Claim is clearly pleaded, from the foundational law legally-binding on Her Majesty to the inactions of her representatives/servants and consequences resulting.

29. Since every element pleaded in the Statement of Claim can be proved, there must exist a reasonable cause of action. *Odhavji Estate v. Woodhouse, [2003] 3 SCR 263, 2003 SCC 69 (CanLII)*, and *Hunt v. Carey Canada Inc., [1990] 2 SCR 959, 1990 CanLII 90 (SCC).*[30]

30. Odhavji Estate v. Woodhouse, [2003] 3 SCR 263, 2003 SCC 69 (CanLII), and Hunt v. Carey Canada Inc., [1990] 2 SCR 959, 1990 CanLII 90 (SCC), R Bk of A, tab 19.

30. Since the determination of the definition of ‘federal property’ as it applies to private property has not been settled, although it has been decided in favor of a non-Crown tenant Plaintiffs, it cannot be said that there is no reasonable probability of success of a claim brought by an individual property owner.

Application of the law to the Plaintiff’s Statement of Claim

31. It is plain and obvious that the Federal Court does have jurisdiction over the matter at issue, since only the Federal Court is in a proper position to interpret the definitions set out in federal legislation. There is no operation of law giving municipalities this power.

32. According to the Federal Court website information on ‘Jurisdiction’, the rules are fairly clear and confirmed by s. 17(1)(d) and s. 17(4) of the *Federal Court Act*.[31] This claim is brought pursuant to s. 3 of the *Crown Liability and Proceedings Act* [32] and meets the requirements therein. There is a wrongful and reckless action by a representative of Her Majesty that is in control of the Plaintiff’s property and the consequence to the Plaintiff is clear and plainly stated.

33. The *PLTA* is a revised statute of Canada, with regulations made by the Governor in Council. Since the *PLTA* is federal legislation, under the administration of an Executive member of the Privy Council, a provincial court could have no jurisdiction to interpret definitions of ‘federal property’ found in the *PLTA.*

31. Federal Court Act, s. 17, R Bk of A, tab 1
32. Crown Liability and Proceedings Act, s. 3 R Bk of A, tab 3

34. In addition, pursuant to s. 25 of the *Federal Court Act*,[33] the Federal Court has original jurisdiction in any case in which a claim for relief is made or a remedy is sought under or by virtue of the laws of Canada, if no other court has jurisdiction to hear the claim.

35. The laws of Canada include the *ICCPR* and *ICESCR*, signed and ratified by Her Majesty in 1976 and which are legally binding, guaranteed by the *Constitution Act, 1982*. Specifically, s. 26 of the *Constitution Act* makes it clear that the absence of specific mention of rights and freedoms in the *Charter* does not deny the existence of other rights and freedoms made legally binding on the CROWN. While the Plaintiff's Statement of Claim did not characterize the issue as one of 'economic right' or a s.7 *Charter* issue, as Moving Party its Motion Record states, the fact is that if she had, economic rights as spelled out in the international laws would be guaranteed by s. 26 of the *Charter*.

36. The CROWN is under obligation pursuant to Article 2.2 of the *ICCPR*[34], to provide a measure for the individual property owner to exercise their rights as enumerated in the legally-binding international covenants. This measure is found in the *PLTA*.

37. It is plain and obvious that since the definition of 'federal properties' and the access to the Consolidated Revenue Fund for purposes of payments in lieu of taxes is assigned to the federal Crown, that the *PLTA* is an existing federal law and that the federal Minister of Public Works and Government Services has responsibility for the administration of the

33. Federal Court Act, s. 25, R Bk of A, tab 1
34. International Covenant on Civil and Political Rights, Art 2.2, R Bk of A, tab 5

PLTA, and therefore the Federal Court has jurisdiction.

38. Therefore, it is clear that the subject matter of the Claim involves human rights regarding disposal of wealth and resources which the Federal Crown is legally bound to guarantee and protect. The actual and existing federal law is the *PLTA*, along with the *ICCPR* and *ICESCR*, which are legally-binding laws that exist in Canada, and the administration of these laws is conferred on the Federal Court pursuant to the *Federal Court Act*. The *Federal Court Act* is the statutory grant of jurisdiction that permits the Federal Court to hear the Plaintiff's claim.

39. There is no requirement for a Statement of Claim that is seeking remedy from the Courts against the CROWN to also name a specific individual. The actions and inactions of all subjects, representatives, and servants of Her Majesty are binding on the CROWN.

40. The Plaintiff/Respondent's pleadings at paragraphs 3 and 4 of the Statement of Claim found as Appendix 1 to this Response, refer to s. 3 of the *Crown Liabilities and Proceedings Act (CLPA)*[35] as a whole, and in addition, reinforces that the CROWN is liable for torts committed by its servants and representatives. The Moving Party has misquoted the Plaintiffs claim suggesting that the Plaintiff was referring only to s. 3(b) of the *CLPA*, when in fact there was no such statement by the Plaintiff and the paragraph referred to s.3 in its entirety. The Plaintiff claims that the Municipality is a

35. Crown Liability and Proceedings Act, s. 3, R Bk of A, tab 3

servant/representative of Her Majesty and that Her Majesty is obligated to remedy

wrongs committed by servants and representatives.

41. The *Crown Liability and Proceedings Act, (CLPA)* does not define 'servants', but instead states that the term 'servants' includes agents. The *CLPA* definition of 'servants' does not exclude representatives, subjects or municipal corporations as implied by the Defendant/Moving Party.[36]

42. *Slaight Communications Inc. v. Davidson, [1989] 1 SCR 1038, 1989*[37] and *Godbout v. Longueuil (City), [1997] 3 SCR 844, 1997 CanLii 335 (SCC)*[38] makes clear that municipalities act on behalf of Her Majesty/CROWN and their actions bind the CROWN.

43. A tort is damage, injury, or a wrongful act done willfully, negligently, or in circumstances involving strict liability, but not involving breach of contract, for which a civil suit can be brought. Since I had no contract with the municipality, and since s.3 of the *CLPA* states "*The Crown is liable for the damages for which, if it were a person, it would be liable…*", it is clear that the CROWN is liable when its representatives act or refuse to act in a way that causes me loss by preventing me from exercising an important and fundamental right.

36. Crown Liability and Proceedings Act, definition 'servant', R Bk of A, tab 3
37. Slaight Communications Inc. v. Davidson, [1989], R Bk of A, tab 20
38. Godbout v. Longueuil (City), [1997], R. Bk of A, tab 13

44. According to Section 92 (8) of the *Constitution Act, 1867, "In each Province the*

Legislature may exclusively make Laws in relation to... Municipal Institutions in the Province." All by-laws passed by a municipal government are subject to change by the provincial government at any time.

45. The *Municipal Act, 2001* is the main statute governing the creation, administration and government of municipalities in the Canadian province of Ontario. The Corporation of the City [redacted] is consequently a subsidiary corporation of the Corporation of the Province of Ontario, which is a subsidiary corporation of the CROWN Corporation. The City [redacted] is therefore a representative of Her Majesty, and all staff, third parties and agents of the City are bound by the *Charter*.

46. All public servants are obligated to swear an oath of office that is specifically spelled out in the *Oaths of Allegiance Act, R.S.C., 1983, c. 0-1*, and in the *Public Service of Ontario Act, 2006, Regulation 373/07 Oaths and Affirmations.*[39], making the City of [redacted] a servant.

47. The Municipality, a representative of the CROWN, has taken an action (refusal to apply for payment in lieu of property taxes) that is harmful to the Plaintiff and its inaction is binding on Her Majesty. The City [redacted] disputes the Plaintiff's interpretation of the *PLTA* definition of 'federal properties'. It is plain and obvious that the Federal Court is needed to clarify this question of law.

39. Oaths of Allegiance Act, and Public Service of Ontario Act, 2006, Regulation 373/07 Oaths and Affirmations, R Bk of A, tab 9.

48. The Defendant/Moving Party has detached the vitally important portion of the definition of ‘federal property’ that expands the definition to include private property. In doing this the Defendant has the opportunity to mischaracterize the definition as one affecting only ‘property owned by the Federal Crown’, and to go on to suggest that the only purpose of the *PLTA* is ‘so that municipalities and provinces may recoup funds from the Federal government for properties and land that the municipalities and provinces cannot otherwise tax in the normal course’.

49. The *PLTA* does not state its purpose as being solely for recouping funds from the Federal government regarding property owned by the Federal Crown. In fact, read together, both parts of the definition of ‘federal property’ and the Purpose of the *Act* make it clear that both federally owned and controlled property and those properties not owned or controlled by the Crown of a department are considered ‘federal property’ for the purposes of the *PLTA*.

50. When given its full and proper reading, the entire definition of ‘federal property’ in fact stands as the legislative measure taken by the State Party Canada to satisfy its international legal obligation to ensure it creates conditions where everyone can freely dispose of their wealth and resources. Without this just and fair interpretation of the definition of ‘federal property’, the CROWN would be in dishonour of its international human rights obligations, since no other measure exists to allow property owners to be free of forced disposition of their resources in order to live on this landmass.

51. There are no mandatory provisions in the *PLTA* to force the municipality to make application, however, there are mandatory provisions in the *ICCPR* that (a) the Plaintiff be free to dispose of their resources for their own ends, (b) that the State Party Canada ensure that measures are in place to allow the Plaintiff to exercise her rights, and (c) that the State create conditions to allow the Plaintiff to exercise her rights. The municipality is bound by these legally-finding articles of law and they need not be restated in every enactment.

52. As stated in *R. v. Hynes, 1999 CanLII 18979 (NL CA)*[40], enforcement decisions cannot revert back to the government, otherwise all measures taken by the CROWN to fulfill its legally-binding human rights obligations would be extinguished by lower-level authorities at will, which is what the municipality [redacted], Ontario is attempting to do.

53. The Plaintiff/Respondent has never implied that her properties are owned by Her Majesty as alleged by the Defendant/Moving Party[41]. The Plaintiff has shown clearly how both portions of the definition of 'federal property' read together make it clear that regardless that my property is not owned or controlled by Her Majesty, the Plaintiff's properties meet the definition of 'federal property'. By removing part of the definition from the discussion, both in the Moving Partys' Motion Record and in its Book of Authorities, the Court is prevented from seeing that the cause of action is clearly stated and provable.

40. R. v. Hynes, 1999, R Bk of A, tab 12
41. Moving Party Motion Record, para 37

54. The Plaintiff/Respondent has very clearly outlined the torts as those actions (refusal) taken by the subject municipality that are aimed at the destruction of the right of the Plaintiff to have her property taxes paid from the Consolidated Revenue Fund so that she can fully exercise her right to freely dispose of her resources for her own ends as enumerated as Article 1.2 of the *ICCPR*[42] and guaranteed under s. 26 of the *Charter*. The forced disposition of resources is harmful to the plaintiff because it violates her rights to remain secure and free of financial servitude to the Municipality, to fully enjoy her wealth and resources, and violates her right to a benefit provided directly by the *PLTA*.

55. As stated in the Statement of Claim, there is no operation of law that forces the municipality [redacted], Ontario to engage in unilateral actions that prevent the Plaintiff from accessing a benefit under the *PLTA*, but there is an operation of law (*ICCPR*) that clearly forces the municipality, which is a representative of the State Party Canada and Her Majesty to <u>create conditions</u> to allow the Plaintiff to exercise her rights to be free of forced disposition of her resources and servitude.

56. At paragraph 41 of the Motion Record of the Defendant/Moving Party, it states that the *Charter* does not specifically enumerate the right 'to be free from servitude and forced disposition of wealth and resources'. While the Charter also fails to specifically enumerate freedom from slavery, rape and murder, the fact is that a full reading of Article 8 of the *ICCPR*[43], guaranteed by s. 26 of the *Charter*, ensures a State cannot deny the

42. International Covenant on Civil and Political Rights, Art. 1.2, R Bk of A, tab 5
43. International Covenant on Civil and Political Rights, Art. 8, R Bk of A, tab 5

right to be free from servitude to a municipality and forced disposition of wealth without fully dishonoring international law obligations.

57. It is the Plaintiff/Respondent's position that if there were a generous reading of the entire Statement of Claim and the *PLTA* definition of 'federal properties' the cause of action would be plain and obvious. It would seem that the only way in which the cause of action and wrongs could be denied would be by removing the relevant part of the definition of 'federal property' from the Defendant/Moving Party's motion record, as seems to have been the case in this Defendant's motion record.

58. The Defendant/Moving Party has very improperly stated at paragraph 41 of the Defendant's Motion Record that the Statement of Claim alleges breaches of section 7 *Charter* rights when this is not so. Further, the Defendant has taken the liberty of characterizing the Plaintiff's claim as one centred on 'economic rights', when this was not the case whatever. But had it been centered on 'economic rights' then those rights are enumerated in the legally-binding *International Covenant on Economic, Social and Cultural Rights* and likewise guaranteed by s.26 of the *Charter*.

59. The issues raised in the Statement of Claim may well be novel, but novelty can be no reason to deny a full hearing before a trial judge.

Request for extension of time

60. The Defendant/Moving Party requests an extension of time. The Plaintiff/Respondent is not opposed if the extension is considered pursuant to Rules 410(2) where the Moving Party bears the cost of the motion.[44] The Respondent respectfully requests that one-half of the extension period requested is granted if this Honourable Court feels inclined to allow an extension, as Rule 7(2) would have been in effect had the extension been by consent.[45]

44. Federal Court Rules, s. 410(2), R Bk of A, tab2
45. Federal Court Rules, s. 7(2), R Bk of A, tab 2

PART IV – ORDER REQUESTED

61. The Plaintiff/Respondent respectfully requests that this Honourable Court order that

(a) The Statement of Claim is allowed in its entirety and the matter permitted to proceed to Trial, and

(b) The extension granted to the Defendant/Moving Party be a 15-day extension of time for filing its Statement of Defence, if one is granted.

(c) In the alternative, given the clear wording of the definition(s) of 'federal property' in the *Payment in Lieu of Taxes Act*, the Court, pursuant to s. 215(2) of the *Federal Court Rules,* use it's discretion and wisdom to grant the Plaintiff/Respondent the relief sought in the Statement of Claim.

(d) order for costs of this motion pursuant to s. 410(2) of the *Federal Court Rules*

RESPECTFULLY SUBMITTED 25th day [redacted]

[redacted]

Telephone: 613[redacted]
NO FAX AVAILABLE

TO:

Jennifer S. Bond
Solicitor for the Defendant/Moving Party
Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

email: Jennifer.Bond@justice.gc.ca
Tel: 613-670-6335

APPENDIX 1

1. Entire Statement Claim as filed and served

Federal Court | Cour fédérale

Date: 20[redacted]15

Docket: T-[redacted]

Citation: 2017 [redacted]

Ottawa, Ontario, November 15, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

[redacted]

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER AND REASONS

[1] On or about September 29, 2017, the Plaintiff introduced, by way of a simplified action, a claim for declaratory relief against the Her Majesty the Queen in Right of Canada [Her Majesty] for a dispute over property taxes levied by the City [redacted] against two properties she owns in that municipality. The Plaintiff contends that the only way the city can obtain property tax revenues from her two properties is by making an application to the federal Minister of Public Works and Government Services pursuant to the *Payments in Lieu of Taxes Act*, RSC 1985, c M-

13 [the Act] and have these revenues paid out of the Consolidated Revenue Fund, something the city is declining to do on the basis that the Act does not apply to these properties.

[2] In declining to do so, she says the City [redacted] is infringing upon her right to freely dispose – and be free from forced disposition – of her wealth and resources. She contends that this right is guaranteed by various international human rights law instruments and that the Act is designed, in fulfilment of Canada's obligations under these instruments, to create conditions allowing her to exercise that right freely. That protection, entrenched in Canadian domestic law both statutorily and constitutionally, the argument goes, is triggered by the fact the properties she owns [redacted] are "federal property" within the meaning of the Act.

[3] While her action is directed at Her Majesty, the Plaintiff is for all intents and purposes seeking declaratory relief from the City [redacted]. In one instance, she seeks relief from the city's inaction in making an application under the Act. In another, she is asking the Court to declare that she is entitled to a refund, by the city, of an amount of property taxes she unwillingly paid in 2017. Why sue Her Majesty then? Because the City [redacted] according to the Plaintiff, is a "servant" of the Crown within the meaning of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 [CLPA] and its inaction amounts to a tort of misfeasance in public office engaging Her Majesty's liability pursuant to section 3 of the CLPA.

[4] Unsurprisingly, Her Majesty has brought a motion in writing under rules 221 and 369 of the *Federal Courts Rules*, SOR/98-106 [the Rules] for an order striking out the Plaintiff's action,

without leave to amend, both because this Court lacks jurisdiction to entertain it and because it does not disclose a reasonable cause of action. This is the motion currently before the Court.

[5] As is well settled, a statement of claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that it has no reasonable prospect of success (*R v Imperial Tobacco Canada Ltd*, [2011] 3 SCR 45, at para 17 [*Imperial Tobacco*]; *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959, at p 980]. Here, this test is clearly met.

[6] The Plaintiff's claim rests on the following three propositions: the property she owns in [redacted] is "federal property" within the meaning of the Act; the Act is aimed, in fulfillment of Canada international law obligations, at protecting the Plaintiff's right to freely dispose - and be free from forced disposition - of her wealth and resources; and the City [redacted] is a "servant" of the Crown within the meaning of the CLPA and engages, therefore, Her Majesty's liability for the torts it commits.

[7] All three propositions, on their face, are meritless.

[8] First, the property at issue does not, by any stretch of the imagination, meet the definition of "federal property" within the meaning of the Act. "Federal property" within the meaning of the Act is either property "owned" or "under emphyteusis" by Her Majesty and administered by a "minister of the Crown" or a "corporation" listed in Scheduled III or IV of the Act, or property which is "occupied or used" by a "minister of the Crown" and administered and controlled by

Her Majesty in right of a province. That definition, set out in subsection 2(1) of the Act, reads as follows:

federal property means, subject to subsection (3),	***propriété fédérale*** Sous réserve du paragraphe (3) :
(a) real property and immovables owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown,	a) immeuble ou bien réel appartenant à Sa Majesté du chef du Canada dont la gestion est confiée à un ministre fédéral;
(b) real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,	b) immeuble ou bien réel appartenant à Sa Majesté du chef du Canada et relevant, en vertu d'un bail, d'une personne morale mentionnée aux annexes III ou IV;
(c) immovables held under emphyteusis by Her Majesty in right of Canada that are under the administration of a minister of the Crown,	c) immeuble dont Sa Majesté du chef du Canada est emphytéote et dont la gestion est confiée à un ministre fédéral;
(d) a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and	d) bâtiment appartenant à Sa Majesté du chef du Canada, dont la gestion est confiée à un ministre fédéral mais qui est situé sur un terrain non imposable qui n'appartient pas à Sa Majesté du chef du Canada ou qui est contrôlé et administré par Sa Majesté du chef d'une province;
(e) real property and immovables occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province; (propriété fédérale)	e) immeuble ou bien réel occupé ou utilisé par un ministre fédéral et administré et contrôlé par Sa Majesté du chef d'une province. (federal property)

[9] A "minister of the Crown" is a federal minister of the Crown and a "corporation" listed in Schedule III and IV of the Act is a federal Crown corporation.

[10] By her own admission, the Plaintiff recognizes that the property she owns in [redacted] is not owned or controlled by Her Majesty. However, she claims that, according to subsection 2(3) of the Act, the definition of "federal property" also includes buildings designed primarily for the shelter of people, driveways for single-family dwellings and real property or immovable leased to or occupied by a person or body that is not a department. Since her two [redacted] properties are [redacted] buildings presenting all these characteristics, they fall, she says, within this extended definition.

[11] Again, by any stretch of the imagination, this cannot be what Parliament intended. Apart from the fact that real property or immovable leased to or occupied by a person or body that is not a department is excluded form the definition of "federal property", a building designed primarily for the shelter of people or a driveway for a single-family dwelling can only fall within that definition if it is owned or controlled by Her Majesty. In other words, subsection 2(3) on which the Plaintiff relies to advance her argument, cannot be read in isolation that is without regard to the main definition of "federal property" found at subsection 2(1). Subsection 2(3), which makes an express reference to the definition of "federal property", provides for a number of exclusions from that definition, with a number of exceptions to these exclusions. Buildings designed primarily for the shelter of people and driveways for single-family dwellings are two of these exceptions.

[12] These exceptions can only make sense however if such buildings or driveways are owned or controlled by Her Majesty in the first place. This is the only way to look at it because the sole purpose of the Act is to establish a regime of discretionary payments in lieu of taxes to provinces and municipalities to mitigate the fact that property owned by Her Majesty is constitutionally exempt from provincial and municipal taxation (*Halifax (Regional Municipality) v Canada*, [2012] 2 SCR 108, at paras 2 and 10). That purpose is not to alleviate, in furtherance of some international obligations, the burden of private property owners who claim that their property should be immune from municipal taxation in the name of one's right to freely dispose of his/her wealth and resources. The Act was not meant to assist tax objectors.

[13] It is therefore plain and obvious in my view that the Act has no application whatsoever to privately-owned and controlled property, such as is the case of the property owned by the Plaintiff in the City [redacted], and that the first two propositions underlying the Plaintiff's action are devoid of any legal foundation.

[14] The Plaintiff's third proposition is as meritless as the first two. The City [redacted] is not a "servant" of Her Majesty within the meaning of subsection 3(b)(i) of the CLPA. A "servant" of the federal Crown for the purposes of the CLPA is someone who is either employed by the Crown or who acts as an agent for the federal Crown (*Ayangma v Canada*, 1998 CanLII 8926 (FC), at para 12). The City [redacted] is neither. As Her Majesty correctly points out, the City [redacted] has been created, as any other municipality in the province of Ontario, by virtue of the *Municipal Act, 2001*, a provincial statute. There is no indication in that statute, or in the material facts pleaded by the Plaintiff in her statement of claim, that the City [redacted] is

employed by Her Majesty or was acting as an agent of Her Majesty when she declined not to make an application under the Act as requested by the Plaintiff.

[15] It is true that the City [redacted] is a "taxing authority" for the purposes of the Act but as a "taxing authority", it does not act on behalf of Her Majesty, such as raising or collecting taxes on her behalf, but it is acting for its own benefit, that is to seek payment in lieu of taxes that it would otherwise constitutionally not be entitled to levy. Her Majesty exerts no control of any kind on the City [redacted]

[16] Finally, the Plaintiff's contention that it is not open to Her Majesty to bring a motion to strike in the context of a simplified action because such a motion amounts to a motion for summary judgment, is equally flawed. It is clear from rule 298(2) of the Rules that a motion to strike can be brought in the context of a simplified action. Therefore, there is no doubt that the present motion to strike is properly before the Court.

[17] In *Imperial Tobacco*, the Supreme Court of Canada held that the power to strike out claims with no reasonable prospect of success is a valuable housekeeping tool, essential to effective and fair litigation as it ensures that only those claims with a chance of success proceed to trial (*Imperial Tobacco*, at para 19). This housekeeping tool is particularly valuable in a case such as this one where the claim has no chance to succeed at trial as it fails to disclose, in any way, shape or form, a reasonable cause of action.

[18] The Plaintiff's statement of claim will therefore be struck out, without leave to amend as I am satisfied that its defects are beyond redemption and cannot be cured, as a result, by amendment (*Simon v Canada*, 2011 FCA 6, at para 8).

THIS COURT ORDERS that:

1. The motion is granted;

2. The Statement of Claim is struck out, without leave to amend;

3. Costs on the motion are awarded to the Respondent.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-[redacted]

STYLE OF CAUSE: [redacted] v HER MAJESTY THE QUEEN IN RIGHT OF CANADA

MOTION IN WRITING CONSIDERED AT [redacted], ONTARIO PURSUANT TO RULE 369 OF THE FEDERAL COURTS RULES

ORDER AND REASONS: LEBLANC J.

DATED: [redacted]

COPY

Rule 337

NOTICE OF APPEAL

COURT SEAL

Federal Court of Appeal File No. A-[redacted]
Federal Court File No. T-1480-17

"SIMPLIFIED ACTION"
(Rule 292)

FEDERAL COURT

BETWEEN:

[redacted]

Appellant (Plaintiff)

and

ATTORNEY GENERAL OF CANADA

Respondent (Defendant)

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at the Federal Court of Appeal, 200 Kent Street, Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal

or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts 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 OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Novembe[redacted]

Issued by [redacted]
(Registry Officer)

VALERIE JEAN-GILLES
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office:

Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario
K1A 0H9

TO:
Attorney General of Canada
Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Counsel for the Defendant, Attorney General of Canada
Jennifer Bond

Tel: 613-670-6335
e-mail: Jennifer.Bond@justice.gc.ca

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Order and Reasons of Justice R. Leblanc, dated [redacted] in which the court allowed the Motion from Her Majesty with orders as follows:

1. The motion is granted.
2. The Statement of Claim is struck out, without leave to amend.
3. Costs on the motion are awarded to the Respondent.

THE APPELLANT ASKS that:

1. The order of the Federal Court be set aside *except* for the order awarding costs of the motion to the Respondent to the Motion (Appellant in this appeal);
2. The case be permitted to proceed to trial;
3. The respondents be ordered to pay to the appellant the costs of this appeal; and
4. This Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. The Appellant is the owner of a [redacted] property in the Ontario municipality of [redacted] and is seeking to have the municipality make application under the *Payment in Lieu of Taxes Act* [*PLTA*] in the amount of the property taxes, including what she has already paid to the municipality in the taxation [redacted].

2. In the action, the Appellant has alleged that the municipality has refused to make the application to the appropriate Minister. The municipality has based its refusal on incorrect interpretation of the definition(s) of 'federal property' in the *PLTA*. Unless the Courts decide on the correct interpretation of the definition of 'federal property' as defined by a

combination of two sections of the legislation after a full hearing of all the facts and law, the Appellant is deprived of a privilege in domestic law that allows her to exercise her fundamental human rights as guaranteed by Her Majesty in 1976.

3. By allowing the Motion, the Motions Judge made serious and reviewable errors of law, made overriding and palpable errors in his assessment of the facts, and in the end, exercised his discretion on an improper and irrelevant basis and in a manner in excess of his jurisdiction and in disregard of established case law.

4. The Moving Party/Her Majesty stated in its Motion Record that a cause of action was discernable. It also stated that the causes of actions were not entirely clear, providing yet another indication that causes of action were indeed identified by the Moving Party/Defendant. The Motions Judge erred by stating there was no 'reasonable' cause of action disclosed and did so without providing reasons for this conclusion that were not based on pre-conceived notions of the meaning of 'federal properties' and that municipalities are not bound by the *Charter*. The Motions Judge failed to explain how the very high bar set by the Courts respecting the striking of a statement of claim, could be lowered to the point where a novel claim can be deemed 'unreasonable' without full consideration of all laws, legislation and evidence.

5. The Motion Judge has relied on s. 298(2) of the Federal Court Rules to find that a motion to strike can be brought in the context of a simplified action, despite s. 297 prohibiting motions for summary judgment or summary trial in a simplified action. Section 298(2) applies only if there are objections to the jurisdiction of the Court; or to strike a statement of claim, on the ground that it discloses no reasonable cause of action.

6. The Motions Judge (a) appears to have accepted that previous *PLTA* cases had been decided by the Federal Court, and that therefore the Federal Court is the correct jurisdiction. The Moving Party itself noted that causes of action do exist. Therefore, there were no genuine grounds to bring the Motion to strike in this simplified action, and the Motion Judge erred in supporting the Moving Party in its efforts to circumvent s. 297 which prohibits summary

judgements in simplified actions.

7. If the facts as pleaded are assumed to be true, and the Moving Party itself identified causes of action, the bar set by the Motion Judge to determine 'reasonable' in terms of this Appellant's causes of action is not just and has not been explained. The Motions Judge erred in establishing a low bar for striking a claim that contradicts the 'high bar' established by Canadian courts, and erred in not explaining his reasons for ignoring established and persuasive court decisions on the subject of striking claims.

8. The Motions Judge erred when reaching his decision as to the definition of 'federal property' as found in the *Payment in lieu of Taxes Act*, RSC 1985, c M13 [PLTA]. As did Her Majesty in the Motions Record, the Motion Judge did not quote the entire definition of 'federal property', instead allowing his personal views to substitute for the actual legislative wording of the 2nd part of the definition.

9. The Motion Judge erred by qualifying the word 'unless' in s. 2(3) of the *PLTA*, when such qualification was not found in the legislation. The word 'unless' creates exceptions to the section titled *Property not included in the definition federal property*, thereby including in the definition of 'federal property' what would otherwise be excluded.

10. The Motions Judge, while recognizing that s. 2(3)a of the *PLTA "provides for a number of exclusions from the definition, with a number of exceptions to the exclusions"*, has erred by qualifying the exceptions in a way that is not provided for in the *PLTA* and has done this by adding his opinion that "*such exceptions can only make sense, if the exceptions are owned by or controlled by Her Majesty in the first place*". The Motions Judge erred in not realizing that all properties possibly connected to the Crown, Her Majesty and her representatives had already been addressed in the first part of the definition and that without full weight given to all facts and law noted in the Statement of Claim, he would miss other explanations that would make sense and not require arbitrary changes to the legislation by the Motion Judge to be supported.

11. The Motions Judge erred in finding that all property referred to in the *PLTA* must be associated to the control or ownership by Her Majesty when the legislation provides for no such interpretation or conclusion. The Motions Judge erred in arbitrarily installing the word 'and' into the legislation in order to connect Her Majesty's property to all structures and work designed to shelter living beings.

12. The Motions Judge erred when qualifying the word 'unless' by presuming the word 'and' as regards to both parts of the definition of 'federal property'. This presumption resulted in what were exceptions to the exclusions from the definition of 'federal property' now being deemed to be themselves exclusions. Had this been the intention of Parliament when it sought to satisfy Her Majesty's legal obligations, the word 'unless' would not have been installed in the legislation and the word 'and' would have been.

13. The Motions Judge erred in presuming that the *PLTA* was strictly intended to establish a regime of discretionary payments in lieu of taxes to mitigate the exemption of Her Majesty's properties from taxation. There is no limiting statement of this kind in the preamble of the *PLTA* or anywhere in the legislation or relevant case law.

14. The Motions Judge erred by dismissing any suggestion that the *PLTA* is linked to Article 2.2 of the *International Covenant on Civil and Political Rights*, which is legally binding on Her Majesty. The Motions Judge refused to consider that Parliament must have taken measures to satisfy Her Majesty's legal obligations to all Canadians after 1976 and one of those measures was the *PLTA* passed in 1985. If the *PLTA* was not the measure provided by Parliament, then the Motions Judge and the Moving Party should point to the measure rather than dismiss out of hand that the *PLTA* was not the measure intended.

15. Finding that the *PLTA* is not the measure provided by Parliament when it worded the *PLTA* as it did, required the Motions Judge to reword the *PLTA* on the basis of personal beliefs that there were no changes in Her Majesty's obligations to Canadians after 1976 and to rely on pre-conceived notions of taxation and the relationship of municipalities to Her Majesty. This required the Motion Judge to rewrite legislation which is outside his jurisdiction.

16. The Motions Judge errs when not accepting the fact of the legally-binding obligations of the government as enumerated in the *International Covenants on Civil and Political Rights* and the *International Covenants on Economic, Social and Cultural Rights* and guaranteed by the *Constitution Act, 1982, Part 1, Charter of Rights and Freedoms,* despite that it was necessary for him to presume the facts pleaded in the Statement of Claim respecting those enumerated rights were true.

17. The Motions Judge has erroneously mischaracterized the Plaintiff/Appellant's pleadings when stating that the Appellant alleges that the *PLTA* triggers protection of her rights under the *Constitution.* The Plaintiff states that Constitutional rights are to be protected whether there is domestic law or not. The ratification of the covenants and the installation of the *Charter* in 1982 triggered the passing of the *PLTA* three years later. The *PLTA* simply facilitates the property owner's exercise of their rights.

18. The Motions Judge made a palpable and overriding error in assessing the facts of the case, including by finding that the actions of the City [redacted] are not binding on Her Majesty pursuant to *Crown Liability and Proceedings Act* and that the City [redacted] is responsible for interpreting federal legislation. When insisting that the Plaintiff should be suing the municipality instead of Her Majesty, the Motions Judge failed to consider that previous *PLTA* cases requiring the Court to determine the intention of the wording of the *PLTA* were brought against the Crown and/or a Minister, not against the municipality and further at least one case involved non-crown property.

19. The Motions Judge erred by finding that municipalities and even provinces are not associated to Her Majesty and that their actions are not binding on the CROWN, despite the many court decisions, and the legislation respecting the oaths to Her Majesty that must be taken by all staff of the municipality and which impose duties to Her Majesty on both the office held by the staff and the individual.

20. The Motions Judge has presumably assumed that the facts pleaded in the Statement of Claim

are true, and thereby assumed that the human rights legislation and the Supreme Court decisions highlighted by the Plaintiff/Appellant are also true, and further, that the rights she seeks to exercise exist. The Motions Judge therefore erred by implying throughout his Decision that the international obligations guaranteed by the *Constitution Act, 1982* are not associated to domestic law and have no relevance to the passing of the *PLTA*. He provides no reasons why Supreme Court and other court decisions contradicting his opinion(s) are not binding in this case.

21. The Motions Judge errs in holding that international human rights laws guaranteed by the *Canadian Charter of Rights and Freedoms*, s. 26 and the domestic law that evolved from these historical events can revert back to the interpretation and control of the very government authorities that the *Charter* seeks to protect individuals from.

22. Until the entire definition of 'federal property' in the *Payment in Lieu of Taxes Act* is decided by the Federal Court, the Federal Court of Appeal or the Supreme Court after a fair and full hearing of all facts, legislation and case law, municipalities and others can continue to change and/or interpret the *PLTA* to avoid making an application to the Minister for payment in lieu of taxes for structures and work designed for the shelter of living beings, immovables and personal property. This deprives the property owner of a privilege available through the *PLTA* that is a measure provided by Her Majesty in honour of her legal obligations, and that is not offered elsewhere in domestic law.

23. The Motions Judge erred when disregarding the fact that when the *PLTA* is interpreted in isolation from the superior laws that exist in Canada, a denial of this right to access the privilege of having one's property tax paid out of the Consolidated Revenue Fund as created by Parliament places the Plaintiff/Appellant in servitude to the Municipality, which in turn creates yet another violation of human rights and a violation of her *Charter* rights as protected by s.26.

November [redacted]

[redacted]

613[redacted]
(no fax available)

SOR/2004-283, ss. 35 and 38

COPY

Rule 337

NOTICE OF APPEAL

COURT SEAL

Federal Court of Appeal File No. A-[redacted]
Federal Court File No. T-[redacted]

"SIMPLIFIED ACTION"
(Rule 292)

FEDERAL COURT

BETWEEN:

[redacted]

Appellant (Plaintiff)

and

ATTORNEY GENERAL OF CANADA

Respondent (Defendant)

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at the Federal Court of Appeal, 200 Kent Street, Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal

or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts 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 OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Novembe[redacted]

Issued by [redacted]
(Registry Officer)

VALERIE JEAN-GILLES
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office:

Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario
K1A 0H9

TO:
Attorney General of Canada
Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Counsel for the Defendant, Attorney General of Canada
Jennifer Bond

Tel: 613-670-6335
e-mail: Jennifer.Bond@justice.gc.ca

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Order and Reasons of Justice R. Leblanc, dated [redacted] in which the court allowed the Motion from Her Majesty with orders as follows:

1. The motion is granted.
2. The Statement of Claim is struck out, without leave to amend.
3. Costs on the motion are awarded to the Respondent.

THE APPELLANT ASKS that:

1. The order of the Federal Court be set aside *except* for the order awarding costs of the motion to the Respondent to the Motion (Appellant in this appeal);
2. The case be permitted to proceed to trial;
3. The respondents be ordered to pay to the appellant the costs of this appeal; and
4. This Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. The Appellant is the owner of a [redacted] property in the Ontario municipality of Belleville and is seeking to have the municipality make application under the *Payment in Lieu of Taxes Act* [*PLTA*] in the amount of the property taxes, including what she has already paid to the municipality in the taxation year 2017.

2. In the action, the Appellant has alleged that the municipality has refused to make the application to the appropriate Minister. The municipality has based its refusal on incorrect interpretation of the definition(s) of 'federal property' in the *PLTA*. Unless the Courts decide on the correct interpretation of the definition of 'federal property' as defined by a

combination of two sections of the legislation after a full hearing of all the facts and law, the Appellant is deprived of a privilege in domestic law that allows her to exercise her fundamental human rights as guaranteed by Her Majesty in 1976.

3. By allowing the Motion, the Motions Judge made serious and reviewable errors of law, made overriding and palpable errors in his assessment of the facts, and in the end, exercised his discretion on an improper and irrelevant basis and in a manner in excess of his jurisdiction and in disregard of established case law.

4. The Moving Party/Her Majesty stated in its Motion Record that a cause of action was discernable. It also stated that the causes of actions were not entirely clear, providing yet another indication that causes of action were indeed identified by the Moving Party/Defendant. The Motions Judge erred by stating there was no 'reasonable' cause of action disclosed and did so without providing reasons for this conclusion that were not based on pre-conceived notions of the meaning of 'federal properties' and that municipalities are not bound by the *Charter*. The Motions Judge failed to explain how the very high bar set by the Courts respecting the striking of a statement of claim, could be lowered to the point where a novel claim can be deemed 'unreasonable' without full consideration of all laws, legislation and evidence.

5. The Motion Judge has relied on s. 298(2) of the Federal Court Rules to find that a motion to strike can be brought in the context of a simplified action, despite s. 297 prohibiting motions for summary judgment or summary trial in a simplified action. Section 298(2) applies only if there are objections to the jurisdiction of the Court; or to strike a statement of claim, on the ground that it discloses no reasonable cause of action.

6. The Motions Judge (a) appears to have accepted that previous *PLTA* cases had been decided by the Federal Court, and that therefore the Federal Court is the correct jurisdiction. The Moving Party itself noted that causes of action do exist. Therefore, there were no genuine grounds to bring the Motion to strike in this simplified action, and the Motion Judge erred in supporting the Moving Party in its efforts to circumvent s. 297 which prohibits summary

judgements in simplified actions.

7. If the facts as pleaded are assumed to be true, and the Moving Party itself identified causes of action, the bar set by the Motion Judge to determine 'reasonable' in terms of this Appellant's causes of action is not just and has not been explained. The Motions Judge erred in establishing a low bar for striking a claim that contradicts the 'high bar' established by Canadian courts, and erred in not explaining his reasons for ignoring established and persuasive court decisions on the subject of striking claims.

8. The Motions Judge erred when reaching his decision as to the definition of 'federal property' as found in the *Payment in lieu of Taxes Act*, RSC 1985, c M13 [PLTA]. As did Her Majesty in the Motions Record, the Motion Judge did not quote the entire definition of 'federal property', instead allowing his personal views to substitute for the actual legislative wording of the 2nd part of the definition.

9. The Motion Judge erred by qualifying the word 'unless' in s. 2(3) of the *PLTA*, when such qualification was not found in the legislation. The word 'unless' creates exceptions to the section titled *Property not included in the definition federal property*, thereby including in the definition of 'federal property' what would otherwise be excluded.

10. The Motions Judge, while recognizing that s. 2(3)a of the *PLTA "provides for a number of exclusions from the definition, with a number of exceptions to the exclusions"*, has erred by qualifying the exceptions in a way that is not provided for in the *PLTA* and has done this by adding his opinion that "*such exceptions can only make sense, if the exceptions are owned by or controlled by Her Majesty in the first place*". The Motions Judge erred in not realizing that all properties possibly connected to the Crown, Her Majesty and her representatives had already been addressed in the first part of the definition and that without full weight given to all facts and law noted in the Statement of Claim, he would miss other explanations that would make sense and not require arbitrary changes to the legislation by the Motion Judge to be supported.

11. The Motions Judge erred in finding that all property referred to in the *PLTA* must be associated to the control or ownership by Her Majesty when the legislation provides for no such interpretation or conclusion. The Motions Judge erred in arbitrarily installing the word 'and' into the legislation in order to connect Her Majesty's property to all structures and work designed to shelter living beings.

12. The Motions Judge erred when qualifying the word 'unless' by presuming the word 'and' as regards to both parts of the definition of 'federal property'. This presumption resulted in what were exceptions to the exclusions from the definition of 'federal property' now being deemed to be themselves exclusions. Had this been the intention of Parliament when it sought to satisfy Her Majesty's legal obligations, the word 'unless' would not have been installed in the legislation and the word 'and' would have been.

13. The Motions Judge erred in presuming that the *PLTA* was strictly intended to establish a regime of discretionary payments in lieu of taxes to mitigate the exemption of Her Majesty's properties from taxation. There is no limiting statement of this kind in the preamble of the *PLTA* or anywhere in the legislation or relevant case law.

14. The Motions Judge erred by dismissing any suggestion that the *PLTA* is linked to Article 2.2 of the *International Covenant on Civil and Political Rights*, which is legally binding on Her Majesty. The Motions Judge refused to consider that Parliament must have taken measures to satisfy Her Majesty's legal obligations to all Canadians after 1976 and one of those measures was the *PLTA* passed in 1985. If the *PLTA* was not the measure provided by Parliament, then the Motions Judge and the Moving Party should point to the measure rather than dismiss out of hand that the *PLTA* was not the measure intended.

15. Finding that the *PLTA* is not the measure provided by Parliament when it worded the *PLTA* as it did, required the Motions Judge to reword the *PLTA* on the basis of personal beliefs that there were no changes in Her Majesty's obligations to Canadians after 1976 and to rely on pre-conceived notions of taxation and the relationship of municipalities to Her Majesty. This required the Motion Judge to rewrite legislation which is outside his jurisdiction.

16. The Motions Judge errs when not accepting the fact of the legally-binding obligations of the government as enumerated in the *International Covenants on Civil and Political Rights* and the *International Covenants on Economic, Social and Cultural Rights* and guaranteed by the *Constitution Act, 1982, Part 1, Charter of Rights and Freedoms,* despite that it was necessary for him to presume the facts pleaded in the Statement of Claim respecting those enumerated rights were true.

17. The Motions Judge has erroneously mischaracterized the Plaintiff/Appellant's pleadings when stating that the Appellant alleges that the *PLTA* triggers protection of her rights under the *Constitution.* The Plaintiff states that Constitutional rights are to be protected whether there is domestic law or not. The ratification of the covenants and the installation of the *Charter* in 1982 triggered the passing of the *PLTA* three years later. The *PLTA* simply facilitates the property owner's exercise of their rights.

18. The Motions Judge made a palpable and overriding error in assessing the facts of the case, including by finding that the actions of the City [redacted] are not binding on Her Majesty pursuant to *Crown Liability and Proceedings Act* and that the City [redacted] is responsible for interpreting federal legislation. When insisting that the Plaintiff should be suing the municipality instead of Her Majesty, the Motions Judge failed to consider that previous *PLTA* cases requiring the Court to determine the intention of the wording of the *PLTA* were brought against the Crown and/or a Minister, not against the municipality and further at least one case involved non-crown property.

19. The Motions Judge erred by finding that municipalities and even provinces are not associated to Her Majesty and that their actions are not binding on the CROWN, despite the many court decisions, and the legislation respecting the oaths to Her Majesty that must be taken by all staff of the municipality and which impose duties to Her Majesty on both the office held by the staff and the individual.

20. The Motions Judge has presumably assumed that the facts pleaded in the Statement of Claim

are true, and thereby assumed that the human rights legislation and the Supreme Court decisions highlighted by the Plaintiff/Appellant are also true, and further, that the rights she seeks to exercise exist. The Motions Judge therefore erred by implying throughout his Decision that the international obligations guaranteed by the *Constitution Act, 1982* are not associated to domestic law and have no relevance to the passing of the *PLTA*. He provides no reasons why Supreme Court and other court decisions contradicting his opinion(s) are not binding in this case.

21. The Motions Judge errs in holding that international human rights laws guaranteed by the *Canadian Charter of Rights and Freedoms*, s. 26 and the domestic law that evolved from these historical events can revert back to the interpretation and control of the very government authorities that the *Charter* seeks to protect individuals from.

22. Until the entire definition of 'federal property' in the *Payment in Lieu of Taxes Act* is decided by the Federal Court, the Federal Court of Appeal or the Supreme Court after a fair and full hearing of all facts, legislation and case law, municipalities and others can continue to change and/or interpret the *PLTA* to avoid making an application to the Minister for payment in lieu of taxes for structures and work designed for the shelter of living beings, immovables and personal property. This deprives the property owner of a privilege available through the *PLTA* that is a measure provided by Her Majesty in honour of her legal obligations, and that is not offered elsewhere in domestic law.

23. The Motions Judge erred when disregarding the fact that when the *PLTA* is interpreted in isolation from the superior laws that exist in Canada, a denial of this right to access the privilege of having one's property tax paid out of the Consolidated Revenue Fund as created by Parliament places the Plaintiff/Appellant in servitude to the Municipality, which in turn creates yet another violation of human rights and a violation of her *Charter* rights as protected by s.26.

November 29, 2017

[redacted]

613[redacted]
(no fax available)

SOR/2004-283, ss. 35 and 38

COPY

COURT SEAL

Federal Court of Appeal File No. [redacted]

Federal Court File No. T[redacted]

FEDERAL COURT OF APPEAL

BETWEEN:

[redacted]

Appellant/Respondent/Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

(ATTORNEY GENERAL OF CANADA)

Respondent/Moving Party/Defendant

MEMORANDUM OF FACT AND LAW OF THE APPELLANT

[redacted]

Tel: 613-[redacted]
No Fax Available
Appellant

TO:

Jennifer Bond
Attorney General of Canada
Department of Justice
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario K1A 0H8

Tel: 613-260-6335
Email: jennifer.bond@justice.gc.ca
Counsel for the Respondent

Pursuant to s. 27(1.1) *Federal Court Act*

IN THE FEDERAL COURT OF APPEAL

Federal Court of Appeal File No. A[redacted]

BETWEEN:

[redacted] Appellant/Respondent/Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(ATTORNEY GENERAL OF CANADA)

Respondent/Moving Party/Defendant

Memorandum of Fact and Law of the Appellant

INDEX

Section	Description	Page
PART I	Statement of Facts	2
	Failure of Respondent to Support Motion to Strike	7
PART II	Issues	8
	Test on Appellate Review	10
PART III	Statement of Submissions	11
PART IV	Orders Sought	31
APPENDIX A – List of Authorities		32
APPENDIX B – Statutes and Regulations		41

PART I – STATEMENT OF FACTS

1. This is an appeal of the Order and Reasons of Honourable Justice R. Leblanc, ("Motion Judge"), of November 15, 2017, in favor of the Respondent/Moving Party/Defendant's ("Respondent") Motion to Strike the Appellant/Respondent/Plaintiff's ("Appellant") Statement of Claim ("Claim"), without leave to amend, and for lack of jurisdiction and for failure to disclose a reasonable cause of action. The Respondent has not filed a Defence.

2. The Appellant requested that the Municipality make an application under the *PLTA* to the Minister for the amount of property taxes assessed against the Appellant's properties in 2017, which met the definition of "federal property." It refused and closed its file.

Statement of Claim, para 19, page 5, Appeal Book TAB 5
Statement of Claim, para 20, page 5 and para 21, page 6, Appeal Book TAB 5

3. The Respondent misrepresented the Appellant's pleadings, failed to provide relevant authorities in support of its Motion to Strike and did not meet its burden of proof.

Motion Record dated October 13th, 2017, Appeal Book, TAB 3
Federal Court Rules, Rule 298(2); Appellant Book of Authorities, TAB 4

4. The Respondent made its motion to strike based on 6 presumptions, without providing settled law and authorities in this novel case:

   a. The Minister would not accept the application for payment in lieu of taxes ["PILT"], even if he did accept the application, the Municipality would not abridge the Appellant's *Charter* rights by refusing to make the application as it has no statutory obligation to do so;

   b. The only purpose of the *PLTA* is to provide for PILTs on federal property, where federal property is assumed to be defined strictly as that related to Crown-owned and occupied land and immovables;

c. Her Majesty is not responsible for the inaction of the Municipality, as the Municipality is not regarded as its 'servant' and the Appellant has no enforceable rights that are directly affected by Municipality inaction;

d. The Appellant's properties do not fall under the ambit of the *PLTA;*

e. The Appellant's Claim cannot succeed because an individual municipal official or employee is not named as a Defendant; and

f. Misrepresentations of the actual pleadings include (i) the removal of page 7 from the Statement of Claim (ii) ignoring the actual pleadings that refer only to s. 2(1), 2(3)(a)(i) and (iv), 2(3)(h), 3.1(b), and 9(1) of the *PLTA,* to instead focus the motion on sections of the *PLTA* that are irrelevant and not pleaded, and (iii) attributing to the Claim, pleadings that were never made or by incorrect reiteration of the pleadings.

Motion Record, Appendix A, Appeal Book at TAB 3
Motion Record, para 28, page 11 and para 35, page 12 and paragraphs 41 and 42, page 14, Appeals Book, TAB 3

5. The Motion Judge relied on a pyramid of inferences to strike the entire claim:

a. the claim is a dispute over property taxes levied by the Municipality;

b. the Appellant is contending that her property is immune from taxation;

c. the Appellant is contending that the only way for the Municipality to obtain property taxes is by making a PILT application;

d. the SOLE purpose of the *PLTA* is to make PILTs for crown-owned and occupied property ONLY;

e. the Motion Judge can change legislative wording as no one can 'stretch their imagination(s)' to accept the *PLTA* as written;

f. parts of the legislation that were not pleaded can be substituted for what was pleaded;

g. the Appellant should be suing the Municipality since the Crown has no liability and Her Majesty exerts no control over the Municipality

h. that the Appellant synonymizes a motion to strike with a summary judgment; and

i. the Appellant's Claim rests on 3 meritless propositions and meets all the criteria for being struck.

Order and Reasons, paragraphs [1], [2], [3], [7], [11], [12], [15], [16], [17], Appeal Book, TAB 2

6. The Motion Judge, is bound by settled law and the principle of "*stare decisis*", and has refused to abide by Supreme Court of Canada decisions cited by the Appellant that have expressly insisted that *Charter* law was to evolve through the litigation of issues, especially novel issues, that municipalities were bound by the *Charter* and that international human rights law was binding on the Crown.

Order and Reasons, para [14], page 6, and para [12] page 6, and paragraphs [15] and [17] page 7, Appeal Book, TAB 2
Written Submissions of the Responding Party, paragraphs 8 and 9, page 8 and paragraphs 13 and 14, page 10 and para 42, page 20 and para 52, page 23, Appeal Book, TAB 4

7. The Motion Judge stated pleadings that were not made by the Appellant, but misrepresented by the Respondent. For example, he held that the Appellant stated that the Municipality is an agent or employee of the Crown. In fact, the Appellant stated that the Municipality is a 'servant' and 'representative' of the Crown. Despite the Appellant's effort to correct the Respondent's misrepresentations of the Appellant's pleadings they found their way into the Order and Reasons.

Order and Reasons, page 6, last sentence of para [14], Appeal Book, TAB 2
Motion Record, para 28, page 11, Appeal Book, TAB 3; Statement of Claim, para 25, page 7, Appeal Book, TAB 5
Written Submissions of the Responding Party, para 12, page 9 and para 41, page 20 and para 46, page 21 Appeal Book, TAB 4

8. The learned Motion Judge and the Respondent have changed the wording of the *Payment in Lieu of Taxes Act* by replacing the phrase *"unless it is"* with the term *"and"* in Section 3(a)

Property not included in the definition of federal property, thereby misrepresenting what the section actually says.

Motion Record, para 35, page 12, Appeal Book, TAB 3
Order and Reasons, para [8], pages 3-4, and para [11], page 5 and paragraphs [12] [13], and page 6, Appeal Book, TAB 2
Payment in Lieu of Taxes Act s. 3(a), Appellant Book of Authorities, TAB 10

9. The Motion Judge barred the Appellant from exercising her right to benefit from the *PLTA* even though the questions of law are not settled pertaining to the definition of "federal property" as it applies to private property, and what the Municipality's powers are under the *PLTA*.

Written Submissions of the Responding Party to the Motion, paragraphs 15, 24, 30 and 59, Appeal Book TAB 4

10. The learned Motion Judge and the Respondent have changed the wording of some of the Appellant's pleadings as seen by their reiteration of paragraph 4 which actually states: *"The Corporation of the City* [redacted] *(hereinafter referred to as* [redacted]*, a taxing authority for the purposes of the Payment in Lieu of Taxes Act, 1982 (hereinafter referred to as PLTA), is a 'servant of the Crown, as defined in the CLPA."*. Paragraph 5 of the Claim that actually says "*The Plaintiff states and it is fact, that pursuant to s. 3 of the CLPA, the Crown is liable for torts committed by its servants and representatives.*". These paragraphs were misquoted by the Respondent as *"The Plaintiff has characterized the City of Belleville as a 'servant of the Crown" under the Crown Liability and Proceedings Act ["CLPA"]. Paragraph 3(b)(i) of the CLPA states that the Crown is liable for the damages for which, if it were a person, it would be liable in respect of a tort committed by a servant of the Crown."* leaving out the specific reference to representatives of the Crown, as well as to 3(b)(ii) that refers to "control of property", a relationship that is important in this matter. The Motion Judge sustained the Respondent's incorrect restatement that focused only on s.

3(b)(i) and ignored s. 3(b)(ii), despite the Appellant's effort to correct the problem by reiterating that she pleaded the entire s. 3 and not just one part of it.

Order and Reasons, para [14], page 6, Appeal Book, TAB 2; Motion Record, para 23, page 10, Appeal Book, TAB 3
Written Submissions of the Responding Party, para 40, page 19, Appeal Book, TAB 4
Statement of Claim, paragraph 4 and 5, page 2, Appeal Book TAB 5

11. There is no mention of s. 7 *Charter* rights in the Appellant's Claim, yet the Respondent's reiteration of paragraph 10 of the Claim involved changing the wording to state that the Appellant alleged a breach of her s. 7 *Charter* rights to life, liberty and security of the person and proceeded to focus on how s. 7 does not protect economic rights when economic rights were not pleaded any more than s. 7 was. The learned Motion Judge rubber-stamped all the misrepresentations, incongruities and mis-readings stated by the Respondent, who did not address the s. 26 *Charter* rights and International Covenant Articles actually pleaded.

Motion Record, paragraphs 41 and 42, page 14, Appeals Book, TAB 3
Statement of Claim, para 10, page 3, Appeal Book, TAB 5

12. The learned Motion Judge reiterated paragraph 13 of the Claim, which actually states:

The City [redacted] a taxing authority, is required to make application to the Minister of Public Works and Government Services for payment in lieu of taxes when a taxable property in its territory meets the definition of "Federal Property" as defined in s. 2(1), 2(3)(a), 2(3)(h) and 9(1) of the PLTA, and paragraph 16 of the Claim which actually states: *"The Plaintiff states, and the fact is that the City of Belleville cannot collect the tax account on her properties unless it violates the Crown's legal obligations to her under the Constitution Act, 1982 and UDHR and ICCPR/ICESCR. Interference with her properties, such as in the form of confiscation for taxes would constitute a direct act aimed at the destruction of the Plaintiff's fundamental human rights as codified in superior law, specifically ICCPR Article 5.*

It was mis-stated by the Motion Judge as:

The Plaintiff contends that the only way the city can obtain property tax revenues from her two properties is by making an application to the federal Minister of Public Works and Government Services, pursuant to the Payment in Lieu of Taxes Act....

Statement of Claim, para 13, page 3, and para 16, page 6, Appeal Book, TAB 5
Order and Reasons, middle para [1], page 1, Appeal Book, TAB 2

13. The Motion Judge stated that the *PLTA* "*was not meant to assist tax objectors*". He provided no law showing that Parliament did not intend the *PLTA* to be at least one of the

measures it was legally obligated to provide individuals who wish to exercise their lawful right to be free of forced disposition of resources as noted in the *ICCPR* and *ICESCR*.

Order and Reasons, paragraphs 12 and 14, page 6, Appeal Book, TAB 2

14. The Respondent provided case law that reiterated a principle of law or Rule of the court, which was about the alleged defamation of an application for a federal public servant position; municipalities were not involved. None of the citations pointed to a specific statement, nor is there any, that would support their allegation that the Appellant's Claim met the criteria to be struck. The Motion Judge did not address this irrelevancy.

Motion Record, paragraphs 14 and 16, page 8 and paragraphs 17, 18, 19 and 21, page 9, and para 26, page 10 and paragraphs 43 and 44, page 14, Appeal Book, TAB 3
Orders and Reasons, para 14, page 6, Appeal Book, TAB 2
Ayangma v. Canada, 1998 CanLII 8926 (FC), Appellant Book of Authorities, TAB 13

15. The Motion Judge stated that Her Majesty exerts no control of any kind on the City of [redacted] without providing any authority.

Order and Reasons, last sentence para [15], page 7, Appeal Book TAB 2

FAILURE OF RESPONDENT TO SUPPORT THE MOTION TO STRIKE

16. The Respondent failed to provide settled law to support their contention that the Federal Court was not the correct jurisdiction and the Motion Judge did not address the matter of jurisdiction of the Federal Court either.

Motion Record, para 10, page 7 and para 20, page 9 and para 29, page 11, Appeal Book, TAB 3

17. The Respondent confused the issues, misrepresented the wording of the Appellant's pleadings, and referred to case law not remotely on point to support its confusions. The Respondent failed to show how the specific provisions of the *PLTA*, as pleaded in the Claim were manifestly incapable of justifying the Appellant's request for a remedy. The Motion Judge erred in law by not addressing the Respondent's admission that causes of action were discerned and that they were clear, just not 'entirely' clear.

Motion Record, para 35, page 12, Appeal Book, TAB 3
Statement of Claim, paragraphs 13, 14 and 15, pages 3-4, Appeal Book, TAB 5

18. The Motion Judge's Order and Reasons implied that 'radical defects' existed in the Claim to the point that amendments could not rectify drafting deficiencies, yet provided no legal authorities whatever to support this conclusion.

Order and Reasons, para [18], page 8, Appeal Book TAB 2

19. The Respondent asserted that there are no mandatory provisions within the *PLTA* to force a Municipality to make an application to the Minister and/or that could force a payment to be provided, and that therefore there was no cause of action. The Respondent did not provide any binding authorities that held that for a reasonable cause of action to exist, provisions must be found in every piece of legislation, including the *PLTA*, to mandate compliance with binding law such as *ICCPR* and the *Charter* when a benefit of that compliance could accrue to the Appellant

Motion Record, para 36, page 13, Appeal Book TAB 3

20. The Motion Judge and the Respondent failed to address how the Appellant is not held in servitude in the present situation where the municipal corporation can coerce her into giving it her resources, failing which she would have her property seized. Being held in servitude is a violation of the Article 8 of the *ICCPR*, therefore the cause of the action is clear and reasonable, unless and until the *ICCPR* and s. 26 of the *Charter* have become non-existent.

Order and Reasons, para, [2], page 2, and para [6], page 3 and para [12], page 6, Appeal Book, TAB 2
Motion Record, para 4, page 5, Appeal Book, TAB 3
International Covenant on Civil and Political Rights, Article 8, Appellant Book of Authorities, TAB 5

PART II —ISSUES

21. These are the issues before this court:

A. Whether or not the Motion Judge erred in law by

(i) changing the wording and intent of Parliament by adding the term "*and*" between Sections 2 and 3 of the *PLTA*;

(ii) removing the phrase '*unless it is...*" in Section 3(a);

(iii) ignoring the term "*subject to subsection 3"* in Section 2(1) ***"federal property"*** *means, subject to subsection 3*," of the *PLTA*;

(iv) ignoring Sections 3(h) and 9(1) of the *PTLA*; and

(v) presuming a 'Purpose' for the legislation not provided for by Parliament?

B. Whether or not the Motion Judge erred in law by not adopting a plain and simple reading of all the elements of the *PLTA* definition of "federal property" as framed by Parliament, including the definitions and exemptions found in Section 2(1) and 2(3)(a), 2(3)(h) and 9(1) of the *PLTA,* which include non-Crown owned and occupied private property?

C. Whether or not the Motion Judge erred in law by allowing the Respondent to remove page 7 from the Appellant's Statement of Claim and to impose pleadings that were not made?

D. Whether or not the Motion Judge erred in law by not addressing the Respondent's failure to provide legal authority in the motion to strike on the basis that Federal Court lacked jurisdiction and that the Claim disclosed no reasonable causes of action?

E. Whether or not the Motion Judge erred in law by implying the Municipality had the power, duty and control to decide for the Minister as to the applicability of the *PLTA* to the Appellant's properties when it refused to make the requested application, and when it interpreted the applicability of unsettled federal legislation was it exercising the powers of a quasi-judicial body?

F. Whether or not the Motion Judge erred in law when he stated that the Appellant could not recover the amount of property taxes already paid, despite all Courts have the statutory power to provide whatever remedies the Courts feel are appropriate?

G. Whether or not the Motion Judge erred in law when he failed to take judicial notice of the binding impact of the *International Covenant on Civil and Political Rights ("ICCPR")* and the *International Covenant on Economic, Social and Cultural Rights ("ICESCR")*, and that the right to be free from servitude and forced disposition of wealth and resources exist in law?

H. Whether or not the Motion Judge erred in law when he failed to take judicial notice of the binding impact of the Supreme Court of Canada decisions regarding striking a claim, especially when the issues are novel and involve unsettled law, and that the Appellant may have acquired and continue to acquire through the litigation process, the evidence to identify all torts that might exist but that are not presently obvious and which may lead to amended pleadings?

I. Whether or not the Motion Judge erred in law by allowing a Motion to Strike in a Simplified Action to become a Summary Judgment proceeding?

TEST FOR APPELLATE REVIEW

22. The test for Appellate review of the decision under appeal is whether the Motion Judge chose the appropriate standard of review and applied it. Both of these issues are to be determined by Appellate Court on a standard of correctness as stated in ***Housen v. Nikolaise*** which outlines the role of the Appellate Court in standards of review for questions of law and states that the primary role of the Appellate Court in standards of review for questions of law is to delineate and refine legal rules and ensure their universal application.

Housen v. Nikolaisen, [2002] 2 SCR 235, 2002 SCC 33 (CanLII). paras. 8 and 9, pages 10 and 11/73, Appellant Book of Authorities, TAB 25

PART III – STATEMENT OF SUBMISSIONS

A. Whether or not the Motion Judge erred in law by

(i) changing the wording and intent of Parliament by adding the term "*and*" between Sections 2 and 3 of the *PLTA*;
(ii) removing the phrase '*unless it is…*" in Section 3(a), thereafter;
(iii) ignoring the term "*subject to subsection 3*" in Section 2(1) "*federal property*" *means, subject to subsection 3*," of the *PLTA*;
(iv) ignoring Section 3(h) of the *PTLA*; and
(v) presuming a 'Purpose' for the legislation not provided for by Parliament?

23. The Motion Judge is bound by law via the doctrine of *"stare decisis"*. He is obliged to presume the pleadings true, to read the pleadings very generously and apply the existing law.

R. v. Imperial Tobacco Canada Ltd., [2011] *3 SCR 45, 2011 SCC 42*, paragraphs [21] to [25], Appellant Book of Authorities, TAB 40

24. The liability and obligations for PILTs as regards private property were not only foreseen since 1976, but intentionally provided for in the *PLTA* through a number of amendments to what was originally called the *Municipal Grants Act, 1949*. The *PLTA* now contains phrases that cause the Appellant's properties to meet the definition of "federal property".

Documented history of Municipal Grants Act, 1949 as recorded in ***Corporation of the City of Mississauga v. Canada (Public Works and Government Services)***, 2011 FC 162 (CanLII), at pages 2-4, Appellant Book of Authorities, TAB 19

25. Judges cannot re-write legislation, yet, the Motion Judge removed the words *"subject to subsection (3)"* from the lead-in statement in s. 2(1), removed the word *"unless"* from s. 2 (3)(a) and the words *"unless prescribed otherwise"* from s. 2(3)(h). He did not consider that the Appellant does not meet the definition of "department"' as defined in the *PLTA*, and therefore s. 2(3)(h) applies to her properties, since the provision uses the qualifier *"...that is not department"*, as seen below. In addition, he did not consider s. 9(1) (b) and (e) of the *PLTA* that were also pleaded.

Payments in Lieu of Taxes Act, R.S.C., 1985, c. M-13

Definitions

*2 (1) In this Act, **federal property** means, subject to subsection (3),*

(a) real property and immovables owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown,

(b) real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,

(c) immovables held under emphyteusis by Her Majesty in right of Canada that are under the administration of a minister of the Crown,

(d) a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and

(e) real property and immovables occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province; (propriété fédérale)

other attribute includes

(a) in relation to a tax levy for the purpose of financing all or part of the capital cost of a service to real property or immovables,

(i) the actual or estimated cost of constructing a new building,

(ii) the number of rooms, living units or beds in a building, or

(iii) the number of persons in occupancy of a building, and

(b) in relation to a tax levy for the purpose of financing all or part of the operating cost of a service to real property or immovables, any prescribed criteria; (autre élément)

Property not included in the definition federal property

*(3) For the purposes of the definition **federal property** in subsection (1), federal property does not include*

(a) any structure or work, unless it is

(i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property,

(ii) an outdoor swimming pool,

(iii) a golf course improvement,

(iv) a driveway for a single-family dwelling,

(v) paving or other improvements associated with employee parking, or

(vi) an outdoor theatre;

(h) unless otherwise prescribed, any real property or immovable leased to or occupied by a person or body, whether incorporated or not, that is not a department.

Purpose

2.1 The purpose of this Act is to provide for the fair and equitable administration of payments in lieu of taxes. 2000, c. 8, s. 4.

Regulations by Governor in Council

9(1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without restricting the generality of the foregoing, may make regulations

(b) prescribing criteria for the purposes of paragraph (b) of the definition ***other attribute*** *in subsection 2(1);*

(e) prescribing the real property and immovables referred to in paragraph 2(3)(h) that are to be included in the definition ***federal property*** *in subsection 2(1);*

Payment in Lieu of Taxes Act, s. 2(1), 3(a), 3(h) and 9(1) (b) and (e), Appellant Book of Authorities, TAB 10
Canada (Attorney General) v. Knee, 2011 FCA 301 (CanLII), para 9, Appellant Book of Authorities, TAB 17

26. The Respondent cited ***Halifax (Regional Municipality) v. Canada (Public Works and Government Services***, however, outside of confirming that the Federal Crown makes discretionary payments under the *PLTA*, this decision does not preclude that in some circumstances private property may be eligible for PILTs.

Halifax (Regional Municipality) v. Canada (Public Works and Government Services, 2 SCR 108, 2012 SCC 29 (CanLII) para 1, page 3/21, Appellant's Book of Authorities, TAB 23

B. Whether or not the Motion Judge erred in law by not adopting a plain and simple reading of all the elements of the *PLTA* definition of 'federal property' as framed by Parliament, including the definitions and exemptions found in Section 2(1) and 2(3)(a), 2(3)(h) and 9(1) of the *PLTA*, which include non-Crown owned and occupied private property?

27. The Federal Court found in ***Montreal (City) v. Attorney General of Canada,*** that even though a tenant was not a Crown Corporation and the property was not occupied or leased by Her Majesty, the property still met the definition of "federal property" through a combination of s. 2(3)(h) and 3.1 of the *PLTA*. In the case at bar, the Respondent insisted that PILTs could only be made if the properties were leased to, controlled by or occupied by Her Majesty. The Federal Court disagreed. We see the importance placed on the words "*unless otherwise prescribed*" and how the entire *Act* must be read as a whole in order to arrive at the correct interpretation.

Montreal (City) v. Attorney General of Canada, 2007, FC 702 (CanLII), para [14], [46] and [47], Appellant Book of Authorities, TAB 31

28. In ***Corporation of the City of Mississauga v. Canada***, the Federal Court found that (a) properties occupied by non-crown parties could in some circumstances meet the definition of "federal properties" and (b) the words "*unless otherwise prescribed*" meant the reader should look elsewhere for an enabling provision. The Court rejected the Crown's interpretation of "*unless otherwise prescribed*" to mean "*unless referred to elsewhere*". The Court in that action did not remove the word "*unless*" and substitute the word "*and*" to change the intent of the legislation as was done by the Motion Judge in the proceeding at bar.

Corporation of the City of Mississauga v. Canada (Public Works and Government Services, 2011 FC 162 (CanLII), paragraphs [49] - [52], Appellant Book of Authorities, TAB 19

29. A plain and simple reading of all elements of the *PLTA* definition of "federal property" results in the following understanding:

federal property means,

(a) real property and immovables owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown,

(b) real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,

(c) immovables held under emphyteusis by Her Majesty in right of Canada that are under the administration of a minister of the Crown,

(d) a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and

(e) real property and immovables occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province; (*propriété fédérale*)

(f) any structure or work that is

(i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property,

(ii) an outdoor swimming pool,

(iii) a golf course improvement,

(iv) a driveway for a single-family dwelling,

(v) paving or other improvements associated with employee parking, or

(vi) an outdoor theatre;

(g) *unless otherwise prescribed*, any real property or immovable leased to or occupied by a person or body, whether incorporated or not, that is not a department. [Emphasis added]

30. A plain and simple reading of the *PLTA* would result in a finding that Parliament had fully intended to allow PILTs for private property. Had the word "and" been installed in the legislation as the Motion Judge implies, there would have been no need to itemize the list in section 2(3) of the *PLTA* as it did because all of those 'structures and work' listed as (f) in the Appellant's above-noted interpretation would be automatically included in the s. 2(1) definition of "***federal property***" (a) to (e) that specifically referred to Crown/federal property.

Payment in Lieu of Taxes Act, s. 2(1) and 2(3), Appellant Book of Authorities, TAB 10

31. If the *PLTA* were interpreted in a way that makes its provisions consistent with Articles 1.2 (disposal of resources) and 8.2 (servitude) of the *ICCPR*, the results would be in compliance with Article 2.2 (measures provided) of the *ICCPR* and would ensure that Article 5 (no denials) of the *ICCPR* was honoured. The Appellant's Claim would therefore be successful.

International Covenant on Civil and Political Rights, Articles 1.2, 2.2, 5, and 8.2, Appellant Book of Authorities, TAB 5

C. Whether the Motion Judge erred in law by allowing the Respondent to remove page 7 from the Appellant's Statement of Claim and to impose pleadings that were not made?

32. The Motion Judge erred by accepting the Respondent's misrepresentation of the actual pleadings when it stated that violations of s. 7 *Charter* rights were pleaded. In fact, the Appellant pleaded that her issue fell under s. 26 of the *Charter*, which specifically states that the *Charter* does not deny the existence of other rights that exist in Canada, and since

the Supreme Court of Canada has upheld repeatedly that the International Covenants are binding on the government at all levels.

Divito v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 47, [2.013] 3 S.C.R. 157, paragraphs [22] and [25], Appellant Book of Authorities, TAB 21

33. The Motion Judge did not address the Respondent's action in removing page 7 of the Claim from its Motion Record Appendix 'A'. Together with allowing the contents of the Appellant's pleadings to be arbitrarily changed by the Respondent, this can be construed as an action aimed at destroying the right to remedy, a violation of Article 5 of the *ICCPR*.

International Covenant on Economic, Social and Cultural Rights, Article 5, Appellant Book of Authorities, TAB 6

D. Whether or not the Motion Judge erred in law by not addressing the Respondent's failure to provide legal authority in the motion to strike on the basis that Federal Court lacked jurisdiction and the Claim disclosed no reasonable causes of action?

34. The Motion Judge erred in law in not addressing that the Respondent failed to provide settled law showing how the Appellant's choice in jurisdiction did not meet the test for determination of Federal Court jurisdiction as established by the Supreme Court of Canada

1. *There must be a statutory grant of jurisdiction by the federal Parliament;*
2. *There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction; and*
3. *The law on which the case is based must be a "law of Canada" as the phrase is used in s.101 of the Constitution Act, 1867.*

ITO-Int'l Terminal Operators v. Miida Electronics, [1986] 1 SCR 752, 1986 CanLII 91 (SCC) at 766, page 13/39, Appellant Book of Authorities, TAB 27

35. The *PLTA* is a law of Canada and the Federal Court is granted jurisdiction by the federal Parliament to adjudicate all matters of federal law, pursuant to s. 17 of the *Federal Court Act* which deals with various matters, all involving the Crown and including instances in which relief was sought against an officer, servant or agent of the Crown for some act or omission in the performance of the duties of that person, as well as for damages under s. 3 of the *Crown Liability and Proceedings Act* respecting a breach of duty attaching to control of property.

The Motion Judge and the Respondent made bald assertions without providing settled law on the issue.

Federal Court Act, 1985, s. 17, Appellant Book of Authorities, TAB 3
Crown Liability and Proceedings Act, s. 3, Appellant Book of Authorities, TAB 2

36. In ***R. v. 974649 Ontario Inc.***, the Federal Court has full jurisdiction to provide any and all remedies necessary to ensure that a Canadian can enjoy the full benefit of the rights and freedoms enumerated in the International Covenants and guaranteed by the *Charter*.

R. v. 974649 Ontario Inc., [2001] 3 SCR 575, 2001 SCC 81 (CanLII), Appellant Book of Authorities, TAB 37

37. The issue around the definition of "federal property" as regards private property has not yet been decided by a Court of competent jurisdiction. ***The Corporation of the City of Mississauga v. Minister of Public Works and Government Services of Canada*** indicated instances where the Federal Court have decided questions of law in favor of non-Crown owned or occupied properties, however those properties were not private properties owned by individuals.

Corporation of the City of Mississauga v. Canada (Public Works Government Services), 2011 FC 162 (CanLII), paragraphs [1] and [2], Appellant Book of Authorities, TAB 19
Trois-Rivières (City) v. Trois-Rivières Port Authority, 2015 FC 106 (CanLII), page 2/23 Appellant Book of Authorities, TAB 49
Montréal (City) v. Montreal Port Authority, 2006 FC 114 (CanLII), para [12 to [16], page 5-7/15, Appellant Book of Authorities, TAB 32
Montreal (City) v. Attorney General of Canada, 2007 FC 702 (CanLII). Appellant Book of Authorities, TAB 31
Toronto (City) v. Toronto Port Authority, 2010 FC 687 (CanLII), para 1, Appellant Book of Authorities, TAB 48

38. The Motion Judge did not keep the interest of a very broad community of property owners in mind when he decided to strike the Appellant's Claim. The Court in ***Seascape 2000 Inc. v. Canada (Attorney General)***, emphasised the importance of considering the interests of those not a party to a proceeding when deciding whether to strike a pleading for not disclosing a reasonable cause of action:

> *Although the "plain and obvious" wording has been retained, the restatement of the test by the Supreme Court of Canada amounts to a direction that an application to strike pleadings for not disclosing a*

reasonable cause of action be looked at through a lens that takes into account accessible justice and the interests of a community broader than the parties to a particular proceeding. [Emphasis added]

Seascape 2000 Inc. v. Canada (Attorney General), para 21 and 23, Appel Bk of Authorities, TAB 45

E. Whether or not the Motion Judge erred in law by implying the Municipality had the power, duty and control to decide for the Minister as to the applicability of the *PLTA* to the Appellant's properties when it refused to make the requested application, and when it interpreted the applicability of unsettled federal legislation was it exercising the powers of a quasi-judicial body?

39. An arbitrary internal system of designating relationships with the Crown as 'servant', 'representative' or 'agent', cannot be used to defeat an individual's effort to exercise their rights and freedoms, else such pretext would itself violate international law.

International Covenant on Civil and Political Rights, Article 5, Appellant Book of Authorities, TAB 5

40. If a duty of care has not already been recognized by law, as in this case, the Federal Court of Appeal in ***Canada v. Scheuer*** outlined the application of the 2-part *Anns* test in Motion to Strike proceedings: consideration of foreseeability, proximity and policy, and whether there are residual policy considerations, outside the relationship of the parties that may negate the imposition of a duty of care.

Canada v. Scheuer, 2016 FCA 7 (CanLII), paragraphs [13] to [17], Appellant Book of Authorities, TAB 18

41. The Province is bound by the ***Constitution Act, 1982, Part I, Canadian Charter of Rights and Freedoms***. The Municipality is a creation of and under full control of the corporation of the Province of Ontario by virtue of the *Municipal Affairs Act*, the *Ministry of Municipal Affairs and Housing Act*, and the *Municipal Act*.

Constitution Act, 1982, Canadian Charter of Rights and Freedoms, s. 32(1), Appellant Book of Authorities, TAB 1
Municipal Affairs Act, 1990, s. 3, Appellant Book of Authorities, TAB 8
Ministry of Municipal Affairs and Housing Act, 1990, s. 4(1)(2), 7(1) and (2), Appellant Book of Authorities, TAB 9
Municipal Act, 2001, section 2 and 17, Appellant Book of Authorities, TAB 7

42. In ***R. v. Hynes***, the Courts have confirmed that the enforcement of rights and freedoms was never intended to revert back to the government. The *Charter* was intended to place the

Courts between the government and the individual seeking to exercise their rights. Thus, there is a question of law regarding the interpretation of the federal *PLTA* that cannot be left up to the discretion of the Municipality or the province.

R. v. Hynes, 1999, CanLII 18979 (NL CA), para [101], Appellant Book of Authorities, TAB 39

43. In ***Godbout v. Longueuil (City)***, municipalities are described as governmental entities and subject to the *Charter* and their actions are binding on the Crown. Otherwise, provinces could simply avoid the application of the *Charter* by devolving powers onto municipal bodies. And in ***Slaight Communications Inc. v. Davidson***, the Municipality has a duty of care to ensure that it stays within the scope of its statutory authority and Her Majesty has a clear obligation to provide the Appellant with opportunities to exercise the right(s) enumerated in the Covenants.

Godbout v. Longueuil (City), [1997] 3 SCR 844, 1997 CanLii 335 (SCC), page 3/80, Appellant Book of Authorities, TAB 22
Slaight Communications Inc. v. Davidson, [1989] 1 SCR 1038, 1989 CanLII 92 (SCC) *at page 30 of 34*, Appellant Book of Authorities, TAB 46

44. The Supreme Court of Canada in ***Odhavji Estate v. Woodhouse*** discusses the improper or unlawful exercise of a power by a public officer: "*... the class of conduct at which the tort is targeted is not as narrow as the unlawful exercise of a particular statutory or prerogative power, but more broadly based on unlawful conduct in the exercise of public functions generally.*" And in ***Baird v. Canada***, the Federal Court of Appeal confirmed that it should be left open to the Court to consider, in light of what the evidence shows, whether there was a failure on the part of an authority, to give proper consideration to whether those powers should be exercised.

Odhavji Estate v. Woodhouse, 2003 SCC 69 (CanLII), [2003] 3 S.C.R. 263, para 16 and 17, Appellant Book of Authorities, TAB 35
Baird v. Canada, 1983 CanLII 2946 (FCA), at paragraphs [28], Appellant Book of Authorities, TAB 14

45. In the 1983 decision in ***Bear v. John Smith Indian Band, Chief and Council of the John Smith Indian Band,*** the Court determined whether the authority, such as a municipality, has discretionary powers of its own and the extent of those powers when deciding whether it has a 'servant' relationship with the Crown.

Bear v. John Smith Indian Band, Chief and Council of the John Smith Indian Band, 1983 CanLII 2270 (SK QB), para [5], Appellant Book of Authorities, TAB 16

46. Both the *Crown Liability and Proceedings Act* ("*CLPA*") and the *Proceedings Against the Crown Act*, ("*PACA*") refer to "servant" as including a Minister of the Crown and did not exclude "municipality" by name from their respective definitions of "servant".

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, definition 'servant', Appellant Book of Authorities, TAB 2
Proceedings Against the Crown Act, RSO [1990], C P.27 definition 'servant' and s. 5(1) and 5(3), Appellant Book of Authorities, TAB 11

47. In addition, *s. 5(1)(c)* of the *PACA,* and s. 3(b)(ii) of the *CLPA* both refer to liabilities in tort in respect of any breach of duties attaching to control of property.

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50s. 3(b)(ii), Appellant Book of Authorities, TAB 2
Proceedings Against the Crown Act, RSO [1990], C P.27 s. 5(1)(c), Appellant Book of Authorities, TAB 11

48. Through the operation of the various internal laws that give the Municipality authority exert control over property in its geographical area, a municipality creates a liability for the Crown if breaching a duty attaching to "control of property". The ability to control property is founded in the power given to the Province in the *Constitution Act, 1867-1982*, which in turn is binding on Her Majesty.

Municipal Affairs Act, *1990*, Appellant Book of Authorities, TAB 8
Ministry of Municipal Affairs and Housing Act, *1990,* Appellant Book of Authorities, TAB 9
Municipal Act, *2001, section 2,* Appellant Book of Authorities, TAB 7

49. There is a legally-binding obligation on Her Majesty/Crown and all Crown representatives, servants and agents, and therefore a responsibility at all levels of government to ensure that (a) no actions are taken that impede, in any way, a Canadian's ability to fully and freely

exercise and enjoy their enumerated and guaranteed human rights, and (b) no pretext is used by any level of government to deny individual rights and freedoms.

International Covenant on Civil and Political Rights, Articles 1.2 and 5.2 and 47, Appellant Book of Authorities, TAB 5

50. Section 17(1) of the *Municipal Act* states that a municipality is not authorized to impose taxes. If not authorized to impose taxes, it should not be presumed to have the authority to interpret federal legislation in a way that allows it to impose taxes when an individual is exercising their full legal capacity to enforce their rights and freedoms.

Municipal Act, 2001, section 17(1), Appellant Book of Authorities, TAB 7

51. While there is no right to a payment, as noted in ***City of Montreal v. Attorney General of Canada***, and ***Montreal (City) v. Montreal Port Authority***, once the question of law regarding the definition of federal property as it applies to private property is decided, the Municipality can expect the Minister to make the payment if its application is in compliance with the *PLTA* regulations and on the form prescribed.

Montreal (City) v. Attorney General of Canada, 2007 FC 702 (CanLII), para [43], Appellant Book of Authorities, TAB 31
Montreal (City) v. Montreal Port Authority, 2007 FC 701 (CanLII), para [25], Appellant Book of Authorities, TAB 33

52. Actions against the Provincial Crown are governed by s. 5 of the ***Proceedings Against the Crown Act, R. S. O. 1990, c. P – 27***, the provisions of which are relevant to the Appellant's claims **only if** the Court decides that the Municipality does have a duty to make application for a PILT and it did not.

Proceedings Against the Crown Act, R. S. O. 1990, c. P – 27, section 5, Appellant Book of Authorities, TAB 11

F. Whether or not the Motion Judge erred in law when he stated that the Appellant could not recover the amount of property taxes already paid, despite all Courts having the statutory power to provide whatever remedies the Courts feel are appropriate?

53. The Supreme Court of Canada in ***Baird v. Canada*** quoted ***Rivtow Marine Ltd. v. Washington Iron,*** found that recovery for economic loss caused by negligence is allowable without any recovery for property damage, and further, that the relationship between the Appellant's loss and the acts or inactions of the Municipality be left up to the Trial Judge.

Baird v. Canada, 1983 CanLII 2946 (FCA), at paragraphs [29]. Appellant Book of Authorities, TAB 14

54. Remedies ordered under s. 24 of the *Charter* can address the harm a violation causes both to an individual and to society because *Charter* violations impair public confidence and diminish "*public faith in the efficacy of the constitutional protection.*"

Vancouver (City) v. Ward, [2010] 2 S.C.R, 28, para 28, Appellant Book of Authorities, TAB 50

55. Even more on point in this issue, where the Appellant has pleaded financial loss as a result of the municipal official's refusal to make a PILT application, is the decision in ***Operation Dismantle v. The Queen***:

> *The common law action affords a means of attack on the acts of public officials who have allegedly exceeded their powers. However, in order to have standing to bring such an action a plaintiff must, as noted from Borchard, supra, be able to show that he or she will suffer injury to a right or legally protected interest from the conduct of such officials.*

Operation Dismantle v. The Queen, [1985] 1 SCR 441, 1985 CanLII 74 (SCC), para 93, Appellant Book of Authorities, TAB 36

G. Whether or not the Motion Judge erred in law when he failed to take judicial notice of the binding impact of the *ICCPR*, the *ICESCR*, and that the right to be free from servitude and forced disposition of wealth and resources exists in law?

56. In ***de Guzman v. Canada***, the Supreme Court of Canada confirmed that international human rights are legal obligations, binding on Canada in the absence of a clearly expressed legislative intention to the contrary.

de Guzman v. Canada (Minister of Citizenship and Immigration), [2006] 3 FCR 655, 2005 FCA 436 (CanLII), page 7/44, top of middle para, Appellant Book of Authorities, TAB 20

57. The content of the International Covenants is foundational to the determination of a case in any proceeding where rights and freedoms are concerned and that the *Charter* should

provide protection at least as great as that provided by international human rights legislation. ***Divito v. Canada*** states: "*As a treaty to which Canada is a signatory, the ICCPR is binding.* ". [Emphasis added] The determinative legal instruments, referred to are the *International Covenant on Civil and Political Rights* ("*ICCPR*") and the *International Covenant on Economic, Social and Cultural Rights ("ICESCR").* They clearly afford protection against servitude and forced disposition of wealth.

Divito v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 47, [2013] 3 S.C.R. 157, paragraphs [22] and [25], Appellant Book of Authorities, TAB 21
Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 7 (CanLII), [2007] 2 S.C.R. 391 at paragraphs [70] and [71], Appellant Book of Authorities, TAB 24
de Guzman v. Canada (Minister of Citizenship and Immigration), [2006] 3 FCR 655, 2005 FCA 436 (CanLII), page 7/44 and paragraphs [69] [70] [75] and [108], Appellant Book of Authorities, TAB 20
Universal Declaration of Rights and Freedoms, 1998, Preamble and Articles 3 and 17, Appellant Book of Authorities, TAB 12
ICCPR, Appellant Book of Authorities, TAB 5; ***ICESCR***, Appellant Book of Authorities, TAB 6

58. In ***Robichaud v. Canada (Treasury Board),*** the Supreme Court of Canada emphasized that human rights legislation serves to eradicate anti-social conditions without regard to motives or intention of those who cause them. Anti-social condition existed when the government forced the Appellant into a situation where her ability to benefit from human rights legislation, in this case Article 1.2 of the *ICCPR*, is decided by a municipal treasurer.

Robichaud v. Canada (Treasury Board), 1987 CanLII 73 [1987] 2 SCR 84 (SCC), 3rd paragraph, Appellant Book of Authorities, TAB 43

59. The importance of considering the entire piece of legislation in the context of binding international law was lost to the Motion Judge, so that he could not account for the way in which the *PLTA* was drafted by Parliament. As such, he had presumed the Parliament could not have intended the *PLTA* to favor the Appellant.

R. v. Imperial Tobacco Canada Ltd., page 5/57, Appellant Book of Authorities, TAB 40
de Guzman v. Canada (Minister of Citizenship and Immigration), *[2006] 3 FCR 655, 2005 FCA 436 (CanLII, paragraphs at pages 5, 6 and 7 and paragraphs [69] [70] page 32/44 and para [75] page 33/44*, Appellant Book of Authorities, TAB 20

60. Courts must take proper account of the expanding role that the common law has given to international law in the interpretation of domestic law. This aspect of the evolution of the common law is an important part of the context against which the *PLTA* and specifically the definition of "federal property" must be interpreted.

de Guzman v. Canada (Minister of Citizenship and Immigration), [2006] 3 FCR 655, 2005 FCA 436 (CanLII, paras [69] and [70], Appellant Book of Authorities, TAB 20

61. Courts are to interpret statutes in a way, which makes their provisions consistent with Canada's international treaty obligations and principles of international law. Articles 1.2 and 8 of the *ICCPR* are legally binding on the Court and they are determinative of the meaning of the *PLTA*'s definition of "federal property". Ignoring Supreme Court of Canada decisions by asserting that the *PLTA* was not framed with the Crown's international legal obligations in mind is plain wrong.

Orders and Reasons, para [12], page 6, Appeal Book, TAB 2
Nemeth v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281, para [34], Appellant Book of Authorities, TAB 34

62. The Supreme Court of Canada decision in ***Suresh v. Canada*** is also on point with regards to how the requirement that the *PLTA* be interpreted in a way that makes it consistent with the *ICCPR* and *ICESCR*, which include the right to be free of coercion, forced disposal of resources and servitude. In addition, ***R. v. Hape*** states that the courts must seek compliance with Canada's binding obligations when interpreting the scope of the application of the *Charter*.

Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 SCR 3, 2002 SCC 1 (CanLII), para 46 Appellant Book of Authorities, TAB 47
R. v. Hape, [2007] 2 SCR 292, 2007 SCC 26 (CanLII), paragraphs 53, 55 and 56, Appellant Book of Authorities, TAB 38
Charter of Rights and Freedoms, Section 26, Appellant Book of Authorities, TAB 1

63. A lower court cannot trivialize human rights/ and *Charter* rights in order to defeat a claim against the Crown. If the rights pleaded are not deemed meaningless by the Supreme Court of Canada, the Appellant's Claim cannot be 'meritless' for having relied on such laws.

Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281, bottom of the middle paragraph page 4/44, and para [12] top of page 13/44, and para [21] at page 15/44, and para [70] at page 26/44 and para [86] at page 33/44 and para [105] at page 38/44 and para [115] at page 41/44, Appellant Book of Authorities, TAB 34
Divito v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 47, [2013] 3 S.C.R. 157, para [25], Appellant Book of Authorities, TAB 21
Canadian Charter of Rights and Freedoms, s. 26, Appellant Book of Authorities, TAB 1
Order and Reasons, para [8], page 3 and para [11], page 5, Appeal Book, TAB 2

64. The right to freely dispose of one's wealth and resources, the violation of which would detrimentally affect the security of a person, if also not their very life, is enumerated in *ICCPR* Article 1.2 and 9, as well as *ICESCR* Article 1.2 and are guaranteed by s. 26 of the *Charter*. Any attempt to diminish the pleadings by inferring that the Appellant's belief in her rights as enumerated in the *ICCPR* is fanciful and beyond 'any stretch of the imagination', is not only contradicting Her Majesty's intent, but Supreme Court of Canada decisions.

International Covenant on Civil and Political Rights, Articles 1.2, 8, and 9, Appellant Book of Authorities, TAB 5
International Covenant on Economic, Social and Cultural Rights, Article 1.2, Appellant Book of Authorities, TAB 6
Canadian Charter of Rights and Freedoms, s. 7 and 26, Appellant Book of Authorities, TAB 1

65. The acceding of Canada to both the *ICESCR* and the *ICCPR* meant that these documents reflect not only international consensus, but also principles that Canada has committed itself to upholding. It behooves the Motion Judge to engage in full consideration of the international human rights documents on servitude and forced disposition of resources before presuming that the *PLTA* was not a measure intended to provide a level of protection against servitude and forced disposition of resources by municipalities.

Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27 (CanLII), [2007] 2 S.C.R. 391, para [69], [70] and [71], Appellant Book of Authorities, TAB 24

66. The Courts are to protect human rights, not wish them away. The Motion Judge has not shown that Supreme Court of Canada decisions are no longer binding, and that the *ICCPR* can be reduced to 'some unimportant international obligations' as is implied in the Order

and Reasons. Ignoring the determinative law when interpreting this Claim, begs the same question expressed by Charles Prov. J in ***Regina v. MacDonald***

> *One wonders whether our Charter of Rights is just mere political rhetoric. Furthermore, a more basic and fundamental reason for not abdicating one's judicial duty and responsibility is to ensure that the coercive powers of the state do not infringe, abrogate or deny the fundamental rights and freedoms guaranteed under the Charter, save and except as provided by s. 1 of the Charter, which places certain limitations on the rights and freedoms therein guaranteed. [Emphasis added]*

Regina v. MacDonald, 1982 CanLII 1972 (ON SC), at pages 32/43, 33/43 and 39/43, Appellant Book of Authorities, TAB 41

H. Whether or not the Motion Judge erred in law when he failed to take judicial notice of the binding impact of the Supreme Court of Canada decisions regarding striking a claim, especially when the issues are novel and involve unsettled law, and that the Appellant may have acquired and continue to acquire through the litigation process the evidence to identify all torts that might unsettled law, which may lead to amended pleadings?

67. ***Baird v. Canada*** held that when complex questions of law are to be resolved, it is in the best interests of all parties and future litigants that the Court formulate its views and apply the principles of law because the granting of a motion to strike precludes the same cause of action from again being summoned to any court. The Supreme Court of Canada in ***Imperial Tobacco*** stated that judges are under a duty to apply the law as set out in (and as it may develop from) statutes and precedent when deciding if a claim has no reasonable chance of succeeding.

Baird v. Canada, 1983 CanLII 2946 (FCA), at paragraphs [39] to [42], [45] and [46], Appellant Book of Authorities, TAB 14
R. v. Imperial Tobacco Canada Ltd., [2011] *3 SCR 45, 2011 SCC 42*, para [25], Appellant Book of Authorities, TAB 40

68. A motion to strike a claim for not disclosing a reasonable cause of action is not decided on the basis of evidence or opinion and inference, but on the basis that the facts pleaded are true, and that pleadings are read generously to allow for drafting deficiencies. The Motion Judge ruled the entire Claim was meritless without providing any legal basis to support his decision.

R. v. Imperial Tobacco Canada Ltd [2011] 3 SCR 45, 2011 SCC 42, para [22] and [23], Appellant Book of Authorities, TAB 40

69. A Motion to Strike proceeds on the basis that, although the facts pleaded are true, unless they are manifestly incapable of being proven the claim must proceed to a full trial. The Motion Judge did not consider that Appellant might adduce evidence in the future that would in fact prove her claim.

Federal Court Rules, s. 174, s. 221(1)(a) and (2), Appellant Book of Authorities, TAB 4
R. v. Imperial Tobacco Canada Ltd., [2011] *3 SCR 45, 2011 SCC 42*, para [22], Appellant Book of Authorities, TAB 40
Lauer v. Canada (Attorney General), 2017 FCA 74 (CanLII), para [28], Appellant Book of Authorities, TAB 29

70. The Federal Court of Appeal in ***Baird v. Canada*** laid out the foundation for deciding if a claim can be struck and noted that neither the issues nor the legal authorities can be ignored. In ***Jack v. Canada (Attorney General)***, the Courts stressed that an untenable plea is one where the claim is *"...clearly impossible of success at law, that has no legal potential whatsoever, that is clearly inviable or unachievable at law..."*. [Emphasis added]

Jack v. Canada (Attorney General), 2004 CanLII 6217 (ONSC), [2004] O.J. No 3294 at para [25], Appellant Book of Authorities, TAB 28
Baird v. Canada, 1983 CanLII 2946 (FCA), at paragraphs [2] [18] [19] and [20], Appellant Book of Authorities, TAB 14

71. Only if the Claim is certain to fail because it contains a "radical defect" should the Plaintiff be denied a trial, and that the Respondent has to clearly establish that the Statement of Claim discloses no reasonable cause of action, even in the event that the alleged facts were proven, as in the case at bar.

Odhavji Estate v. Woodhouse, 2003 SCC 69 (CanLII), [2003] 3 S.C.R. 263, para 15, Appellant Book of Authorities, TAB 35

72. Where pleadings concern differing interpretations of a statute, striking out is not appropriate. A variety of different interpretations of the *PLTA* definition of "federal property" have been expressed -- by the Municipality, the Respondent, the Motion Judge and the Appellant -- and nothing is settled in law, making the striking of the Claim in this case abundantly inappropriate, legally incorrect and unfair. In

addition, the Respondent has failed to show how the Appellant's path of statutory interpretation is clearly wrong, absurd, vexatious or manifestly incapable of being proved, since all of the law pleaded is binding law. "***If a claim is novel or dubious it cannot be struck out and where the pleadings concern different interpretations of the statute if there is any doubt striking out is not appropriate***". [Emphasis added]

Rewega v. Rewega, 2005 ABCA 365 (CanLII), para 9, Appellant Book of Authorities, TAB 42

73. In ***Roy Little Chief v. Siksika Nation,*** the Court stated:

> *In striking out a pleading or an action it must be plain, obvious and beyond doubt that a claim will not succeed, this being the test set out in three Supreme Court of Canada cases,* ***Hunt v. Carey Canada Inc.,*** *1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959,* ***Operation Dismantle Inc. v. The Queen****, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441 and* ***Canada (Attorney General) v. Inuit Tapirisat of Canada****, 1980 CanLII 21 (SCC), [1980] 2 S.C.R. 735: this test is so solidly established that it is no longer usually necessary to dwell on the test. However, as I pointed out in* ***Charlie v. Vuntut Gwitchin Development Corp****. (2002), 2002 FCT 344 (CanLII), 218 F.T.R. 116 (F.C.T.D.) at page 121, it is for the defendant, seeking to strike out an action, to put forward his or her best argument which might stand, or which may be shown by the plaintiff to be weak or in doubt. However this is not to say that the burden shifts to the plaintiff to show, positively, that there is jurisdiction. Indeed, in* ***Hodgson v. Ermineskin Indian Band No. 942 (2000)****, 2000 CanLII 15066 (FC), 180 F.T.R. 285 (F.C.T.D.) Madam Justice Reed observed at page 289 that:*
>
> > *The "plain and obvious" test applies to the striking out of the pleadings for lack of jurisdiction in the same manner as it applies to the striking out of any pleading on the ground that it evinces no reasonable cause of action. The lack of jurisdiction must be "plain and obvious" to justify a striking out of the pleadings at this preliminary stage.* *[Emphasis added]*

Roy Little Chief v. Siksika Nation, 2003 FCT 708 (CanLII), para [13], upheld on appeal (2000), 267 N.R. 143 (F.C.A.), leave to appeal to Supreme Court of Canada denied (2001), Appellant Book of Authorities, TAB 44

74. The Motion Judge relied on paragraph 17 of ***Imperial Tobacco*** and page 980 of ***Hunt v. Carey Canada Inc.,*** but took those statements entirely out of context of the entire framework discussed by the Supreme Court of Canada in those cases when it established the test for determining what constituted a claim without reasonable prospects of success.

R. v. Imperial Tobacco Canada Ltd., *supra*, paragraphs [17] to [25], Appellant Book of Authorities, TAB 40
Hunt v. Carey Canada Inc., [1990] 2 SCR 959, 1990 CanLII 90, paragraphs at page 3/26 and 17 and 18/26, Appellant Book of Authorities, TAB 26
Order and Reasons, para [5], page 3, Appeal Book, TAB 2

75. The Supreme Court of Canada clearly stated that *"The facts pleaded are taken as true. Whether the evidence substantiates the pleaded facts, now or at some future date, is irrelevant to the motion to strike. The judge on the motion to strike cannot consider what evidence adduced in the future might or might not show."*

R. v. Imperial Tobacco Canada Ltd., *supra,* para [17] to [25] incl., Appellant Book of Authorities, TAB 40

76. ***B.C.G.E.U. v. British Columbia (Attorney General)*** is on point regarding the Appellant's right to rely on a full analysis of all factors associated with her case, if there is a possibility that the Claim may succeed, particularly a novel claim involving unsettled law. The wording of the legislation should not be changed and the motion should not go outside the actual pleadings or remain devoid of supporting jurisprudence in order to defeat the Claim at the motion stage, otherwise there is a violation of human rights, a violation of the fundamental principles of justice and the Rule of Law.

B.C.G.E.U. v. British Columbia (Attorney General), [1988] 2 SCR 214, 1988 CanLII 3 (SCC), paragraphs 25 and 26 at pages 13/30 and 14/30, Appellant Book of Authorities, TAB 15

I. Whether the Motion Judge erred in law by allowing a Motion to Strike in a Simplified Action to become a Summary Judgment proceeding?

77. Rule s. 297 prohibits Summary Judgment in Simplified Actions. The Respondent maneuvered the proceeding into a summary judgment by removing a page from the Statement of Claim, and by referring to irrelevant sections of the *PLTA*. Despite the Appellant's explanation, the Motion Judge held that the Appellant contended that it is not open to Her Majesty to bring a motion to strike in the context of a simplified action because such a motion is a motion for summary judgment.

Order and Reasons, middle sentence of para [16], page 7, Appeal Book, TAB 2
Federal Court Rules, s. 297 and s. 298(2), Appellant Book of Authorities, TAB 4

78. The significant difference between a motion to strike and a motion for Summary Judgment is well articulated in ***Leadbeater v. Ontario*** where the Judge recognized how the Defendant in that case attempted to turn the motion to strike into a Summary Judgment.

Leadbeater v. Ontario, 2001 CanLII 28341 (ON SC), paragraphs [5] and [9], Appellant Book of Authorities, TAB 30

79. If the Motion Judge does not agree with Parliament or Supreme Court of Canada decisions, the forum to change this is not a Motion proceeding. ***Wilson v. The Queen*** describes the rule against collateral attack as follows:

> *It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally - and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment.*

R v. Wilson, 1983 CanLII 35 (SCC), [1983] 2 S.C.R. 594 (S.C.C.), pages 5/29 and 6/29, Appellant Book of Authorities, TAB 51

80. When a Motion to Strike in a Simplified Action is devoid of any reference to legal authorities that are on point to support its position, bringing such a Motion, considering the long delay in getting to trial caused by such a Motion, is in itself an act aimed at the destruction of the Appellant's right to effective remedy, as guaranteed by s. 24 of the *Charter* and subject to Article 5.1 of the *ICCPR*. The Justices in ***B.C.G.E.U. v. British Columbia (Attorney General)*** stated that *"Any action that interferes with such access by any person or groups of persons will rally the court's powers to ensure the citizen of his or her day in court. Here the action causing interference happens to be picketing. As we have already indicted, interference from whatever source falls into the same category."*

International Covenant on Civil and Political Rights, Article 5.1, Appellant Book of Authorities, TAB 5
B.C.G.E.U. v. British Columbia (Attorney General), [1988] 2 SCR 214, 1988 CanLII 3 (SCC), para 26 at pages 13/30 and 14/30, Appellant Book of Authorities, TAB 15
Canadian Charter of Rights and Freedoms, s. 24, Appellant Book of Authorities, TAB 1

PART IV -- ORDERS SOUGHT

The Appellant prays for the following Orders:

a. An Order setting aside the Motion Judge's Order Striking the Claim, granting the appeal and referral of the matter back to the Federal Court of Canada for a full trial on the law, facts and merits of the case;

b. Costs of this appeal; and

c. Any other remedies this Honourable Court may find in its wisdom is reasonable and just.

All of which is respectfully submitted this ..5th.. day of [redacted]

[redacted]

613-[redacted]
No fax available
Appellant

APPENDIX A – STATUTES AND REGULATIONS

The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 – Part I – Canadian Charter of Rights and Freedoms

2. *Everyone has the following fundamental freedoms:*
   (d) freedom of association.

7. *Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

24.(1) *Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.*

26. *The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.*

32.(1) *This Charter applies*
   (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
   (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Crown Liability and Proceedings Act, RSC 1985, c-C-50
Definitions
"servant" includes agent, but does not include any person appointed or employed by or under the authority of a law of the Legislature of Yukon, of the Northwest Territories or for Nunavut. (préposés)

3 *The Crown is liable for the damages for which, if it were a person, it would be liable*
   (b) in any other province, in respect of
      (i) a tort committed by a servant of the Crown, or
      (ii) a breach of duty attaching to the ownership, occupation, possession or control of property. R.S., 1985, c. C-50, s. 3; 2001, c. 4, s. 36.

Federal Court Act (R.S.C. 1985), c F-71)

Relief against the Crown
17 (1) *Except as otherwise provided in this Act or any other Act of Parliament, the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown.*

Cases

(2) Without restricting the generality of subsection (1), the Federal Court has concurrent original jurisdiction, except as otherwise provided, in all cases in which
(a) the land, goods or money of any person is in the possession of the Crown;
(b) the claim arises out of a contract entered into by or on behalf of the Crown;
(c) there is a claim against the Crown for injurious affection; or
(d the claim is for damages under the Crown Liability and Proceedings Act.

Crown and subject: consent to jurisdiction
(3) The Federal Court has exclusive original jurisdiction to hear and determine the following matters:
(a the amount to be paid if the Crown and any person have agreed in writing that the Crown or that person shall pay an amount to be determined by the Federal Court, the Federal Court — Trial Division or the Exchequer Court of Canada; and
(b) any question of law, fact or mixed law and fact that the Crown and any person have agreed in writing shall be determined by the Federal Court, the Federal Court — Trial Division or the Exchequer Court of Canada.

Conflicting claims against Crown
(4) The Federal Court has concurrent original jurisdiction to hear and determine proceedings to determine disputes in which the Crown is or may be under an obligation and in respect of which there are or may be conflicting claims.

Relief in favour of Crown or against officer
(5) The Federal Court has concurrent original jurisdiction
(a) in proceedings of a civil nature in which the Crown or the Attorney General of Canada claims relief; and
(b) in proceedings in which relief is sought against any person for anything done or omitted to be done in the performance of the duties of that person as an officer, servant or agent of the Crown.

Federal Court has no jurisdiction
(6) If an Act of Parliament confers jurisdiction in respect of a matter on a court constituted or established by or under a law of a province, the Federal Court has no jurisdiction to entertain any proceeding in respect of the same matter unless the Act expressly confers that jurisdiction on that court.R.S., 1985, c. F-7, s. 17; 1990, c. 8, s. 3; 2002, c. 8, s. 25.

Federal Court Rules, SOR/98-106

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.

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

(a) discloses no reasonable cause of action or defence, as the case may be,
(b) is immaterial or redundant,
(c) is scandalous, frivolous or vexatious,
(d) may prejudice or delay the fair trial of the action,
(e constitutes a departure from a previous pleading, or
(f) is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly.

Evidence

(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).

Motion for summary judgment or summary trial

297 No motion for summary judgment or summary trial may be brought in a simplified action. SOR/2009-331, s. 4.

Motions prior to pre-trial conference

298 (1) Subject to subsections (2) and (3), a motion in a simplified action shall be returnable only at a pre-trial conference conducted in accordance with rules 258 to 267.

Exception

(2) A motion may be brought, within the time set out in rule 204 for the service and filing of a statement of defence,
(a) to object to the jurisdiction of the Court; or
(b) to strike a statement of claim, on the ground that it discloses no reasonable cause of action.

International Covenant on Civil and Political Rights, 1976

Article 1

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Article 2

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Article 5

1. *Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*
2. *There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.*

Article 8

2. *No one shall be held in servitude.*

Article 9

1. *Everyone has the right to liberty and security of person.*

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

International on Economic, Social and Cultural Rights, 1976

Article 1

2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

Article 5

1. *Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.*

2. *No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.*

Municipal Act, 2001, SO. 2001, C.25

Municipality

(2) In this Act, a reference to a municipality is a reference to its geographical area or to the municipal corporation, as the context requires. 2001, c. 25, s. 1 (2)

Restrictions, financial matters

17 (1) Sections 9, 10 and 11 do not authorize a municipality to,

(a) impose taxes;
(b) borrow or invest money or sell debt;
(c) incur debt without borrowing money for the purpose of obtaining long-term financing of any capital undertaking;
(d) enter into agreements for the purpose of minimizing costs or financial risk associated with the incurring of debt;
(e) make a grant or a loan;
(f) take any other prescribed financial action;
(g) become a bankrupt under the Bankruptcy and Insolvency Act (Canada); or
(h) as an insolvent person, make an assignment for the general benefit of creditors under section 49 of the Bankruptcy and Insolvency Act (Canada) or make a proposal under section 50 of that Act. 2006, c. 32, Sched. A, s. 13. Regulations

(2) The Minister may make regulations prescribing financial actions for the purpose of clause (1) (f). 2006, c. 32, Sched. A, s. 13.

Municipal Affairs Act, R.S.O. 1990, Chapter M.46

Powers of Ministry
3. The Ministry may,

municipal accounting

(a prescribe and regulate the system of estimates, bookkeeping and accounting to be adopted by municipalities, and the form of and the manner in which all estimates, books of account, registers, records, vouchers, receipts and other books and documents relating to the assets, liabilities, revenues and expenditures of municipalities shall be kept, and the manner in which all funds and money thereof shall be accounted for;

municipal returns

(b) prescribe the forms, returns, statements and information to be made and furnished by municipalities to the Ministry, annually, periodically or otherwise, and the times when and by whom they shall be made;

municipal audit
(c) prescribe and regulate the system of auditing of the accounts, registers, records, vouchers, receipts and other books and documents relating to the assets, liabilities, revenues, expenditures, funds and money of municipalities and the reports, returns, statements and information to be made and furnished by municipal auditors and otherwise with respect to the performance of their duties;

compiling statistics, etc.
(d) collect, compile, analyze and record such statistical and other information relating to the financial and other affairs of municipalities as may be useful;

publishing reports, etc.

(e) prepare and publish statistics, reports, records, bulletins, pamphlets, circulars and other means of disseminating information and advice in relation to municipal affairs as may be useful;

report on municipal government, etc.

(f) study, report and advise upon the system of municipal institutions and the government and administration of municipal affairs or upon the government and administration of municipal affairs in any municipality or municipalities;

incidental powers

(g) perform and do all things necessary or incidental to any of the aforesaid purposes;

advisory powers

(h) effect improvement generally in the conduct and administration of municipal affairs and, among other things, consult with and assist by advice municipalities, develop proper methods of municipal administration, financing, accounting and audit, collaborate with municipal associations and other bodies and collect, compile and disseminate municipal statistics and information;

powers of investigation

(i) inquire at any time into any or all of the affairs, financial and otherwise, of a municipality or local board and hold such hearings and make such investigations in respect thereof as appear necessary or expedient in the interests of such municipality, its ratepayers, inhabitants and creditors, and particularly to make and hold such inquiries, hearings and investigations for the purpose of avoiding any default or recurrence of default by any municipality in meeting its obligations. R.S.O. 1990, c. M.46, s. 3; 1991, c. 15, s. 39.

Ministry of Municipal Affairs and Housing Act

Functions of Minister

4. (1) The Minister is responsible for the policies and programs of the Government of Ontario in relation to,

(a) municipal affairs, including the co-ordination of programs of financial assistance to municipalities;

(b) community planning, community development, maintenance and improvement of the built environment and land development; and

(c) housing and related matters.

Implementation of policies and programs

(2) The Minister may take such measures as he or she considers appropriate to implement any policy or program referred to in subsection (1), including entering into any agreements for such purpose with any municipality or with any other person.

Protection from personal liability

7. (1) No action or other proceeding for damages shall be instituted against the Deputy Minister or any employee of the Ministry, or anyone acting under the Deputy Minister's authority for any act done in good faith in the execution or intended execution of the person's duty, or for any alleged neglect or default in the execution in good faith of the person's duty.

Crown liability

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the Proceedings Against the Crown Act, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. R.S.O. 1990, c. M.30, s. 7.

Payment in Lieu of Taxes Act, (R.S.C., 1985, C. M-13)

Definitions

2 (1) *In this Act, **federal property** means, subject to subsection **(3)**,*

(a) real property and immovables owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown,

(b) real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,

(c) immovables held under emphyteusis by Her Majesty in right of Canada that are under the administration of a minister of the Crown,

(d) a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and

(e) real property and immovables occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province; (propriété fédérale)

other attribute includes

(a) in relation to a tax levy for the purpose of financing all or part of the capital cost of a service to real property or immovables,

(i) the actual or estimated cost of constructing a new building,

(ii) the number of rooms, living units or beds in a building, or

(iii) the number of persons in occupancy of a building, and

(b) in relation to a tax levy for the purpose of financing all or part of the operating cost of a service to real property or immovables, any prescribed criteria; (autre élément)

Property not included in the definition federal property

2(3) *For the purposes of the definition **federal property** in subsection (1), federal property does not include*

(a) any structure or work, unless it is

(i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property,
(ii) an outdoor swimming pool,
(iii) a golf course improvement,
(iv) a driveway for a single-family dwelling,
(v) paving or other improvements associated with employee parking, or
(vi) an outdoor theatre;

(h) unless otherwise prescribed, any real property or immovable leased to or occupied by a person or body, whether incorporated or not, that is not a department.

Purpose

2.1 *The purpose of this Act is to provide for the fair and equitable administration of payments in lieu of taxes. 2000, c. 8, s. 4.*

Regulations by Governor in Council

9(1) *The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without restricting the generality of the foregoing, may make regulations*

(b) prescribing criteria for the purposes of paragraph (b) of the definition ***other attribute*** *in subsection 2(1);*

(e) prescribing the real property and immovables referred to in paragraph 2(3)(h) that are to be included in the definition ***federal property*** *in subsection 2(1);*

Proceedings Against the Crown Act, RSO 1990, c P.27

Definitions

1 In this Act,

"servant", when used in relation to the Crown, includes a minister of the Crown. "préposé") R.S.O. 1990, c. P.27, s. 1.

Liability in tort

5 (1 Except as otherwise provided in this Act, and despite section 71 of the Legislation Act, 2006, the Crown is subject to all liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

(a) in respect of a tort committed by any of its servants or agents;

(b) in respect of a breach of the duties that one owes to one's servants or agents by reason of being their employer;

(c) in respect of any breach of the duties attaching to the ownership, occupation, possession or control of property; and

Liability for acts of servants performing duties legally required

(3) Where a function is conferred or imposed upon a servant of the Crown as such, either by a rule of the common law or by or under a statute, and that servant commits a tort in the course of performing or purporting to perform that function, the liability of the Crown in respect of the tort shall be such as it would have been if that function had

been conferred or imposed by instructions lawfully given by the Crown. R.S.O. 1990, c. P.27, s. 5 (3).

The Universal Declaration of Human Rights, 1948

Preamble
Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Article 3
Everyone has the right to life, liberty and security of person.

Article 17
1. *Everyone has the right to own property alone as well as in association with others.*
2. *No one shall be arbitrarily deprived of his property.*

APPENDIX B – LIST OF AUTHORITIES

1 *Ayangma v. Canada,* 1998 CanLII 8926 (FC)

2 *Baird v. Canada*, 1983 CanLII 2946 (FCA)

3 *B.C.G.E.U. v. British Columbia (Attorney General),* [1988] 2 SCR 214, 1988

4 *Bear v. John Smith Indian Band, Chief and Council of the John Smith India Band,* 1983 CanLII 2270 (SK QB)

5 *Canada (Attorney General) v. Knee*, 2011 FCA 301 (CanLII)

6 *Canada v. Scheuer,* 2016 FCA 7 (CanLII)

7 *Corporation of the City of Mississauga v. Canada (Public Works and Government Services),* 2011 FC 162 (CanLII)

8 *de Guzman v. Canada (Minister of Citizenship and Immigration)*, [2006] 3 FCR 655, 2005 FCA 436 (CanLII)

9 *Divito v. Canada (Public Safety and Emergency Preparedness)*, [2013] 3 SCR 157, 2013 SCC 47 (CanLII)

10 *Godbout v. Longueuil (City)*, [1997] 3 SCR 844, 1997 CanLII 335 (SCC)

11 *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, 2 SCR 108, 2012 SCC 29 (CanLII)

12 *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 SCR 391, 2007 SCC 27 (CanLII)

13 *Housen v. Nikolaisen*, [2002] 2 SCR 235, 2002 SCC 33 (CanLII)

14 *Hunt v. Carey Canada Inc.,* [1990] 2 SCR 959, 1990 CanLII 90 (SCC)

15 *ITO-Int'l Terminal Operators v. Miida Electronics,* [1996] 1 SCR 752, 1986 CanLII 91 (SCC)

16 *Jack v. Canada (Attorney General)*, 2004 CanLII 6217 (ON SC)

17 *Lauer v. Canada (Attorney General)*, 2017 FCA 74 (CanLII)

18 *Leadbeater v. Ontario*, 2001 CanLII 28341 (ON SC)

19 *Montreal (City) v. Canada (Attorney General)*, 2007 FC 702 (CanLII)

20 *Montreal (City) v. Montreal Port Authority*, 2006 FC 114 (CanLII)

21 *Montreal (City) v. Montreal Port Authority*, 2007 FC 701 (CanLII)

22 *Nemeth v. Canada (Justice),* [2010] 3 SCR 281, 2010 SCC 56 (CanLII)

23 *Odhavji Estate v. Woodhouse,* [2003] 3 SCR 263, 2003 SCC 69 (CanLII)

24 *Operation Dismantle v. The Queen, [1985] 1 SCR 441, 1985 CanLII 74 (SCC)*

25 *R. v. 974649 Ontario Inc.,* [2001] 3 SCR 575, 2001 SCC 81 (CanLII)

26 *R. v. Hape,* [2007] 2 SCR 292, 2007 SCC 26 (CanLII)

27 *R. v. Hynes, 1999,* CanLII 18979 (NL CA)

28 *R. v. Imperial Tobacco Canada Ltd.,* [2011] 3 SCR 45, 2011 SCC 42 (CanLII)

29 *Regina v. MacDonald*, 1982 CanLII 1972 (ON SC)

30 *Rewega v. Rewega,* 2005 ABCA 365 (CanLII)

31 *Robichaud v. Canada (Treasury Board),* [1987] 2 SCR 84, 1987 CanLII 73

32 *Roy Little Chief v. Siksika Nation*, 2003 FCT 708 (CanLII)

33 *Seascape 2000 Inc. v. Attorney General of Canada, 2012 CanLII 78018 (NL SCTD)*

34 *Slaight Communications Inc. v. Davidson,* [1989] 1 SCR 1038, 1989 CanLII 92 (SCC)

35 *Suresh v. Canada (Minister of Citizenship and Immigration),* [2002] 1 SCR 3, 2002 SCC 1 (CanLII)

36 *Toronto (City) v. Toronto Port Authority*, 2010 FC 687 (CanLII)

37 *Trois-Rivieres (City) v. Trois-Rivieres Port Authority*, 2015 FC 106 (CanLII)

38 *Vancouver (City) v. Ward,* [2010] 2 SCR 28, 2010 SCC 27 (CanLII)

39 *Wilson v. The Queen*, [1983] 2 SCR 594, 1983 CanLII 35 (SCC)

Federal Court of Appeal File No. A [redacted]

FEDERAL COURT OF APPEAL

BETWEEN

[redacted]

Appellant/Respondent/Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(Attorney General of Canada)

Respondent/Moving Party/Defendant

MEMORANDUM OF FACT AND LAW OF THE APPELLANT

[redacted]

No Fax Available
Appellant

RECEIVED - [illegible]
2013 FEB -2 P 12: 32
[illegible]
COPY

AG -

Court File No. A[redacted]

FEDERAL COURT OF APPEAL

BETWEEN:

[redacted]

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

MEMORANDUM OF FACT AND LAW OF THE RESPONDENT, HER MAJESTY THE QUEEN IN RIGHT OF CANADA

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario K1A 0H8

Per: Jennifer Bond
Tel: (613) 670-6335
E-mail: Jennifer.Bond@justice.gc.ca

Counsel for the Respondent,
Attorney General of Canada

Court File No.: A-[redacted]

FEDERAL COURT OF APPEAL

BETWEEN:

[redacted]

Appellant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(ATTORNEY GENERAL OF CANADA)

Respondent

MEMORANDUM OF FACT AND LAW OF THE RESPONDENT, HER MAJESTY THE QUEEN IN RIGHT OF CANADA

OVERVIEW

1. The motions judge correctly struck out the Appellant's claim because it did not disclose a reasonable cause of action. He properly found that the property the Appellant owns [redacted] is not "federal property" within the meaning of the *Payment in Lieu of Taxes Act*, and that the failure of the City [redacted] to make a request to the federal Crown for payment pursuant to that legislation is not actionable as against the Respondent. The Appellant has failed to show how the motions judge erred in these findings.

2. The heart of the Appellant's claim is an assertion that she should not have to pay taxes to the City [redacted]. The proper procedure to adjudicate a decision made by the municipality is by way of a judicial review in Ontario Superior Court, not as a simplified action against the federal Crown in Federal Court. This appeal should be dismissed.

PART I – RESPONDENT'S STATEMENT AS TO FACTS

A. Background

3. The Appellant is the registered owner of [redacted] properties in [redacted] Ontario, for which she has been assessed, and has paid, property tax.[1] The Appellant asserts that her properties meet the definition of "federal property", pursuant to subsections 2(1) and 2(3) of the *Payment in Lieu of Taxes Act* ("*PLTA*").[2] As a result, she states that the *PLTA* requires the City [redacted] to make a request to the federal Minister of Public Works and Government Services for payment in lieu of taxes from the Consolidated Revenue Fund, in order that the she may "fully exercise her right to be free from forced disposition of her wealth and resources to the City [redacted]".[3]

4. The City [redacted] had refused the Appellant's request that it make an application to the Minister of Public Works and Government Services under the *PLTA*, on the basis

---

[1] Statement of Claim at para 6, Appeal Book ["AB"] Tab 5.
[2] *Payment in Lieu of Taxes Act,* R.S.C., 1985, c. M-13, ss. 2(1), 2(3), Appellant's Book of Authorities ["ABOA"] Tab 10; Statement of Claim at para 14, AB Tab 5.
[3] Statement of Claim at paras 13-18, AB Tab 5.

that the legislation applies only to properties owned or occupied by the Federal government, and not to private citizens.[4]

5. On September 29, 2017, the Appellant filed a Statement of Claim in a simplified action against the Respondent, Her Majesty the Queen, which sought various forms of declaratory relief as a result of the City [redacted]s refusal to seek a payment in lieu of taxes, pursuant to the *PLTA*, for the properties.[5]

6. The federal Crown was named as the Respondent to the Statement of Claim because the Appellant asserts that the City [redacted] is a "servant and representative" of the federal Crown as defined in the *Crown Liability and Proceedings Act* ("*CLPA*") and, as such, the Crown is liable for all torts committed by the municipality.[6]

7. On October 13, 2017, the Respondent filed a motion in writing asking that the Appellant's claim be struck on the basis that the Federal Court did not have jurisdiction over the Plaintiff's claim against the City [redacted] and that the Statement of Claim did not disclose any reasonable cause of action.

B. Decision under Appeal: Motion to Strike

8. On November 15, 2017, Justice LeBlanc granted the Respondent's motion, and struck the Appellant's Statement of Claim in its entirety without leave to amend.[7]

---

[4] Statement of Claim at para 20, AB Tab 5.
[5] Statement of Claim at para 6, AB Tab 5.
[6] *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, s. 3, ABOA Tab 2; Statement of Claim at paras 4-5, AB Tab 5.
[7] Decision of Justice LeBlanc, dated November 15, 2017 ["Motion Decision"], AB Tab 2.

9. Justice LeBlanc found that the Appellant's claim rested on three propositions: a) that the property she owns [redacted]s "federal property" within the meaning of the *PLTA*; b) that the *PLTA* is aimed at protecting the Appellant's right to freely dispose, and be free from the forced disposition of, her wealth and resources; and, c) that the City [redacted]s a "servant" of the Crown within the meaning of the *CLPA*, and engages, therefore, Her Majesty's liability for the torts it commits.[8] He found all three propositions to be meritless.[9]

10. First, Justice Le Blanc found that the Appellant's properties do not meet the definition of "federal property" within the meaning of the *PLTA* "by any stretch of the imagination."[10] Relying on the Supreme Court of Canada's ("SCC") decision in *Halifax (Regional Municipality) v Canada*[11], he held that the sole purpose of the *PLTA* is to allow for discretionary payments in lieu of taxes to provinces and municipalities by the federal Crown. This is to mitigate the fact that property owned by Her Majesty is constitutionally exempt from provincial and municipal taxation, and not to "alleviate…the burden of private property owners who claim that their property should be immune from municipal taxation."[12] As a result, it was plain and obvious that the *PLTA* has no application to privately owned and controlled property, and the first two of the Appellant's propositions were "devoid of any legal foundation."[13]

---

[8] Motion Decision at para 6, AB Tab 2.
[9] Motion Decision at para 7, AB Tab 2.
[10] Motion Decision at para 8, AB Tab 2.
[11] *Halifax (Regional Municipality) v Canada*, 2012 SCC 29, ABOA Tab 23.
[12] Motion Decision at para 12, AB Tab 2.
[13] Motion Decision at para 13, AB Tab 2.

11. Further, Justice LeBlanc found that the City [redacted] is not a "servant" of Her Majesty within the meaning of subsection 3(b)(i) of the *CLPA,* and that there is no indication that the City [redacted] was employed by, or acting agent for, Her Majesty when it declined to make the Appellant's requested application under the *PLTA*.[14]

12. The Appellant now appeals Justice LeBlanc's decision to allow the Respondent's motion to strike.

PART II – ISSUE

13. The only issue in this appeal is whether the motions judge erred in striking the Appellant's action.

PART III – ARGUMENT

A. The standard of appellate review

14. The discretionary decision to grant a motion to strike should be overturned only if the motions judge erred in law, misapprehended facts, failed to give appropriate weight to relevant factors, or where an obvious injustice would result.[15]

B. The motion judge did not err in his decision to strike the pleadings

15. The Appellant has not demonstrated an error of law, an error of principle, or an obvious, serious error that undercuts the integrity and viability of the decision of the motions

---

[14] Motion Decision at para 14, AB Tab 2.
[15] *Canadian Imperial Bank of Commerce v Canada*, 2013 FCA 122 at para 5, Respondent's Book of Authorities ["RBOA"] Tab 3; *Tuccaro v Canada*, 2014 FCA 184 at para 4, RBOA Tab 8.

judge. Instead, the motions judge correctly found that the Appellant's pleadings had no chance of success.

a. The test for dismissing a claim on a motion to strike

16. On a motion to strike a statement of claim under the *Federal Courts Rules*, the applicable test is whether it is "plain and obvious" that the claim discloses no reasonable cause of action.[16] Put another way, the claim must have no reasonable prospect of success.[17]

17. In determining whether the pleadings disclose a reasonable cause of action, the facts as pleaded are taken to be true and the statement of claim is to be read generously with a view to accommodating any inadequacies in the allegations.[18]

18. In order to disclose a reasonable cause of action, a statement of claim must plead each constituent element of a cause of action with sufficient particularity, with each allegation supported by material facts capable of being proven.[19]

ii) The Appellant's property does not fall under the PLTA

19. The motions judge properly found that the Appellant's private properties do not fall under the auspices of the *PLTA*.

---

[16] *Federal Courts Rules*, SOR/98-106, Rule 221, ABOA Tab 4; *Hunt v. Carey Inc.*, [1990] 2 SCR 959 at p. 980, ABOA Tab 26; *Bauer Hockey Corp. v Sport Maska Inc. (Reebok-CCM Hockey)*, 2014 FCA 158 at para 13, RBOA Tab 2.
[17] *Bauer Hockey Corp. v Sport Maska Inc. (Reebok-CCM Hockey)*, 2014 FCA 158 at para 13, RBOA Tab 2, citing *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at paras. 17 to 26, ABOA Tab 40.
[18] *Condon v Canada,* 2015 FCA 159, at paras. 13, 21, RBOA Tab 4.
[19] *Operation Dismantle v. The Queen*, [1985] 1 SCR 441, at p. 447, RBOA Tab 6; *Federal Courts Rules*, Rule 174; *Federal Courts Rules*, Rule 181, ABOA Tab 4.

20. The sole purpose of the *PLTA* is, as the SCC has indicated, and the motions judge noted, to "establish a regime of discretionary payments in lieu of taxes to provinces and municipalities to mitigate the fact that property owned by Her Majesty is constitutionally exempt from provincial and municipal taxes."[20]

21. Subsection 3(1) of the *PLTA* permits the federal Minister of Public Works and Government Services to make a payment in lieu of a real property tax or frontage or area tax to a requesting municipality in respect of federal property.

22. Subsection 2(1) of the *PLTA* defines "federal property" for the purposes of the legislation:

federal property means, subject to subsection (3),	**propriété fédérale** Sous réserve du paragraphe (3) :
a. real property and immovables **owned by Her Majesty in right of Canada** that are under the administration of a minister of the Crown,	a. immeuble ou bien réel **appartenant à Sa Majesté du chef du Canada** dont la gestion est confiée à un ministre fédéral;
b. real property and immovables **owned by Her Majesty in right of Canada** that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,	b. immeuble ou bien réel **appartenant à Sa Majesté du chef du Canada** et relevant, en vertu d'un bail, d'une personne morale mentionnée aux annexes III ou IV;
c. immovables **held under emphyteusis by Her Majesty in right of Canada** that are under the administration of a minister of the Crown,	c. **immeuble dont Sa Majesté du chef du Canada est emphytéote** et dont la gestion est confiée à un ministre fédéral;

[20] Motion Decision at para 12, AB Tab 2; *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 at para 2, ABOA Tab 23.

d. a building **owned by Her Majesty in right of Canada** that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and

e. real property and immovables **occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province.** [emphasis added]

d. **bâtiment appartenant à Sa Majesté du chef du Canada**, dont la gestion est confiée à un ministre fédéral mais qui est situé sur un terrain non imposable qui n'appartient pas à Sa Majesté du chef du Canada ou qui est contrôlé et administré par Sa Majesté du chef d'une province;

e. immeuble ou bien réel **occupé ou utilisé par un ministre fédéral** et administré et contrôlé par Sa Majesté du chef d'une province

23. Subsection 2(3), includes a number of structures and lands that are excluded from the definition of "federal property."[21] However, it is clear that in order to fall under the definition of "federal property" pursuant to the *PLTA*, the claimed property must first meet the requirements of subsection 2(1).

24. The Appellant's submissions on this point[22], and specifically on the interpretation of subsection 2(3)(a), fail to consider the definition of "federal property" in its full context, including the preconditions of subsection 2(1). This has led to an incomplete application of the definition in this case.

25. The Appellant's references to subsections 9(1)(b) and (e) are similarly misplaced, as those provisions merely allow the Governor in Council to make regulations to

---

[21] *Payment in Lieu of Taxes Act* (R.S.C., 1985, c. M-13), s. 2(3), ABOA Tab 10.
[22] Applicant's Memorandum of Fact and Law at paras 24-31.

carry out the purposes and provisions of the *PLTA*. The Governor in Council has not created any regulations that would see the Appellant's privately owned properties fall under the definition of "federal property."

26. In addition, the jurisprudence cited by the Appellant does not stand for the proposition that privately owned property can meet the definition of "federal property." Indeed, in all of the cases cited by the Appellant on this point, the land in question was owned by the federal Crown:

    a. *Halifax (Regional Municipality) v Canada (Public Works and Government Services)* addressed the issue of the valuation of the Halifax Citadel National Historic site[23];

    b. *Montréal (City) v Canada (Attorney General)*, addressed whether property owned by Her Majesty but leased to Aéroports de Montréal, and then further sub-leased, was eligible for payment in lieu of taxes[24]; and

    c. *Corporation of the City of Mississauga v. Canada (Public Works and Government Services)*, held that the City of Mississauga could seek payment in lieu of taxes from the federal Crown for property taxes that were not paid by two former tenants of the Greater Toronto Airport Authority, which was leasing land from the federal Crown.[25]

---

[23] *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)* at paras 37 and 51, ABOA Tab 23.
[24] *Montréal (City) v Canada (Attorney General)*, 2007 FC 702 at para 3, ABOA Tab 31.
[25] *Corporation of the City of Mississauga v Canada (Public Works and Government Services)*, 2011 FC 162 at paras 3-4, ABOA Tab 19.

27. Further, the motions judge did not err by failing to give credence to the Appellant's arguments regarding the applicability of the *International Covenant on Civil and Political Rights* ("*ICCPR*") or the *International Covenant on Economic, Social and Cultural Rights* ("*ICESCR*"). Municipal property taxes do not amount to the forced disposition of resources, nor do they amount to servitude.[26] In these circumstances, it is plain and obvious that neither these international agreements, nor any domestic legislation that may enact them, are applicable.[27]

28. On a final note, contrary to the Appellant's argument, there is nothing to suggest that the motions judge did not have all of the relevant documents available to him when he rendered his decision. Any inadvertent removal of page seven of the Appellant's Statement of Claim from the Respondent's motion to strike materials was rectified by the Appellant's inclusion of the entirety of the Statement of Claim in her written submissions to the Court on the motion. [28]

iii) The City [redacted] *is not a servant of the Crown for the purposes of the CLPA*

29. While the Appellant's Statement of Claim seeks declaratory relief as a result of actions taken by the City [redacted] she has named only Her Majesty in Right of Canada as Respondent to the action. The motions judge properly found that Her

---

[26] See, for example, the analysis on this point in: *Pomerleau v Canada (Revenue Agency)*, 2017 ABQB 123 at paras 97-111, RBOA Tab 7.
[27] See: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 69, RBOA Tab 1: "International treaties and conventions are not part of Canadian law unless they have been implemented by statute."
[28] Written submissions of the Responding Party, AB Tab 4.

Majesty cannot be held liable for alleged torts committed by of the City of [redacted] a municipality created by provincial statute.[29]

30. Paragraph 3(b)(i) of the *CLPA* states that the Crown is liable for the damages for which, if it were a person, it would be liable in respect of a tort committed by a servant of the Crown.[30]

31. In *Ayangma*, the Federal Court found that a servant of the Crown, for the purposes of section 3 of the *CLPA*, is "anyone who is employed by the Crown, or acts as an agent for the Crown."[31] Section 2 of the *CLPA* defines the "Crown" as "Her Majesty in right of Canada."[32]

32. The City [redacted] is a municipality located in the Province of Ontario. Municipalities in Ontario are created by virtue of section 2 of the *Municipal Act*, 2001, a provincial statute.[33] The motions judge found that there is no indication in the *Municipal Act*, or in the material facts as plead by the Appellant in the Statement of Claim, that the City [redacted] s employed by Her Majesty in right of Canada, or was acting as an agent for her, when it decided not to seek payment in lieu of taxes for the Appellant's properties.[34]

---

[29] *Municipal Act*, 2001, S.O 2001. C. 25, s.2, ABOA Tab 7.
[30] *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, s. 3(b)(i), ABOA Tab 2.
[31] *Ayangma v Canada*, 1998 CanLII 8926 (FC) at para 12, ABOA Tab 13.
[32] *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, s. 2, ABOA Tab 2.
[33] *Municipal Act, 2001*, S.O 2001. C. 25, s. 2, ABOA Tab 7.
[34] Motion Decision at para 14, AB Tab 2.

33. Regardless as to how the Appellant chooses to characterize or define the City of Belleville in the Statement of Claim, or in her submissions to this Court, it is plain and obvious that the municipality is not a Crown servant as defined in the *CLPA*. As such, the Respondent cannot be held liable for any torts it is alleged to have committed. The motions judge rightfully struck out the claim on this basis.

34. In addition, the foregoing is based on the premise that the Statement of Claim reveals a tort that the City of Belleville is alleged to have committed. However, no tort known in law is articulated in the pleadings, and a close reading of the allegations reveals that the Appellant's claims are really a request for the judicial review of the decision of the City [redacted] not to seek a payment in lieu of taxes for the Appellant's property. The *CLPA* only applies to torts, not applications for judicial review. As a result, the Appellant's claim properly belongs as an application for judicial review in the Superior Court of Ontario with the City of [redacted] as the named respondent.

iv) A motion to strike is permissible in the context of a simplified action

35. The motions judge found that Rule 298(2) permits motions to strike in the context of a simplified action, and that the Respondent's motion to strike was therefore properly before the Court.[35]

36. In order for the Respondent's motion to have been a motion for summary judgment, as the Appellant claims, it would have had to have been based on the premise that

---

[35] *Federal Courts Rules,* Rule 298(2), ABOA Tab 4; Motion Decision at para 16, AB Tab 2.

while a discernable cause of action existed, there was no genuine issue for trial, or that a genuine issue existed, but it could be adjudicated by way of summary judgment.[36] That was not the position of the Respondent. Throughout these proceedings, the Respondent has consistently maintained that the Court did not have jurisdiction to hear the matter, and that even if it did, no cause of action arose from the pleadings.[37] This was properly a motion to strike in both name and substance.

PART IV – ORDER SOUGHT

37. For all these reasons, the Respondent asks that the appeal be dismissed, with costs.

---

[36] *Manitoba v Canada*, 2015 FCA 57 at paras 15-16, RBOA Tab 5
[37] Respondent's Motion to Strike materials, AB Tab 3.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Ottawa, Ontario, this 5th [redacted]

Jennifer Bond
Counsel for the Respondent

TO: **Federal Court of Appeal**
Courts Administration Service
Thomas D'Arcy McGee Building
90 Sparks Street, 1st Floor
Ottawa, Ontario K1A 0H9

Tel: (613) 996-6795
Fax: (613) 952-7226

AND TO: [redacted]

The Appellant

PART V – AUTHORITIES

Legislation

Crown Liability and Proceedings Act, R.S.C., 1985, c. C-50

Federal Courts Rules, SOR/98-106

Municipal Act, 2001, S.O 2001. C. 25

Payment in Lieu of Taxes Act, R.S.C., 1985, c. M-13

Jurisprudence

Ayangma v Canada, 1998 CanLII 8926 (FC)

Baker v Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817

Bauer Hockey Corp. v Sport Maska Inc. (Reebok-CCM Hockey), 2014 FCA 158

Canadian Imperial Bank of Commerce v Canada, 2013 FCA 122

Condon v Canada, 2015 FCA 159

Corporation of the City of Mississauga v Canada (Public Works and Government Services), 2011 FC 162

Halifax (Regional Municipality) v Canada (Public Works and Government Services), 2012 SCC 29

Hunt v Carey Inc., [1990] 2 SCR 959

Manitoba v Canada, 2015 FCA 57

Montréal (City) v Canada (Attorney General), 2007 FC 702

Operation Dismantle v. The Queen, [1985] 1 SCR 441

Pomerleau v Canada (Revenue Agency), 2017 ABQB 123

Tuccaro v Canada, 2014 FCA 184

Court File No. A-[redacted]

FEDERAL COURT OF APPEAL

B E T W E E N :

[redacted]

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICES Y. DEMONTIGNY, D. NEAR, AND J. WOODS

on September 19, 2018, at OTTAWA, Ontario

APPEARANCES:

[redacted] In Person

J. Bond/M. Roach Counsel for the Attorney General of Canada

Table of Contents

FEDERAL COURT OF APPEAL
T A B L E O F C O N T E N T S

Legend
[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled phonetically.

SUBMISSIONS BY MS. BOND 4

SUBMISSIONS IN REPLY BY [redacted] 10

SUBMISSIONS ON COSTS BY [redacted] 22

SUBMISSIONS ON COSTS BY MS. BOND 25

Transcript Ordered: September 27, 2018; audio received October 22, 2018

Transcript Completed: October 24, 2018

Ordering Party Notified: October 24, 2018

[redacted] v. Attorney General of Canada

WEDNESDAY, SEPTEMBER [redacted]

EXCERPT OF PROCEEDINGS

...OPENING OF COURT

THE COURT JUSTICE NEAR: Good afternoon to you all.

[redacted]: Good afternoon, Justices.

THE COURT JUSTICE NEAR: This matter is set down for two hours. That means each side will get one hour to make their presentation. I have a small technical matter that I think I'll deal with now. The Notice of Appeal, I notice that the respondent is named as the Attorney General of Canada. Generally when the Government of Canada is sued in the federal court we refer to it, it as Her Majesty the Queen. So I'm going to, unless anybody has any objection to it, just change that to read the, Her Majesty the Queen rather than the Attorney General of Canada. Nothing turns on it in terms of the merits, so you don't have to worry about that. It's just a small technical thing that I just happened to notice, and it was properly done in the federal court. And so we should properly do it here. All right. Without further ado, please.

[redacted] Good afternoon. My name is [redacted] and I'm the appellant plaintiff, and unfortunately there's a bit of a glitch and it could be my fault as a self-litigant, but I understood I had two hours to make my presentation and I have worked very hard and very

diligently to get my presentation down to one hour and forty minutes. So perhaps there might be a need for a bit of a continuation? Now I'm going to read most of my presentation so that I don't miss anything, and I'll go as quickly as I can but I, I doubt that I can get it to an hour..

THE COURT JUSTICE NEAR: Well just so it's clear, you have one hour to make your presentation. I suggest you might skip some parts if you can't fit within that time frame, but it was very clear that it's two hours and that's one hour for each party. Try not to go over the important parts too quickly so we can follow you.

[redacted]: Okay. Well first I'd like to deal with a couple of little preliminary matters, and the first one is that I'd like to request permission to have a support friend help me today, [redacted]. She owns a farm out in Smithville, Ontario, and we share an interest in health, wellness, and human rights; and she'll help me to quickly get through this, especially since there's a reduction in time that's going to affect my presentation quite dramatically.

THE COURT JUSTICE NEAR: All right. That's fine.

[redacted] So if she can move up.

...SUBMISSIONS BY [redacted] NOT REQUIRED

THE COURT JUSTICE NEAR: I've, I've allowed you to carry on past your time, but I think the time has come to say that you're out of time. If you have any closing important points that you wish to make I invite you to do that now.

[redacted] Yes I do but I only have about

ten pages left to read and they're very important. They're my closing - you know, pulling everything together.

THE COURT JUSTICE NEAR: If you could summarize them quickly that would be helpful (indiscernible).

[redacted] Well I can't because they're the case law.

THE COURT JUSTICE NEAR: Well we don't really need too much of the case law. If you could just give us the principles (indiscernible).

[redacted] If you'll just give me a second here. Can I have a minute just to see what would be best? It's a pity that we're held to such, you know, such important rights are held to time constraints. Let me just mention *Heckendorn*.

...SUBMISSIONS BY [redacted] CONTINUED

[redacted] So other than my brief, very brief cost submissions I think that can be wrapped up.

THE COURT JUSTICE NEAR: All right. Thank you you very much. We will take a ten-minute break. Come back, well let's say we'll come back at 25 after and we'll go on from there. Thank you.

CLERK REGISTRAR: Order.

R E C E S S

U P O N R E S U M I N G :

CLERK REGISTRAR: The court is now resumed.

THE COURT JUSTICE NEAR: Thank you. We'll hear from you now if you could speak to the main

points, please.

MS. BOND: Yeah the - all right.

THE COURT JUSTICE NEAR: If you're (indiscernible) then (indiscernible) louder.

MS. BOND: I will stand back here. I don't intend to, to take up my full hour, Justices. I am just, as you say, going to hit the main points.

SUBMISSIONS BY MS. BOND:

Very briefly, because the appellant has raised a number of allegations of misrepresentation on the part of the Attorney General of Canada, I'm going to briefly touch on, on what she, she has indicated, and I think what we have here is a, is a situation which we see in, in all adversarial processes where there is a difference of views on how a law should be interpreted, and that is why with respect to the appellant we are here so that those differences of, of views can be adjudicated. So a misrepresentation on the part of the Attorney General as to its views but merely a difference in the ones, vis-à-vis the ones that the appellant has, has presented to the court. With respect to the missing page in the motion record in the lower court, it does appear that one of the pages was inadvertently removed from the motion record. Certainly that, there was no indication of malice with respect to that. The, the motion, the actual statement of claim had already been filed with the court, and indeed the appellant did file her entire statement of

claim in her reply. So Justice LeBlanc had the benefit of all of the documentation in its entirety in front of him when he made his decision, notwithstanding the, the inadvertent missing page seven of the statement of claim in the motion record. And so, and indeed there would be no purpose for the Attorney General to take out that page. The statement of claim had already been filed. It was on the court file. It would have been in front of Justice LeBlanc. With respect to changing the, the pleadings or the, the allegation that the Attorney General changed the pleadings of the appellant, indeed the appellant had referred to her *Charter* rights, or excuse me, had referred to her rights per the *Constitution Act of 1982*, which includes the *Charter of Rights and Freedoms*. She references at paragraph 26 of the statement of claim her right not to be dispossessed of her - not to dispose her of her economic rights. That's not in the *Charter of Rights and Freedoms*. That's not in the *Constitution Act of 1982*, and so the Attorney General of Canada, in giving a broad and generous reading to the statement of claim, said well it's not there but if, if, even if one were to read it into, for example, Section 7, the Supreme Court of Canada has said that economic rights are not included in Section 7. So this is not a Section 7 claim either. Again, this is not a misrepresentation on the part of the Attorney General of Canada but merely pointing out to the court that economic rights are not found in the

Constitution Act of 1982 as flagged in paragraph 26 of the statement of claim. In trying to find how that might, might have been interpreted and arguing that indeed it can't be even be (indiscernible) Section 7. And with respect to Section 26 of the *Charter*, 26 isn't a positive right. It just says that the *Charter* doesn't exclude other rights but that doesn't mean that Section 26 bestows positive rights on anyone. So that's not a basis for a, for a claim under the *Constitution Act*. Justice LeBlanc under the obligation on the motion to strike to decide whether or not the appellant's statement of claim was, had any chance of success. So that was, that was the test he was looking at. The test for this court is to decide whether or not the motions judge erred in law, misapprehended facts, failed to give appropriate weight to relevant factors, or this court may also overturn the motion judge's decision where an obvious injustice would result. So that's the test for this court. But the Attorney General of Canada asserts that this is not a (indiscernible) standard but that this is the standard of the court, this court must be looking at when reviewing Justice LeBlanc's decision. The Attorney General of Canada's position is that the appellant hasn't demonstrated any error of law or principle or an obvious or spurious error that undercuts the integrity and viability of the motion judge's decision. Really, this is a situation where the motion judge was asked in

the, by the respondent in its motion, whether or not the City of Belleville could be sued under the auspices of Her Majesty the Queen in the federal court and whether or not the *Payment In Lieu Of Taxes Act* allowed for, or takes under its ambit, personal property. And the court found that the City of Belleville is not Her Majesty the, is not Her Majesty the Queen and so the only way that the City of Belleville could be sued under the name of Her Majesty the Queen is if it fell under Section 3 of the *Crown Liability and Proceedings Act*. And the court found that it is not the representative or an agent or an employee of Her Majesty the Queen and, therefore, cannot be sued under the, in the name of Her Majesty the Queen. And the Attorney General of Canada's position is that Section 3(b)(ii) is, is not dispositive in this appeal. That's with respect to whether or not the Crown can be sued or Her Majesty the Queen can be sued with respect to property. Again, there's no assertion that this was the Federal Crown who made this decision. It was the City [redacted] and so that section does not apply and, and, certainly Justice LeBlanc did not have to take it into consideration. The, the section that's applicable was Section - Subsection 3(b)(i) and, and certainly it was - the City [redacted] is not - it's a creature of statute of Ontario and, and it does not fall under the ambit of that section. The second question that the, that the judge, motions judge was, had to, had to find was

whether or not personal property falls under the *Payment in Lieu of Taxes Act*. The legislation is fairly clear. It's in the title of the *Payment in Lieu of Taxes Act*. It's also called an *Act Respecting Payment in Lieu of Taxes* to municipalities, provinces, and other bodies exercising functions of local government that levy real property taxes. That is the purpose of this *Act*, and certainly the Supreme Court of Canada decisions with respect to it indicate that that is, that is the purpose of this legislation because the Federal Crown cannot be taxed but does own property in municipalities. Instead of the municipalities levying taxes on the federal government, they can ask for a payment in lieu of the taxes. That is the purpose of this legislation. Justice LeBlanc was not in error in finding that that, that that does not include personal property. The appellant has discussed at length the definition of federal property under Section 2(1) and 2(3) with the assertion that both the Attorney General of Canada and the, and the motions judge have included the word 'and' in that section. Certainly a plain reading of, of Section 2 shows that federal property means real property and immovables owned by Her Majesty in right of Canada and then it lists a number of type, types of property all of which are owned, have to be owned by Her Majesty in right of Canada to, to apply. And there's a Subsection, subjective - Subsection 3, and if one goes to Subsection 3, it, it says for the

purposes of the definition of federal property in Subsection 1. So we know that the definition of federal property is in Subsection 1. Federal property doesn't include, and then lists a certain amount of structures unless they're homes and golf courses or driveways and that sort of thing, but what's clear from the legislation is that one, is that in order to fall under federal property, the property first has to meet the definition of Subsection 2(1) of the *Act*, and there is nothing in the statement of claim that indicates that the appellant's properties, personal properties, are owned by Her Majesty the Queen. And if they're not owned by Her Majesty the Queen and don't fall under the ambit of the *Act*, by the definition of federal property they don't fall under the *PLTA*. And therefore the City of Belleville had no, had no ability to ask for a payment in lieu of taxes. Justices, this is a simple matter of whether or not a decision made by the City [redacted]s - or whether or not the Federal Crown can be sued in the federal court for a decision made by the City of Belleville. There is nothing in the legislation, either in the *Crown Liability and Proceedings Act* or in the *Payment in Lieu of Taxes Act* that allows for that. If the appellant would like to sue the City [redacted] for its decisions, it can do so in the proper forum, which is the Superior Court of Ontario, not in this court. And Justice LeBlanc was right in finding that. And even if the City [redacted] could somehow

be found to be, or somehow, somehow the federal court could find - be found to be liable for the actions of the City [redacted] in this particular situation, the *Payment in Lieu of Taxes Act*, both by a plain reading in the definitions and by the case law is a mechanism for municipalities to get payment from the Federal Crown for properties that are owned by the Federal Crown. This is not a situation where, where private properties fall under the *Act*, and, and certainly our written submissions enunciate and further you can tell why that's the case. Subject to any questions, those are my submissions. We - I do have submissions on costs at the appropriate time.

THE COURT JUSTICE NEAR: All right. Thank you. You have the right of a brief reply. Reply means that you respond to anything that she has said and not to reargue your case.

[redacted] Thank you.

SUBMISSIONS IN REPLY BY [redacted]:

We're back to the Attorney General leaving out important parts of the *PLTA*. For example, she referred to the definition of, of federal property, but again she left out one part of the definition. Federal property means, and here is what is important, subject to Subsection 3. What she does is she removes that and she implies the word 'and' that this (a) to (e) and Section 2(b) - I'm sorry, Section 2(3), are connected by this word 'and,' and she's done that by removing

subject to Subsection 3. Okay? So list is but it doesn't say that there's a 'and' there. It says subject to Subsection 3.

UNIDENTIFIED MALE SPEAKER: Excuse me. Can you use the mic for the podium, please?

[redacted] Oh sure.

UNIDENTIFIED MALE SPEAKER: This mic here. That one is squeaking(ph) like crazy.

[redacted] Yes.

UNIDENTIFIED MALE SPEAKER: Thank you. Sorry to interrupt.

[redacted] So that's really important because that's what was done all the way through. There is no word 'and' in there, and those very important words, 'subject to Subsection 3' is very, very important. Okay? And in my appeal arguments I explain, I made out what the *PLTA* definition of federal property would be if it was just the two parts were connected as normally you would read it instead of being separated out and destroyed like that. I - she referred to the municipality having no obligation or, you know, to, to make a *PILT* application. Well that was dealt with by the federal court in two cases: *The City of Montreal* v. *The Attorney General of Canada* in 2007 and then the *Montreal City v. The Montreal Port Authority* where the, the federal court said that once the question of law regarding the *PLT* is decided in a particular case, the municipality can expect the Minister to make the payment if its application is in compliance with the regulations and on the proper

form. There is a proper form that does this. So the courts have already - the federal court has already said there is no, nothing standing in the way of a municipality making its application and letting the Minister decide, and there's no reason to think the Minister would turn down an application if it was on the proper form and the law was settled in that particular circumstance. So I think that's really important because they keep going back to the point that a municipality can't be forced and municipality this and municipality that. And she mentioned something about the municipality, my suing the municipality through the, Her Majesty. That's not what we're doing at all. We're saying that this is unsettled law with regards to private property, how that, those two parts work together in concert to make it possible to get payments in lieu of property - payments in lieu of taxes for private properties in some instances, and then you don't have to sue the municipality. That's already been decided. If, if the law is settled by a court then the municipality has no reason not to make its application and let the minister, the federal minister make its own decision. So it's not about - we didn't ask if the City of Belleville could be sued in the name of Her Majesty. That never came up. That's just another misrepresentation of what my claim was about. She also stated that Section 26 of the *Charter* is not a basis for a claim. She didn't provide any legal authority for that. And, and

the *Charter* has - the courts have said time and time again that things are not all settled with regard to the *Charter*, that as time goes there are more and more novel issues that are going to come up to make, to broaden the, the *Charter* protections. So why would Section 26 suddenly not become a grounds for, for a claim? I mean she's not telling us why that's supposed to be settled according to her. Now she said that mixing up pages and removing pages and so on and so forth is just inadvertent. Well it's not inadvertent when it's one of four things that have happened that caused me a lot of distress because I had to spend a lot of time parsing through all of these misrepresentations and trying to correct them instead of just trying to deal with the law and, and on a fair basis. But by taking out the page, it wasn't inadvertent because one of her comments in her motion factum was that my claim did not plead relief. Well obviously it didn't plead relief if you take page seven out because page seven was where the relief was. So it wasn't inadvertent. I, I'm unsettled(ph) law. She, she did not provide one single legal authority, one single decision that remotely comes close to the claim that I have brought, to the situation that I have brought. So how can unsettled law be interpreted properly in a motion to strike where I'm not allowed to bring evidence, not allowed to plead evidence in my statement of claim, and, and where it is her duty to provide the settled law that to me the

only way that my claim would not make sense is if she could say okay, there was settled law on this. The court said in your circumstance this is the way it is. Well then, yes, that's settled law. Yes, my situation has already been decided. That's not the case at all. She's made bald assertions again, just now, without any settled law at all but it's her duty to provide the settled law, not to settle it for us by just making statements in mid-air, like Section - what did she say - Section 26 is not a basis for a claim. Well everything that's violated in the *Charter* is a basis for a claim.

THE COURT JUSTICE DEMONTIGNY: If I may, Ms. [redacted] I must confess I am still at a loss to understand how your property which you own personally, I understand, can fall within the definition of a federal property.

[redacted] Okay.

THE COURT JUSTICE DEMONTIGNY: You have to explain that to me clearly because I still don't understand the reasoning.

[redacted] Okay. Well if you take - a federal property means in a...

THE COURT JUSTICE DEMONTIGNY: Yes.

[redacted] If you go to...

THE COURT JUSTICE DEMONTIGNY: We have (indiscernible)....

[redacted] ...my Book of Authorities at Number 10.

THE COURT JUSTICE DEMONTIGNY: Exactly.

[redacted] Tab 10. You see federal

property means, okay, (a) to (e), all, it's all the references....

THE COURT JUSTICE DEMONTIGNY: So you don't fall in any of (a) to (e).

[redacted] No, totally agree.

THE COURT JUSTICE DEMONTIGNY: Okay.

[redacted] Don't plead that at all.

THE COURT JUSTICE DEMONTIGNY: Okay.

[redacted] Now go to....

THE COURT JUSTICE DEMONTIGNY: Three, 3(a)? Or 3....

[redacted] Property not included. It would be page five...

THE COURT JUSTICE DEMONTIGNY: Yes.

[redacted] ...of that *Act*. Properties not included in the definition of federal property.

THE COURT JUSTICE DEMONTIGNY: But you still have to fall within the definition of federal property first, and then there are exclusions, but they are exclusions on the basis of the fact that you already fall within (a) to (e).

[redacted] It doesn't say 'and.' It says, For the purposes of the definition. In other words we're continuing the definition of federal property, Subsection 1. Right? Federal property does not include. Okay? Any structure or work. Fine, until you see the word, unless it is.

THE COURT JUSTICE DEMONTIGNY: But these are all exclusions from the...

[redacted] Yes.

THE COURT JUSTICE DEMONTIGNY: ...general definition of federal property.

[redacted] That's right. So the federal property in Subsection (1), okay, doesn't include any structure or work unless it is a building designed primarily for the shelter. So if you've got a building that's designed primarily for the shelter of living things and so on and so forth, then it is a structure or work that is included in federal property. If you have an outdoor swimming pool. You see, Your Honour, the thing is that Section 3, Subsection (3) would not be needed at all, not needed at all if it wasn't intended to address outdoor swimming pools, buildings designed primarily for the shelter of people, golf course improvements, a driveway for family single, single family dwelling paving and so on and so forth. You wouldn't need that. Why? Because (a) to (e) would cover all of that. (a) to (e) is all real property immovables owned. Why would you have to single out, why would you have to single out outdoor swimming pools, golf courses, so on and so forth. You wouldn't have to. Okay. What the federal property means, they say subject to Subsection (3). Okay? In other words the continuation of the definition of federal property continues in Subsection (3) and for that purpose of defining federal properties, okay, we're telling you that it doesn't include structures or work unless, unless, unless it's a, it's a building designed primarily for the shelter of the - it's a building designed for, primarily for the shelter of people and living things and fixtures and outdoor swimming pools

and so on and so forth. Well now that's a different story. That's, that's a structure or work that is included.

THE COURT JUSTICE DEMONTIGNY: So if I understand you correctly, an outdoor swimming pool, for example, is a federal property whoever owns it. That's what you're saying.

[redacted] That's what it's saying. It doesn't say here that the Majesty has to own it.

THE COURT JUSTICE DEMONTIGNY: No....

[redacted] It doesn't say here - no. Everything that the Majesty is dealing with is in (a) to (e). Okay? The real property and immovables. That would be your golf course. That would be your paving, your driveway, your outdoor theatre. That would all be included in (a) to (e) but it goes on to define federal property, okay, also includes any structure or work that is one of those things, (a) to, all the way down to (f) I guess it is. But in my case it's 3(a), 3(b), yeah, 3(a) and 3(b). You see, the thing is that it's tricky. There is no need to make that extra list because it's - if it had to do with Majesty's property only you wouldn't have to have that extra list. You'd just put Her Majesty's property, owned or occupied. Period. That covers everything, right? But they had to add that extra part and they said, no, property - federal - the definition of federal property does not include any structure or work. You go, oh, okay. Unless. Now the minute they put unless it is, now you're saying that anything that's in

that extra list is now structural work that is part of federal property. Now I, I should tell you that if I had a chance to complete my, my submission here, I could have explained to you that the definition of, of real estate as it has anything to do with Her Majesty's real estate is, there's a separate Act for that. It's defined in a totally separate way. What throws people off with this *Payment in Lieu of Taxes* is that it appears, the words federal property makes you immediately think oh, it must be Crown-owned property. You see that's the kind of like almost like a trick word. It could have said, you know, any kind of other word but federal because federal throws you off. It makes you think that it's Her Majesty's property, but Her Majesty's property is not defined as, as federal property in any other Act. It has a specific title. The other thing that I wanted to deal with is you were told the purpose, that same, same repetitive misrepresentation of the purpose of the, of the *PLTA*. Okay? She just said it was for the payment in lieu of taxes of property owned and occupied by Her Majesty. Let me read to you the actual purpose as stated in the *Act*, and you tell me if you see anything there about Her Majesty or the word 'sole.' Let me find it. The purpose of the *Act*, 2.1: The purpose of this Act is to provide for the fair and equitable administration of payments in lieu of taxes. Now where does it say here an equitable administration of payments in lieu of taxes only for Her Majesty's

properties? It doesn't. There's multiple reasons at trial why I could show that this, the way this *Act* was worded it did allow for things other than Her Majesty's property owned and occupied, and in fact those other cases that I didn't get to to be able to explain them to you showed where the courts have already decided that there is other properties other those, than those ones that fall in the Section (a) to (e) that, that can be allowed *PILTS*. It's, it's a, it's an *Act* that has not fully been settled yet in law. There is other sections of it that I don't, didn't have time to go through today, but one of them refers to any structure and work that is not a department, and in the *Act* it defines department. Okay? I'm not a department. I don't meet the definition of department. So if my property does not meet the definition of department then it, it allows for a, a payment in lieu of taxes. So, you know, it's something that absolutely needs a trial because you need to be able to parse out all of these words and, and show the court that where you interfere with an Act by installing words like 'sole purpose,' 'sole purpose' and 'Her Majesty's properties' when it's not in there you're changing the purpose of the actual *Act*. You're implying that federal property refers only to Her Majesty's properties when that's not the case. I can, I can show in a trial that the, the proper wording for Her Majesty's properties is actually a totally different term. I, I can show the

application that is used and so on and so forth, but I wasn't allowed to bring any of that up, you know. And so I, I have to say that it's very discouraging that I have to fight so hard for my rights. I worked for many, many, many hours on this out of respect for this panel to have it as well, well done as I possibly could. And then to turn around and be told that I - well time is prioritized over my rights, my right to get my word out, to do the best I can, that it's important that I stick to an hour. Well the fact is that I was told that it was going to be a three-hour session, that I had two hours here and I honed it down to an hour and forty minutes to even allow for questions. And, and then it turns out that I only have an hour. So I couldn't put everything that I needed to put in here to show that it's totally unfair to Canadians to be given these, this *Charter*, to be given all these rights, told to come to court and then well, it's more important that we stay within the hour than we hear, you know, your grievance. That's what hurts Canadians when we hear stuff like that. I worked extremely hard and I had a lot of other cases and, and, and quotes from, from Supreme Court decisions that explained exactly what I was trying to explain, but in my bumbling way I can't do it nearly as well as you Justices, but it would have nailed down exactly what I, what the problem was with this decision. Okay? If a claim is novel or dubious, it cannot be struck out and where the pleadings concern a different

interpretation of the statute, if there is any doubt striking out is not appropriate. There is a Supreme Court decision. You can't tell me there's no doubt. You're doubting, she's doubting, I'm doubting, the municipality is doubting. So because you didn't get to see the rest of my Supreme Court decisions and how they are directly on point with what I was trying to say about my rights and, and what I'd like this court to do, I brought a copy of my oral presentation and maybe you would consider it as well because there's a lot of excellent law. And the reason why I had to submit a supplementary book is because I'm not a lawyer and I continued, after I filed my appeal - I'm sorry, yeah, filed my appeal, I continued to look for more and more law right till eleven o'clock every night looking for more and more law, and that's what I was hoping to present to you, that I have a valid claim, I have a right to be heard, and I shouldn't be dismissed just because somebody can't stretch their imagination.

THE COURT JUSTICE WOOD: All right. I think we've got your point on that submission.

[redacted] Yes. Could I make my costs submissions at some point?

THE COURT JUSTICE WOOD: Yes, you can...

[redacted] Oh.

THE COURT JUSTICE WOOD: ...make them right now if you (indiscernible).

[redacted] Oh, right now? Okay. I think we have to give them to....

THE COURT JUSTICE WOOD: Well do you have any objection to....

MS. BOND: No. I've got no objection, Justice.

THE COURT JUSTICE WOOD: All right. Thank you. Then we will accept those for filing.

MS. BOND: I will ask if Ms. [redacted] has a copy of (indiscernible). Do you have a copy....

[redacted] Oh yeah. I have a copy for everybody. Sorry, here.

MS. BOND: But you're going to deliver it (indiscernible).

[redacted] Here you go. Thank you. Sorry about that.

THE COURT JUSTICE WOOD: All right. Costs?

[redacted] Thank you.

SUBMISSIONS ON COSTS BY [redacted]

In the Motion to Strike proceedings I was obligated to research, learn and write my motion response materials as a self-litigant. I don't engage in law for a living, as I said, and I'm - therefore the court process is truly an ordeal, for me anyway. I understand that the human experience is not factored into the assessment of costs. So I wasn't able to find anything that was relevant to what I put into it in the court rules. I have devoted over 1,900 hours of time to respond to the Attorney General's motion to strike in order to access justice and to advance my appeal. I lost valuable opportunities for income and social life. That's - none of that is factored into the court rules that I could see.

I respectfully point you to the Supreme Court statements in *Walker v. Ritchie*, year 2006, at paragraphs 35 and 36. That's found at my Tab 14 of my Supplementary Book of Authorities. There the Justices emphasized that it is important in fixing costs, that the Court consider the difficulty and complexity of the legal and factual issues as they, these can make it more difficult for the plaintiff to prove his or her case. Even failures to admit are enumerated factors under Rule 57.01(1) of the Federal Court Rules. And as I discussed by citing case law earlier, misrepresentations to deceive the court and protract the proceedings should also have consequences. I didn't get to that case law, but it's in the submission. Pursuant to the Federal Court Rules, 400 on Costs, this cost, this Court has the full discretionary power over the amount and allocation of costs and the determination of and by whom they are to be paid and costs may be awarded to or against the Crown. The cost rules are provided in my Supplementary Book of Authorities at Tab 1. In exercising your discretion, Justices, I ask that you keep in mind Rule 400(3)(c) the importance and complexity of the issues, Rule 400(3)(h) whether the public interest in having this proceeding justifies a particular award of costs given that it involves *Charter* rights, Rule 400(3)(j) the conduct of the Attorney General that I have discussed here today that unnecessarily lengthen the proceedings, and Rule 400(3)(k) that the motion to strike was

unnecessary and brought for the purposes of denying me access to justice. I request that, pursuant to Rule 400(4), if I succeed in this Appeal, that this honourable court provide an order of, for assessment of costs in accordance with Tariff B or in any other manner that you deem fair and just to a self-litigant. I request that if my appeal is dismissed, that no costs are awarded against me given that my matter involves unsettled law and is of significant public importance. I was unable to be absolutely certain as to what the motions judge meant when he awarded costs in the motion with the phrase: *"Costs on the motion are awarded to the Respondent"* because I was the respondent. A pro-bono lawyer stated that this meant that Her Majesty, the moving party, would have to pay my costs in defending the motion. If that's the case then I would ask that in setting aside Justice LeBlanc's decision that I am still permitted to collect the motion costs from the Attorney General. If this is not what was meant in his decision, then I would ask that the costs awarded against me, if that's what was meant, be set aside in the interest of justice and accessibility. So I thank you very, very much for your patience and time today. I understand that it, it's not what you expect when it's a self-litigant, but I can assure you that I have worked extremely hard to be respectful of this court. Thank you.

THE COURT JUSTICE NEAR: All right. Thank you.

Brief submissions on costs?

MS. BOND: Just briefly, Justices.

SUBMISSIONS ON COSTS BY MS. BOND:

In my initial, in my initial submissions I indicated why the Attorney General of Canada is not guilty of any sort of misrepresentation. So I ask that that not be taken into consideration in costs awarded. Should the appellant's appeal be dismissed, the Attorney General of Canada would be a fixed costs award between $950 and $1,000. Subject to any questions.

THE COURT JUSTICE WOODS: I have a question as to whether you have any submissions on the submissions that were made about the federal court award of costs.

MS. BOND: The federal awards costs, does award costs to the respondent. So it did, it did grant the motion and it said costs on the motion are awarded to the respondent. Because of the appeal, because of the appeal we, we haven't proceeded on the costs, but it appears that when Justice LeBlanc indicated the costs would be awarded to the respondent, he meant the defendant because the defendant was successful in the, in the motion. We haven't pursued the, pursued the clarification on that because of the appeal.

THE COURT JUSTICE DEMONTIGNY: Well Her Majesty's identified as the respondent in the judgment, so I would understand that the costs were in her favour though.

MS. BOND: That, that is what we intended as, what we thought was the logical intention and also the, the Attorney General or Her Majesty is usually the, the respondent in these sorts of things and, like, realizing that it was a motion where the applicant think that's what was intended, but as I say we did not pursue a clarification on that in light of the appeal. Subject to any questions.

THE COURT JUSTICE NEAR: Thank you. One brief...

[redacted] Excuse me.

THE COURT JUSTICE NEAR: ...last point?

[redacted] Well I just wanted to address that. She would be a moving party in that motion. He didn't leave, he didn't say anything about the costs awarded to the moving party. She wasn't a respondent in that motion. I was the respondent in that motion, so I'm not sure where that - I don't know, that terminology is coming from but I am sure that the judge knew the difference between moving party and respondent when he wrote that, that, that term. So - yeah, so I just have a problem with your calling yourself the respondent in that motion because she wasn't. She was the moving party.

THE COURT JUSTICE NEAR: Thank you. All right. Thank you...

[redacted] Thank you.

THE COURT JUSTICE NEAR: ...for an interesting afternoon. The matter will be taken under reserve and we will render a judgment as, as soon as we can. Thank you.

...END OF EXCERPT

28.
Certification

FORM 2
Certificate of Transcript (Subsection 5(2))
Evidence Act,

I, Christine Berkhout, certify that this document is a true and accurate transcription to the best of my ability of the recording of [redacted] v. Her Majesty the Queen, in the Federal court of Appeal held at Ottawa, Ontario, taken from Recording 0001.

October 24, 2018
Date

Christine Berkhout
(Signature of authorized persons)

Federal Court of Appeal | Cour d'appel fédérale

Date: 2[redacted]

Docket: A-[redacted]

Citation: [redacted]

CORAM: **NEAR J.A.**
DE MONTIGNY J.A.
WOODS J.A.

BETWEEN:

[redacted]

[redacted]

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on [redacted]

[redacted] delivered at Ottawa, Ontario, on [redacted]

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
WOODS J.A.

Federal Court of Appeal | Cour d'appel fédérale

Date: [redacted]

Docket: [redacted]

Citation: [redacted]

CORAM: **NEAR J.A.**
DE MONTIGNY J.A.
WOODS J.A.

BETWEEN:

[redacted]

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

NEAR J.A.

[1] The appellant, [redacted], appeals from the November [redacted] order and reasons of the Federal Court ([redacted]. The Motions Judge, on motion by the respondent, Her Majesty the Queen (Her Majesty), struck the Statement of Claim of the appellant without leave to amend, with costs awarded to the respondent. At issue on appeal is whether the Motions Judge erred in striking the appellant's claim. As a preliminary matter, upon the suggestion of this Court the parties agreed that the style of cause should be changed to name Her Majesty as respondent,

rather than the Attorney General of Canada as originally stated in the appellant's Notice of Appeal.

I. Background

[2] On or about [redacted], the appellant commenced, by way of a simplified action, a claim for declaratory relief against the respondent for a dispute over property taxes the City of [redacted]) levied against two properties (Properties) she owns in that municipality. Her claim asserts that the Properties meet the definition of "federal property" under ss. 2(1) and 2(3) of the *Payments in Lieu of Taxes Act*, R.S.C. 1985, c. M-13 (the PLTA), and that in order to collect municipal taxes over these Properties, the City is required to make application to the federal Minister of Public Works and Government Services under the PLTA and have the taxes paid out under the Consolidated Revenue Fund.

[3] The City declines to make such application on the ground that the PLTA does not apply to the Properties. In turn, the appellant contends that the refusal of the City to make such application interferes with her right to be free from forced disposition of her wealth and resources, a right which she claims is guaranteed under various instruments of international law and, by adoption, under the PLTA and the Canadian constitution as domestic law. She claims that the City's refusal to make an application under the PLTA amounts to the tort of misfeasance in public office engaging Crown liability under s. 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 [CLPA].

[4] In my view, I see no reason for this Court to intervene with the order and reasons of the Motions Judge. The submissions of the appellant remain, on their face, without merit. I agree

with the Motions Judge that it is plain and obvious that the properties the appellant owns in the City [redacted] are not "federal property" within the meaning of the PLTA. The PLTA, as a piece of legislation designed to mitigate against the fact that Crown property is constitutionally exempt from provincial and municipal taxation (*Halifax (Regional Municipality) v. Canada*, 2012 SCC 29), has no application to privately owned and controlled property in the City.

[5] Further, the argument that a motion to strike is prohibited under R. 297 of the Rules likewise has no merit. That provision prohibits summary judgment or trial in a simplified action and does not relate to motions to strike which, as the Motions Judge explained, are clearly permitted in the context of a simplified action under R. 298(2) of the Rules. I find that the Motions Judge applied the correct test for disposing of a motion to strike, which is that a claim will only be struck if it is "plain and obvious" that it had no reasonable prospect of success, assuming the facts to be true (*R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at para. 17).

[6] In addition, I find no merit to the appellant's submission that the respondent acted improperly or with malice in putting forward arguments relating to the interpretation of the PLTA, or otherwise tried to mislead the Court. I likewise do not find any merit to the appellant's submission that the respondent purposefully omitted page seven of the appellant's Statement of Claim from the respondent's motion to strike materials. I accept the respondent's submission that this was inadvertent, and in any event, caused no prejudice to the appellant as the Motions Judge had the entirety of her Statement of Claim before him on the motion.

[7] Despite the strongly held view of the appellant, I conclude that the Motions Judge made no error of fact or law in granting the respondent's motion to strike, and no obvious injustice results from his decision. The appellant's Statement of Claim was devoid of legal foundation and had no chance of success.

II. Order

[8] The appeal is dismissed with costs awarded against the appellant in the amount of $750.00.

"David G. Near"
J.A.

"I agree."
Yves de Montigny J.A."

"I agree."
J. Woods J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM AN ORDER AND REASONS OF THE HONOURABLE JUSTICE R. LEBLANC DATED NOVEMBER 15, 2017, DOCKET NO. T-1480-17

DOCKET:	[redacted]
[redacted] **OF CAUSE:**	[redacted] v. HMTQ
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	[redacted]
REASONS FOR JUDGMENT BY:	NEAR J.A.
CONCURRED IN BY:	DE MONTIGNY J.A. WOODS J.A.
DATED:	[redacted]

[redacted]	
[redacted]	[redacted]
[redacted] Michael Roach	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT

Court File No._____

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN

[redacted]

APPLICANT
(Appellant)

AND

HER MAJESTY THE QUEEN

RESPONDENT
(Respondent)

APPLICATION FOR LEAVE TO APPEAL
Volume I of II (pages 1-175)

[redacted]

Tel: [redacted]
no fax available
email: [redacted]

(APPLICANT)

HER MAJESTY THE QUEEN
Jennifer Bond
Attorney General of Canada
Department of Justice
Civil Litigation Section
50 O-Connor Street, Suite 500
Ottawa, ON K1A 0H8

Tel: 613-260-6335
email: jennifer.bond@justice.gc.ca

(RESPONDENT)

SUPREME COURT OF CANADA
RECEIVED BY THE REGISTRY
NOV 07 2018
REÇU PAR LE GREFFE
COUR SUPRÊME DU CANADA

TABLE OF CONTENTS

		Page #
NOTICE OF APPLICATION FOR LEAVE TO APPEAL		**Vol I – 1 - 5**
CERTIFICATE RE CONFIDENTIALITY AND SEALING		**Vol I – 6-7**
LOWER COURT JUDGMENTS		
➢ Reasons for Judgment of Federal Court Motions Judge LeBlanc dated November 15th, 2017		**Vol I – 8-16**
➢ Reasons for Judgment of Federal Court of Appeal dated September 20th, 2018		**Vol I – 17-23**
MEMORANDUM OF ARGUMENT		**Vol I – 24-51**
➢ **Part I**	Statement of facts and public importance - Overview	**Vol I – 24-26**
	(a) Importance of unsettled legislation to millions of property owners	**Vol I – 26-27**
	(b) Systemic lack of equality and fairness to Self-Litigants	**Vol I – 27-28**
	(c) Important questions of law	**Vol I – 28**
	(d) Construction of the Federal *Payment in Lieu of Taxes Act*, R.S.C., 1985, c. M-13	**Vol I – 29**
➢ **Part II**	Statement of the Questions in Issue	**Vol I – 29-30**
➢ **Part III**	Statement of Argument	**Vol I – 30-42**
	Issue 1: Did the Courts violate the of principles of Natural Justice?	**Vol I – 30-35**
	(i) Absence of Fairness	**Vol I – 30-31**
	(ii) Failure to give reasoned decisions	**Vol I – 31-32**
	(iii) Failure to address Attorney General misrepresentations	**Vol I – 32-35**
	Issue 2: Did the Courts abandon the Rule of Law and ignore doctrine of *stare decisis*?	**Vol I – 35-40**
	(i) Lower Courts ignored prohibition against collateral attacks on legislation	**Vol I – 35-36**
	(ii) Actions *ultra vires* the *Interpretation Act*, RSC 1985, c I-21 and principles of statutory interpretation	**Vol I – 36-38**
	(iii) Failure to apply the test for striking claims	**Vol I – 38-40**

Issue 3: Does a plain and simple reading of ss. 2(1) and 2(3) of the *Payment in Lieu of Taxes Act* result in subject properties meeting the definition of 'Federal Property' *without* having to be owned and/or occupied by Her Majesty? **Vol I – 40-42**

- **Part IV** Submissions in support of order sought concerning costs **Vol I – 42**
- **Part V** Order or Orders Sought **Vol I – 42**
- **Part VI** Table of Authorities **Vol I – 43-44**
- **Part VII** Legislation **Vol I – 45-51**

DOCUMENTS IN SUPPORT

TAB #

1. Statement of Claim filed 29th September 2017 **Vol I – 52-60**
2. Motion Factum of Her Majesty the Queen/Moving Party **Vol I – 61-86**
3. Written Submission of [redacted]espondent **Vol I – 87-114**
4. Memorandum of Fact and Argument of the Appellant, [redacted] **Vol I – 115-159**
5. Memorandum of Fact and Argument of the Respondent, Her Majesty the Queen **Vol I – 160-175**
6. Hard Copy of the full Oral Submissions **Vol II – 176-215**
7. Excerpts of the Transcript of the Federal Court of Appeal Hearing, September 19, 2018. **Vol II – 216-245**
8. FOLD-OUT CHART OF PLTA **Vol II -- 246**

APPLICANT'S MEMORANDUM OF ARGUMENT

PART I – OVERVIEW AND STATEMENT OF FACTS

1. This case is about a municipal treasurer and the lower courts making unsupported and unreasonable *ultra vires* interpretations of the revised federal statute, the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13, specifically ss. 2(1) definition of 'Federal Property', 2(3) 'Property not included in the definition *federal property'*, and 2.1 Purpose.[1] If the decision of the court of first instance (Motion Judge), is permitted to stand as settled law, the situation for private property owners will be that the Courts at any level and in any proceeding, as well as municipal officials, will be able to re-write legislation they do not agree with.

2. The decision of the Motion Judge[2], upheld by the Federal Court of Appeal[3], foreclosed any possibility that s. 26 *Charter* interests may be engaged, yet by signing and ratifying treaties and international instruments, Canada has committed itself internationally to ensuring that these covenants are upheld as relevant and persuasive interpretative factors.

3. Property owners across Canada feel like slaves to municipalities; many families lose their lands due to tax arrears when, after 1976, legislation such as **the *Municipal Act*, 2001 in Ontario prohibits the imposition of taxes on inhabitants by municipalities**[4].

4. Meanwhile, the lack of finality as to the definition of 'Federal property' in the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13 ["*PLTA*"][5] as it relates to private property enumerated in ss. 2(3) (a) and (h), provides municipalities an excuse to refuse to apply for payments in lieu of taxes ["PILTS"]. The effect then is that the discretion conferred by Parliament on the Minister of Public Works and Government Services ["Minister"][6] is exercised by the wrong authority, and *ultra vires*.

5. The Municipality, the court of first instance and the Federal Court of Appeal have all arbitrarily imposed non-existent wording in the *PLTA*, as well as a purpose for the *PLTA* that

---

[1] *Payments in Lieu of Taxes Act*, RSC 1985, c M-13, ss. 2(1), 2(3) (a) and (b) and 2.1, (Vol I, at 47-50)
[2] Decision of Federal Court Motion Judge Leblanc, dated November 15, 2018 (Vol I, at 8-16)
[3] Decision of Federal Court of Appeal, dated September 20th, 2017 (Vol I, at 17-23)
[4] *Municipal Act*, 2001, S.O. 2001, c. 25, s. 17 (Vol I, at 46)
[5] Supra see note 1
[6] *Payments in Lieu of Taxes Act*, RSC 1985, c M-13, section 3(1) (Vol I, at ~~46~~ 56)

improperly excludes property listed in ss. 2(3) (a) and (h) of the *PLTA*, and using legally unsupported inferences and opinions have prevented the issue from being heard at trial.

6. The Motions Judge, with the approval of the Federal Court of Appeal, not only failed to address the Moving Party/Attorney General's many misrepresentations and false statements in its Motion to Strike the Statement of Claim, but went outside his mandate to abandon the doctrine of *stare decisis* and made summary determinations on issues not before him[7], in a Simplified Action that prohibits summary judgments[8].

7. There are 3 main reasons why Motion Judge LeBlanc's Order and Reasons should be set aside, none of which were addressed by the Federal Court of Appeal, to allow the novel and extremely important issues raised in the Applicant's Statement of Claim to be fully heard by a trial judge:

   a) he lost jurisdiction when he arbitrarily changed the intent of the *PLTA* by implying the non-existent word "*and*" between ss. 2(1) and ss 2(3); by ignoring the phrase '*unless it is...*" in ss 2(3)(a); by disregarding the term "*subject to subsection 3*" in ss. 2(1); by ignoring ss. 2(3)(h) and 9(1) (b) and (e); by failing to consider that private property, including the Applicant's, do not meet the *PLTA* definition of 'department' and therefore ss. 2(3)(h) applies to some private properties because the provision uses the qualifier *"...that is not a department"*; and finally, by presuming a 'Purpose' for the legislation that improperly excludes the properties listed in ss. 2(3) (a) and (h).[9]

   b) he failed to apply the doctrine of *stare decisis* regarding the test for striking a claim, the prohibition against courts changing legislation, statutory interpretation and the binding effect of International Covenants[10]; he failed to decide jurisdictional issues.

   c) he failed to provide a reasoned decision based on legal principles and settled law on motions to strike a claim; he lent his approval to abuse of process and frauds on the

---

[7] Decision of Federal Court Motion Judge Leblanc, dated November 15, 2018 (Vol I, at 8-16)
[8] Federal Courts Rules, SOR/98-106, s. 297 (Vol I, at 51)
[9] Decision of Federal Court Motion Judge Leblanc, dated November 15, 2018, paras 8, 9, 11, 12 (Vol I, at 8-16)
[10] Supra at note 7, paras 11 and 12 (Vol I, at 12, 13)

court[11], misapprehended the Applicant's response statements[12], and relied on unrelated and irrelevant cases cited by the Attorney General[13].

8. The Federal Court of Appeal, instead of deciding on the nullity that was the court of first stance's decision in the underlying motion to strike the Statement of Claim,

- failed to address any of the issues before it in the Appeal[14]
- made a summary judgment of its own on the purpose of the unsettled *PLTA* as regards private property, and failed entirely to analyze ss. 2(3) (a) and (h) of the *PLTA* when doing so[15],
- cited one misinterpreted and misrepresented court decision by the Attorney General as deciding that the SOLE purpose of the *PLTA* was in relation to Her Majesty's real estate only, when that decision did not remotely do so,
- disregarded 4 volumes of jurisprudence that supported the assertion that the Motion Judge's decision was a failure of the administration of justice, *ultra vires* for a number of reasons, and a blatant trivialization of the Plaintiff's *Charter* right to a principled and fair adjudication of a motion to strike her novel Claim, and
- dismissed the appeal, without careful analysis of the Appellant's jurisprudence, the relevant *PLTA* provisions, as well as the actions of the Attorney General, including when it raised 6 new 'reasons' during an appeal (4 written, 2 in oral rebuttal).

(a) Importance of Unsettled *PLTA* Legislation to millions of property owners

9. Millions of property owners are being harmed unnecessarily and unlawfully kept in servitude to various corporate taxing authorities because there has been a refusal by the courts below to analyze ss. 2(3) (a) and (h) of the *PLTA*, in the context of the entire *Act* and international obligations and in accordance with the principles of statutory interpretation.

---

[11] Written Submission of Plaintiff/Responding Party, list at paras 40, 48, 53, 58 (Vol I, TAB 3 at 87-114
[12] Reasons for Judgment of Motions Judge, para 16 (Vol I, at 14)
[13] Reasons for Judgment of Motions Judge, paras 12, 14 (Vol I, at 14)
[14] Memorandum of Fact and Law of the Appellant, paras 21 A-I, (Vol I, TAB 4, at pages 124-126)
[15] Decision of Federal Court of Appeal, dated September 20th, 2018 (Vol I, at pages 17-23)

10. **Should this Court choose not to grant this application for Leave to Appeal and provide finality with respect to the interpretation of the unsettled ss. 2(3) (a) and (h) of the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13 that relates to property not owned by Her Majesty, the *ultra vires* decision in the court of first instance will stand and the issues will have been determined by default in a motion to strike proceeding, where a final interpretation was arrived at by changing the legislative wording.**

11. The largest landowner in Canada is Her Majesty, at roughly 89% of the Canadian landmass. Private property owners account for only 11% of land ownership, therefore the largest portion of municipal revenue is not from private property taxation.[16]

12. In addition, when Her Majesty guaranteed individuals an end to forced disposition of wealth and resources in 1976[17], domestic law, such as the *Municipal Act*, 2001 (Ontario)[18] was installed to prohibit the imposition of property taxes on individuals by municipalities.

13. Given this Appellant's advanced age, she is unlikely to personally benefit from a successful appeal, but a decision by the Supreme Court of Canada in this matter, if her appeal were successful, would mean that servitude to municipalities has finally ended in Canada for millions of property owners as intended by Her Majesty in 1976, **without a single financial loss to the corporate municipalities**. To date, the Applicant has been denied all access to a fair and principled trial on the issues.

(b) The systemic lack of equality and fairness for Self-litigants

14. There cannot be a Rule of Law without access, otherwise the Rule of Law is replaced by a rule of men and women who decide who shall and who shall not have access to justice.[19]

---

[16] Land Ownership in Canada (Statistics), Applicants Book of Authorities, TAB 20
[17] *International Covenant on Civil and Political Rights*, Articles 1.2, 8 and *International Covenant on Economic, Social and Cultural Rights*, Article 1.2 (Vol I, at page 46)
[18] *Municipal Act*, 2001, S.O. 2001, c. 25, s. 17 (Vol I, at page 46)
[19] *Vilardell v. Dunham*, 2013 BCCA 65 (CanLII) at para 15, discussing the impact of *British Columbia (Attorney General) v. Christie*, [2007] 1 SCR 873, 2007 SCC 21 (CanLII), Applicant's Book of Authorities, TAB 18

15. The public has a right to a reasoned explanation based in settled law as to why the Federal Court of Appeal, like the court below, lent its approval to the Attorney General's multiple misrepresentations to the court, its tampering with the Statement of Claim, the deliberate misstatement and substitution of the Plaintiff's pleadings and the withholding of material provisions of the *PLTA* and *Crown Liability and Proceedings Act ["CLPA"]*. The very fact that the Attorney General had to resort to this behavior suggests to reasonable people that the Claim indeed has merit and good chance of success if considered by an impartial tribunal.

16. The Federal Court of Appeal panel implied that this Canadian's claim and rights were not worth 15 minutes of their time and distressed this self-represented litigant by imposing a new one-hour time limit without prior notice, just as she was about to start her presentation.[20] A hard copy of the oral submissions[21] that contains her entire oral legal arguments were provided to the panel, because despite the Appellant begging for more time and racing through her submission, the panel would not allow the Appellant to 'put her best foot forward'.

(c) Important Questions of Law

17. Despite the volumes of jurisprudence prohibiting the courts from changing legislation to create the outcomes the government desires, the Federal Court of Appeal, by refusing to set aside the lower court decision as a nullity because it did re-construct the *PLTA*, and to dismiss the motion to strike in order that this issue be subjected to a full hearing on the facts and law, has delegated authority to the lower court to amend the *PLTA* it does not itself have and is seeking to create legal precedent that will forever defeat all self-litigants bringing novel claims very important to their lives.

18. There are multiple errors of law in this matter that are so substantial as to have affected the administration of justice, the upholding of the Rule of Law, public confidence and the lives of millions of property owners.

---

[20] Transcript of Federal Court of Appeal Hearing dated September 19th, 2018 (Vol II, TAB 7, at pages 218-220 and 235-238)

[21] Hard copy of Appellant's Oral submissions (Vol II, TAB 6, pages 176-215)

(d) The Construction of *Payments in Lieu of Taxes Act*, R.S.C., 1985, c. M-13

19. Whether properties enumerated in ss. 2(3) (a) and (h) of the *PLTA*[22] can be considered 'federal property' without having to be owned/occupied by Her Majesty is unsettled law. There is no jurisprudence regarding the properties enumerated in ss. 2(3) (a) and (b), that is: *a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property, an outdoor swimming pool, a golf course improvement, a driveway for a single-family dwelling, paving or other improvements associated with employee parking, an outdoor theatre, or any real property or immovable leased to or occupied by a person or body, whether incorporated or not, that is not a department.*

20. The *PLTA* was drafted during *Charter*-proofing activities after 1982, to replace provincial Municipal Grants Acts ["MGA"], because the MGAs did not conform to the *Charter's* spirit and intent in that they unfairly related only to Her Majesty's real estate. The jurisprudence as to the federal *PLTA*'s application to various types of properties continues to develop, so that today we see the *PLTA* apply to properties such as those owned by Hockey Canada.[23]

PART II – ISSUES

Issue 1: Did the Federal Court of Appeal violate the principles of natural justice when it lent its approval to the Motion Judge's

- failure to correctly apply the test for striking a Statement of Claim to instead make a summary judgment on unsettled federal legislation in a Simplified Action,
- *ultra vires* actions and loss of jurisdiction, and
- failure to address the Attorney General's unethical tactics?

---

[22] *Payments in Lieu of Taxes Act*, RSC 1985, c M-13, section 2(3) (a) and (b) and 2.1, (Vol I, at page 48, 49
[23] *Payments in Lieu of Taxes Act*, RSC 1985, c M-13, Schedule III, section 2

Issue 2: Did the Courts of both instances abandon the Rule of Law and wholly ignore the doctrine of *stare decisis*, thereby resulting in proceedings that were unfair, unprincipled and not in accordance with the spirit and intent of the *Charter*, the *Interpretation Act*, R.S.C., 1985, c. I-21, Rules of the Federal Court and settled law on the striking of claims, the result of which created permanent barriers to justice for the Applicant and other private property owners, until and unless this Court rectifies the injustice?

Issue 3: Does a plain and simple reading of the definition of 'Federal Property' in the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13, and the provision 'Properties not included in the Definition of Federal Properties'' **that creates exceptions to the exclusions to that definition**, result in the properties listed in ss. 2(3) (a) and (h) meeting the definition of 'Federal Property' *without* having to be owned and/or occupied by Her Majesty?

PART III – STATEMENT OF ARGUMENT

Issue 1: Did the Federal Court of Appeal violate the principles of natural justice when it lent its approval to the Motion Judge's

- **failure to correctly apply the test for striking a statement of claim to instead make a summary judgment on unsettled federal legislation in a Simplified Action,**
- ***ultra vires* actions and loss of jurisdiction, and**
- **failure to address the Attorney General's unethical tactics?**

(i) Absence of Fairness

21. The central consideration in relation to the principle of fundamental justice is that the deprivation at issue should not be arbitrary, that is, should not be inconsistent with the spirit and intent of Her Majesty's legal undertakings and the *Charter of Rights and Freedoms*.

22. It is widely accepted that self-litigants are routinely unfairly treated by the courts and sharp lawyering tactics, often to the point of gross violations of natural justice and judicial violations of *Charter* rights. There seems to be, to the public, no equality and no consistency as to how laws and procedures will be applied or whether legal arguments citing relevant law will even be considered when put forward by self-litigants.

23. In 1999, the Court of Appeal for Ontario in *Davids v. Davids*[24] defined 'fairness':

> *[36] Fairness does not demand that the unrepresented litigant be able to present his case as effectively as a competent lawyer. Rather, it* ***demands that he have a fair opportunity to present his case to the best of his ability. ... It does require that the trial judge treat the litigant fairly and attempt to accommodate unrepresented litigant's unfamiliarity with the process so as to permit them to present their case.*** *[emphasis added]*

24. The Appellant cited for the Federal Court of Appeal during submissions, this Court's unanimous endorsement in *Pintea v. Johns,*[25] of the Statement of Principles on Self-represented Litigants and Accused Persons, Canadian Judicial Council, 2006, that includes the obligation of the court to give self-represented parties a full opportunity to present their case. Yet, the Federal Court of Appeal disregarded the principles of fairness nonetheless.[26]

25. If there is a possibility that the Claim may succeed, particularly a novel claim involving unsettled law, as in the case at bar, the legislative wording should not be changed and the motion judge should not go outside the actual pleadings or disregard supporting jurisprudence in order to defeat the Claim at the motion stage. This court in ***B.C.G.E.U. v. British Columbia (Attorney General)***[27], at paragraphs 25 and 26 stated:

> *"**Any** action that interferes with such access by any person or groups of persons will rally the court's powers to ensure the citizen of his or her day in court.*

(ii) Failures to give reasoned decisions

26. The Federal Court of Appeal, with a decision not grounded in settled law or focussed on the issues before it, that is, the striking of a claim without applying the correct test, and the loss of jurisdiction of the lower court, lent its approval to the failure of the court of first instance to provide a reasoned decision. These are errors in law; the appellate court is unable to discern the basis for the decisions from the reasons provided, nor are the basis for the

---

[24] *Davids v. Davids*, 1999 CanLII 9289 (ON CA), para 36, Applicant's Book of Authorities, TAB 5
[25] *Pintea v. Johns*, [2017] 1 SCR 470, 2017 SCC 23 (CanLII), para [4], Applicant Book of Authorities, TAB 13
[26] Transcript of Appeal Hearing dated September 19th, 2018 (Vol II, TAB 7 at pages 218-220, 235-238)
[27] *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 SCR 214, 1988 CanLII 3 (SCC) at paras 25, 26, Applicants Book of Authorities, TAB 2

decision obvious from the materials before the court. Such decisions undermine the public's confidence in the administration of justice.[28]

(iii) Failures to address the Attorney General's misrepresentations

27. Three Courts of Appeal in Canada have spoken to the consequences that should flow when deliberate misrepresentations to the Court are exposed: (i). The Saskatchewan Court of Appeal in *Beale v. Beale*[29] at paragraph [12] described fraud on the court as: *All conduct which disturbs the course of justice falls within the general idea of fraud on the Court and contempt of Court."* (ii). When a party obtains an order in a proceeding by misrepresentation of material facts and information, as in the case at bar, the Ontario Court of Appeal in *Ornat v. Stalona*[30] at paragraphs 2 and 3, held that the appeal must be allowed, judgment below set aside and the matter should be referred to the Attorney General of Ontario, and additionally, (iii). The Nova Scotia Court of Appeal in *National Bank Financial Ltd v. Barthe Estate*[31], summarized that where a party maintains a position and asserts facts which it knows to be false, and then deliberately sets out on a path to hide the truth from the Court and opposing parties, that party has deprived the opposing party of a fair adjudicative process. When such conduct is exposed, the court must act to protect the integrity of the justice system. The lower courts, in this case, have failed to do this.

28. The following is a brief summary of some the Attorney General's reprehensible conduct in the case at bar that were disregarded by the Federal Court of Appeal, but that were

---

[28] *Sahota v. Sahota*, 2015 CanLII 20903 (ON SCDC), para [6]-[7], Applicant Book of Authorities, TAB 17
[29] *Beale v. Beale*, 1929 CanLII 112 (SK CA), para 12, Applicant Book of Authorities, TAB 3
[30] *Ornat v. Stalona*, 1996 CanLII 1229 (ON CA), paras 2 and 3, Applicant Book of Authorities, TAB 12
[31] *National Bank Financial Ltd. v. Barthe Estate*, 2015 NSCA 47 (CanLII), at the Summary: para. 5, and pages 3 and 8, Applicant Book of Authorities, TAB 11

prejudicial to this Applicant because the courts so often defer to lawyer's statements where self-litigants are parties:

- the Attorney General asserts that it is clear that in order to fall under the definition of "federal property" pursuant to the *PLTA*, the subject property must first meet the requirements of ss. 2(1) of the *PLTA*, misrepresenting to a busy Court relying on the Attorney General's truthful presentation of relevant legislative provisions, that there is the magic word '*and*' between the two material sections -- ss. 2(1) and 2(3) -- of the definitions of 'federal property'[32] .

- the Attorney General sought to mislead the Court by failing to provide the relevant provision of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50. The Attorney General repeatedly discussed only ss. 3 (b) (i), when the relevant provision in this case is ss. 3 (b) (ii) - a breach of duty attaching to the control of property.[33]

- The Attorney General entirely misled the court in both the Motion Factum and the written Appeal Response by stating that this court in *Halifax (Regional Municipality) v. Canada* indicated that the SOLE purpose of the *PLTA* was to establish a regime of discretionary payments in lieu of taxes for properties owned or occupied by Her Majesty[34], when there is not a single reference to the SOLE purpose of the *PLTA* in that entire decision, nor was that case about ss. 2(3) (a) and (h) of the *PLTA*. In fact, that decision was about the value of property and not remotely relevant to the central issue of the interpretation of ss. 2(3) (a) and (h) of the *PLTA*.

---

[32] Her Majesty's Motion Factum, at para [35] (Vol I, TAB 2 at page 71)
[33] Her Majesty's Motion Factum,at paras 23 and 25, (Vol I, TAB 2 at page 61-86)
[34] Memorandum of Fact and Law of the Respondent, Her Majesty the Queen in Right of Canada, at para 20, (Vol I, TAB 5, at page 167)

- the AG sought to mislead the Court by citing *Ayangma v. Canada*, a Federal Court case that had no similarity to any of the facts or players in the case at bar whatsoever because that decision did not exclude others, such as municipalities, when it held that 'anyone who is employed by the Crown or acts as an agent for the Crown' is a servant of the Crown[35].

- after it removed page 7 of the Statement of Claim from the Motion Record, the Attorney General falsely stated that the Claim pleads that the Municipality is employed by Her Majesty, and that no relief was sought, when not a single pleading referred to the municipality as an employee of Her Majesty[36] and the page removed contained the relief pleadings.

- the Attorney General entirely misrepresented the Applicant's Claim as pleading s. 7 of the *Charter*[37]. **The Applicant did not plead s. 7 of the *Charter*. The Applicant pleaded s. 26**[38], which the Attorney General did not address until her final statement in rebuttal of oral submissions, where she ambushed the Appellant by stating that s. 26 is not a basis for a claim[39], again without citing jurisprudence in support.

- the AG cited *Piedra v. Copper Mesa Mining Corporation,* an entirely unrelated case where the Plaintiff in that case had amended their claim **6** times[40].

---

[35] Her Majesty's Motion Factum, at para 26 (Vol I, TAB 2 at 71)
[36] Her Majesty's Motion Factum, at at para 28, (Vol I, TAB 2, at 74
[37] Her Majesty's Motion Factum, at paras 41 and 42, (Vol I, TAB 2, at 75)
[38] Statement of Claim at para 10 (Vol I, TAB 1 at 54)
[39] Transcript of Appeal Hearing dated September 19th, 2018, Oral Rebuttal of AG (Vol II, TAB 7 at 223)
[40] Her Majesty's Motion Factum, at para 44, (Vol I, TAB 2, at 75)

- the Attorney General cited *Pomerleau* seeking to conflate an entirely irrelevant income tax issue based in a s.7 *Charter* argument with this payment in lieu of taxes, s. 26 action[41].

Issue 2: Did the Courts of both instances abandon the Rule of Law and wholly ignore the doctrine of *stare decisis*, thereby resulting in proceedings that were unfair, unprincipled and not in accordance with the spirit and intent of the *Charter*, the *Interpretation Act*, R.S.C., 1985, c. I-21, Rules of the Federal Court and settled law on the striking of claims, the result of which created permanent barriers to the access of justice for the Applicant and other private property owners, until and unless this Court rectifies the injustice?

29. The public is told that within our system of civil justice, it is not right for a decision-maker to attempt to bend the facts and re-shape the law to fit a particular result and world view. Judges and Masters are bound to go where precedent and other proper emanations of the law (common law, statutes and the Constitution) direct, having regard to the facts. To do what the lower courts have done in the case at bar is an error in principle and just plain wrong.

30. Forty-two years after the International Covenants were ratified and guaranteed by Her Majesty, and thirty-six years after the installation of the *Charter of Rights and Freedoms,* Canadians are still put through distress and legal ordeals by the lower courts -- in fact, to such a degree that the young and the old, the frail and uneducated in law are almost fully deprived of justice and their rights and freedoms through a number of government and court actions and inactions.

(i) Lower Courts ignored prohibition against collateral attacks on legislation

31. In *Heckendorn v. Her Majesty the Queen in Right of Canada*[42], the Federal Court stated at paragraph [18]:

> *"It is **a matter of elementary law that when a statute appears on its face to have been duly passed by a competent legislature, the courts must assume that all things have***

---

[41] Memorandum of Fact and Law of the Respondent, Her Majesty the Queen in Right of Canada, at para 27, (Vol I, TAB 5, at 170)

[42] *Heckendorn v. Canada*, 2005 FC 802 (CanLII) at para 18, Applicants Book of Authorities, TAB 9

> ***been rightly done*** *in respect of its passage through the legislature, and cannot entertain any argument that there is a defect of parliamentary procedure lying behind the Act as a matter of fact."*

32. This Court's decision in *Wilson v. The Queen*[43], at page 6, describes the rule against collateral attack on Parliament's legislation and superior court of record Court decisions: If the Motion Judge does not agree with Parliament or Supreme Court of Canada decisions, the forum to change this is not a Motion to Strike proceeding.

(ii) Actions *ultra vires* the *Interpretation Act*, RSC 1985, c I-21 and principles of statutory interpretation

33. The Justice in the first instance, with whose decision the Federal Court of Appeal agreed, failed to consider the principles of statutory interpretation, even if the motion to strike proceeding was the proper time to interpret unsettled law, which, in the case at bar, was not.

34. On a number of occasions, the Supreme Court of Canada has given guidance on how to approach a problem of statutory interpretation. In *Rizzo & Rizzo Shoes Ltd. (Re)*[44], at paragraph 21, Mr. Justice Iacobucci, speaking for the unanimous Court, endorsed the statement of Elmer Driedger in *Driedger on the Construction of Statutes*, 2nd ed. (Toronto: Butterworths Canada Ltd., 1983) that:

> *Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.*

35. The *Interpretation Act*, RSC 1985, c I-21, ss. 45 (4) [45] prohibits judicial re-construction of an enactment duly passed by Parliament and states that such a re-constructed *Act* cannot be adopted, therefore the decisions of the courts below to impose their own interpretations of unsettled law, without proper analysis and attention to the principles of statutory interpretation and law during a motion to strike are nullities.

---

[43] *Wilson v. The Queen*, [1983] 2 SCR 594, 1983 CanLII 35 (SCC), page 6, Applicants Book of Authorities, TAB 19

[44] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para 21, Applicant Book of Authorities, TAB 15

[45] *Interpretation Act*, RSC 1985, c I-21, ss. 45 (4), (Vol I, at 45)

36. In ***de Guzman v. Canada***[46], at page 5, 6 and 7 and, in the top middle paragraph at page 7, and paragraphs 69, 70 and 75, the Federal Court of Appeal confirmed that Courts must take proper account of the expanding role that the common law has given to international law in the interpretation of domestic law. This aspect of the evolution of the common law is an important part of the background against which the *PLTA* and specifically the definition of "federal property" and ss. 2(1) and 2(3) must be interpreted. International human rights are legal obligations, binding on Canada in the absence of a clearly expressed legislative intention to the contrary. There is no legislative intention to abridge the International Covenants expressed in the *PLTA* or *CLPA*. ***Divito v. Canada***[47], went further, at paragraphs 22 and 25: "***As a treaty to which Canada is a signatory, the ICCPR is binding.*** ". Therefore, there was no reason for the court of first instance, with the approval of the Federal Court of Appeal, to diminish the importance of the *International Covenant on Civil and Political Rights ["ICCPR"]* and *International Covenant on Economic, Social and Political Rights* ["*ICESCR*"] Articles pleaded in the Statement of Claim[48] and to completely disregard ss. 2(1) and 2(3) of the *PLTA*.

37. In ***Corporation of the City of Mississauga v. Canada***[49], at paragraphs [49] - [52], the Federal Court shows that (a) **properties occupied by non-crown parties could in some circumstances meet the definition of "federal properties"** and (b) **the words "*unless otherwise prescribed*" in ss. 2(3)(h) meant the reader should look elsewhere for an enabling provision.** That Court rejected the Crown's interpretation of "*unless otherwise prescribed*" to mean "*unless referred to elsewhere*". In addition, that Court did not remove the word "*unless*" and substitute the word "*and*" to change the intent of the legislation as was done by the lower courts in the case at bar.

38. The Motions Judge also failed to address the existence of the word '*unless*' that *is* found in ss. 2(3); the Federal Court of Appeal upheld this failure. Not only is the word '*unless*' as

---

[46] *de Guzman v. Canada (Minister of Citizenship and Immigration)*, [2006] 3 FCR 655, 2005 FCA 436 (CanLII), at pages 5, 6, 7, and paras. 69, 70 and 75, Applicant Book of Authorities, TAB 6

[47] *Divito v. Canada (Public Safety and Emergency Preparedness), [2013] 3 SCR 157, 2013 SCC 47 (CanLII),* paras 22 and 25, Applicant Book of Authorities, TAB 7

[48] Statement of Claim filed Sept 29th, 2017, paras 8-12, 16, 18, 26 (Vol I, TAB 1)

[49] *Corporation of the City of Mississauga v. Canada (Public Works and Government Services)*, 2011 FC 162 (CanLII), paras 49-52, Applicant Book of Authorities, TAB 4

found in ss. 2(3) a material provision of the *PLTA*[50], but the phrase in ss. 2(1), '***federal property, means, subject to subsection (3)***', is equally material in that it directs the reader to understand that there are other qualifying properties to be considered.

39. Had the word "*and*" been installed in the legislation as the lower courts imply, there would have been no need to itemize the list in ss. 2(3) of the *PLTA* as Parliament did, because all of the 'structures and work' listed in ss. 2(3) (a) and (h) would have been automatically included in ss. 2(1), since there are no exclusions for Crown property.

(iii) Failure to apply the test for striking claims

40. The Federal Court of Appeal erred when it stated that the Appellant was asserting that a motion to strike was prohibited. The Appellant asserted that a Summary Judgment was prohibited in Simplified Actions.[51] The tribunal cited paragraph 17 of this court's decision in *Imperial Tobacco* to restate the test for striking a claim, but did not follow the stated principle, nor consider the Appellant's citations of paragraphs 17 to 21 and 25 of *Imperial Tobacco*[52] that held that a motion to strike a claim is not decided on the basis of evidence or opinion and inference, that the Motion Judge is bound by the doctrine of *"stare decisis"*, and ***"The facts pleaded are taken as true."***, important principles fully disregarded.

41. In ***Baird v. Canada***[53], at paragraph 28, the Federal Court of Appeal confirmed that it should be *left open to the Trial Judge* to consider, in light of what the evidence shows, whether there was a failure on the part of an authority, such as the municipal treasurer in this case, to

---

[50] *Payments in Lieu of Taxes Act*, RSC 1985, c M-13, ss. 2(1) and 2(3) (Vol I at 46-48)
[51] Decision of Federal Court of Appeal dated Sept 20/18 at para [5] (Vol I at 21)
[52] *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 SCR 45, 2011 SCC 42 (CanLII) at paras 17-21 and 25, Applicants Book of Authorities, TAB 16
[53] *Baird v. Canada*, 1983 CanLII 2946 (FCA), para 28, Applicants Book of Authorities, TAB 1

consider whether their powers should be exercised, if they even had such powers. Yet, the lower court, in a motion to strike proceeding and the Federal Court of Appeal, lent their approval to a municipal treasurer interpreting federal legislation *ultra vires*, when only a trial judge had the authority to do so.

42. **IF the existence of ICCPR as a binding law is true, IF it is true that the Applicant's *Charter* rights exist and are protected by law, IF it is true that servitude and slavery are unlawful in Canada, IF it is true that the Applicant and other property owners are held in a form of servitude in the particular circumstances described in the Claim, and IF it is true that municipalities have no authority to IMPOSE taxes or refuse to make PILT applications, then there is a reasonable, if not very good chance of success of the Claim.**

43. Yet the Motion Judge, with the approval of the very court that was to harness its powers to ensure that the Appellant had her day in court -- the Federal Court of Appeal -- utterly failed the Appellant. The courts below took the Applicant's pleadings as entirely *untrue* and ruled the entire Claim was meritless without providing any legal basis in support of their decisions, resulting in this Applicant being refused access to justice on these issues forever.

44. The Federal Court of Appeal went so far as to disregard its own decision in ***Baird v. Canada***[54], at paragraphs [2] [18] [19] and [20], that noted that neither the issues nor the legal authorities can be ignored. In the case at bar, both the human rights issues and the legal authorities were ignored and replaced by opinions, and re-constructed legislation.

45. The Attorney General failed to show how the interpretation of ss. 2(3) (a) and (h) of the *PLTA* had already been settled, thus this is a novel claim with differing interpretations at

---

[54] *Baird v. Canada*, 1983 CanLII 2946 (FCA), paras [2] [18] [19] and [20], Applicants Book of Authorities, TAB 1

play: striking out is not appropriate[55]. Nor should a motion to strike become the battleground for novel and complex issues to be decided prematurely. The Motion Judge failed to read the actual pleadings, let alone generously, to permit this novel but arguable claim to be tried.

46. The Federal Court of Appeal's decision then gave life to a nullity.

Issue 3: Does a plain and simple reading of the definition of 'Federal Property' in the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13, and the provision 'Properties not included in the Definition of Federal Properties' that creates exceptions to the exclusions to that definition, result in the properties listed in ss. 2(3) (a) and (h) meeting the definition of 'Federal Property' *without* having to be owned and/or occupied by Her Majesty or otherwise be limited by preconditions?

47. The federal *PLTA* was created by Parliament to replace the various provincial Municipal Grants Acts subsequent to Her Majesty guaranteeing the rights and freedoms enumerated in the ICCPR and the ICESCR[56], in 1976.

48. In addition, **s. 17 of Ontario's *Municipal Act*, 2001[57] prohibits the municipal imposition of taxes on individual property owners** and it too was drafted to conform to the intent of the *Charter*.

49. Section 26 of the *Charter* does not deny the existence of other rights that exist in Canada, even if they are not specified in the *Charter* itself[58]. One of the rights not specified in the *Charter* that was signed and guaranteed by Her Majesty in 1976 is stated in Part I, Article 1.2 of both the ICCPR and ICESCR:

> ***All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice*** ... [emphasis added]

---

[55] *Rewega v. Rewega*, 2005 ABCA 365 (CanLII), para 9, Applicant Book of Authorities, TAB 14

[56] *International Covenant on Economic, Social and Political Rights, Article 1.2* Applicants Book of Authorities, (Vol I, at 46)

[57] *Municipal Act*, 2001 (Ontario), s. 17, (Vol I, at 46)

[58] *The Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, Part I, Charter of Rights and Freedoms, section 26onstitution Act, s. 26, (Vol I, at 51)

50. Thus, the nexus between the International Covenants on forced disposal of income and servitude, section 26 of the *Charter*, the replacement of the various *Municipal Grants Acts* with the *PLTA* that expanded the list of properties that meet the definition of 'federal property', and the prohibition against imposing taxes in the *Municipal Act*, 2001, support the Applicant's interpretation that results from a plain and simple reading of the *PLTA* definition of 'Federal Property', (see Fold-Out Chart)[59] and does not support lower courts' inference that Parliament could not have intended the *PLTA* to apply to any but Crown-owned and occupied property[60].

51. The arbitrary assertions by the municipal treasurer, the court of first instance and the Federal Court of Appeal that the SOLE purpose of the *PLTA* does not allow the *PLTA* to apply to the types of private properties listed in ss. 2(3) (a) and (h) of that statute, unless they are also owned by Her Majesty is not supportable. There is not a single reference to the SOLE purpose of the *PLTA* to be found in the entire *PLTA* itself that seeks to apply the legislation only to Her Majesty's real estate.

52. The Federal Court of Appeal lent its approval to the misrepresentation of this court's decision in *Halifax (Regional Municipality) v. Canada (Public Works and Government Service[61]s.* Outside of confirming that the Federal Crown makes discretionary payments under the *PLTA*, that decision does not consider private property or ss. 2(3) (a) and (h) of the *Act,* and in fact is focused on a dispute over property values.

53. While there is no right to a PILT, as noted by the Federal Court in ***City of Montreal v. Attorney General of Canada***[62], at paragraph 43, once the question of law regarding ss. 2(1) and 2(3) of the *PLTA* is decided, the Municipality can expect the Minister to make the

---

[59] FOLD-OUT Chart (Vol II, TAB 8 at 246)
[60] Reasons for Judgment of Motions Judge, paras 8, 11, 12 (Vol I, at 12-13)
[61] *Halifax (Regional Municipality) v. Canada (Public Works and Government Services), [2012] 2 SCR 108, 2012 SCC 29 (CanLII),* Applicants Book of Authorities, TAB 8
[62] *Montréal (City) v. Canada (Attorney General),* 2007 FC 702 (CanLII), para 43, Applicant Book of Authorities, TAB 10

payment if the municipality's application complies with *PLTA* regulations and on the form prescribed.

54. The Federal Court, the Federal Court of Appeal and the municipality all lack jurisdiction and authority to decide for the Minister whether or not to grant an application for payment in lieu of taxes ["PILT"] pursuant to of ss. 3(1) of the *PLTA*[63]. Neither, the courts nor the municipality are given the authority to make pre-determinations as to the applicability of the *PLTA* to private property that meets the criteria enumerated in ss. 2(3) (a) and (b) of the *PLTA* or to change the legislative wording to support their desired outcomes.

PART IV – SUBMISSIONS WITH RESPECT TO COSTS

55. This application for leave to appeal (a) is brought by a senior of advanced years, reliant on a basic pension, against whom a cost order would impose even greater hardships and (b) is public interest litigation advanced on behalf of all individual private property owners in Canada. For these reasons the Applicant requests that costs be awarded to her, in any event of the cause.

PART V – ORDER OR ORDERS SOUGHT

56. That leave to appeal be granted with costs awarded to the Applicant in any event of the cause.

Dated at Ottawa, Ontario [redacted]

[redacted]

Self-Represented Litigant

---

[63] *Payments in Lieu of Taxes Act*, RSC 1985, c M-13, ss. 3(1) (Vol I, at 50)

PART VI --TABLE OF AUTHORITIES

Used in Paragraph #

Legislative enactments

Crown Liability and Proceedings Act, RSC 1985, c C-50, s. 3 ... 15, 27, 36

Interpretation Act, R.S.C., 1985, c. I-21, s. 45(4) 2, 33, 35

Municipal Act, 2001, S.O. 2001, c. 25, s. 17 ..... 3, 12, 48, 50

Payments in Lieu of Taxes Act, RSC 1985, c M-13, ss. 3(1) ss. 2(1), 2(3), 2.1 ..... 1, 4, 9, 10, 15, 17, 19, 20, 27, 36, 38, 39, 45, 47, 50-54

The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, Part I, Charter of Rights and Freedoms, s. 26 ..... 2, 8, 20, 21, 22, 27, 30, 42, 48-50

Case Law

TAB #

1. *Baird v. Canada*, 1983 CanLII 2946 (FCA), paras [2] [18] - [20], [28] 41, 44
2. *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 SCR 214, 1988 CanLII 3 (SCC) at paras 25, 26 25
3. *Beale v. Beale,* 1929 CanLII 112 (SK CA), para 12 26
4. *Corporation of the City of Mississauga v. Canada (Public Works and Government Services)*, 2011 FC 162 (CanLII), paras 49-52 37
5. *Davids v. Davids,* 1999 CanLII 9289 (ON CA), para 36 23
6. *de Guzman v. Canada (Minister of Citizenship and Immigration),* [2006] 3 FCR 655, 2005 FCA 436 (CanLII), at pages 5, 6 and 7 36
7. *Divito v. Canada (Public Safety and Emergency Preparedness),* [2013] 3 SCR 157, 2013 SCC 47 (CanLII), paras 22 and 25 36
8. *Halifax (Regional Municipality) v. Canada (Public Works and Government Services),* [2012] 2 SCR 108, 2012 SCC 29 (CanLII) ..... 27, (pt 3,4,52)
9. *Heckendorn v. Canada*, 2005 FC 802 (CanLII), para 18 31
10. *Montréal (City) v. Canada (Attorney General),* 2007 FC 702 (CanLII), para 43 53

11. *National Bank Financial Ltd. v. Barthe Estate,* 2015 NSCA 47 (CanLII), at the Summary: para. 5, and pages 3 and 8 26

12. *Ornat v. Stalona,* 1996 CanLII 1229 (ON CA), paras 2 and 3 26

13. *Pintea v. Johns,* [2017] 1 SCR 470, 2017 SCC 23 (CanLII), para [4] 24

14. *Rewega v. Rewega*, 2005 ABCA 365 (CanLII), para 9 45

15. *Rizzo & Rizzo Shoes Ltd. (Re),* 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para 21 34

16. *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 SCR 45, 2011 SCC 42 (CanLII) at paras 17-21 and 25 40

17. *Sahota v. Sahota*, 2015 CanLII 20903 (ON SCDC), paras [6], [7] 42

18. *Vilardell v. Dunham*, 2013 BCCA 65 (CanLII) at para 15 14

19. *Wilson v. The Queen*, [1983] 2 SCR 594, 1983 CanLII 35 (SCC), page 6 32

Articles

20. *Land ownership in Canada (Statistics)* – Wikipedia 11

PART VII – LEGISLATION

Crown Liability and Proceedings Act **R.S.C., 1985, c. C-50**	***Loi sur la responsabilité civile de l'État et le contentieux administrative*** **L.R.C. (1985), ch. C-50**
Liability 3 The Crown is liable for the damages for which, if it were a person, it would be liable (a) in the Province of Quebec, in respect of (i) the damage caused by the fault of a servant of the Crown, or (ii) the damage resulting from the act of a thing in the custody of or owned by the Crown or by the fault of the Crown as custodian or owner; and (b) in any other province, in respect of (i) a tort committed by a servant of the Crown, or (ii) a breach of duty attaching to the ownership, occupation, possession or control of property. R.S., 1985, c. C-50, s. 3; 2001, c. 4, s. 36	**Responsabilité** 3 En matière de responsabilité, l'État est assimilé à une personne pour : a) dans la province de Québec : (i) le dommage causé par la faute de ses préposés, (ii) le dommage causé par le fait des biens qu'il a sous sa garde ou dont il est propriétaire ou par sa faute à l'un ou l'autre de ces titres; b) dans les autres provinces : (i) les délits civils commis par ses préposés, (ii) les manquements aux obligations liées à la propriété, à l'occupation, à la possession ou à la garde de biens. L.R. (1985), ch. C-50, art. 3; 2001, ch. 4, art. 36

Interpretation Act**, R.S.C., 1985, c. I-21**	***Loi d'interprétation,*** **L.R.C. (1985), ch. I-21**
Judicial construction not adopted 45(4) A re-enactment, revision, consolidation or amendment of an enactment shall not be deemed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language. R.S., c. I-23, s. 37	**Absence de con„rmation de l'interprétation judiciaire** 45(4) La nouvelle édiction d'un texte, ou sa révision, refonte, codification ou modification, n'a pas valeur de confirmation de l'interprétation donnée, par décision judiciaire ou autrement, des termes du texte ou de termes analogues. S.R., ch. I-23, art. 37

International Covenant on Civil and Political Rights, 1976

Article 1.2 All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Article 8.2 No one shall be held in servitude.

International Covenant on Economic Social and Cultural Rights, 1976

Article 8.2 No one shall be held in servitude.

Municipal Act, 2001, S.O. 001,c. 25

Restrictions, financial matters

17 (1) Sections 9, 10 and 11 do not authorize a municipality to,

(a) impose taxes;

(b) borrow or invest money or sell debt;

(c) incur debt without borrowing money for the purpose of obtaining long-term financing of any capital undertaking;

(d) enter into agreements for the purpose of minimizing costs or financial risk associated with the incurring of debt;

(e) make a grant or a loan;

(f) take any other prescribed financial action;

(g) become a bankrupt under the *Bankruptcy and Insolvency Act* (Canada); or

(h) as an insolvent person, make an assignment for the general benefit of creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada) or make a proposal under section 50 of that Act. 2006, c. 32, Sched. A, s. 13.

Regulations

(2) The Minister may make regulations prescribing financial actions for the purpose of clause (1) (f). 2006, c. 32, Sched. A, s. 13.

Payments in Lieu of Taxes Act, R.S.C., 1985, c. M-13	**Loi sur les paiements versés en remplacement d'impôts, L.R.C. (1985), ch. M-13**
2 (1) In this Act, **department** means (a) any department named in Schedule I to the Financial Administration Act, (a.1) any division or branch of the federal public administration named in Schedule I.1 to that Act, (a.2) any commission under the Inquiries Act designated as a department for the purposes of the Financial Administration Act, (b) any corporation established by or under an Act of Parliament or performing a function on behalf of the Government of Canada included in Schedule I to this Act; (ministères) **federal property** means, subject to subsection (3), (a) real property and immovables owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown, (b) real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation, (c) immovables held under emphyteusis by Her Majesty in right of Canada that are under the administration of a minister of the Crown, (d) a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a	2 (1) Les définitions qui suivent s'appliquent à la présente loi. **propriété fédérale** Sous réserve du paragraphe (3) : a) immeuble ou bien réel appartenant à Sa Majesté du chef du Canada dont la gestion est confiée à un ministre fédéral; b) immeuble ou bien réel appartenant à Sa Majesté du chef du Canada et relevant, en vertu d'un bail, d'une personne morale mentionnée aux annexes III ou IV; c) immeuble dont Sa Majesté du chef du Canada est emphytéote et dont la gestion est confiée à un ministre fédéral; d) bâtiment appartenant à Sa Majesté du chef du Canada, dont la gestion est confiée à un ministre fédéral mais qui est situé sur un terrain non imposable qui n'appartient pas à Sa Majesté du chef du Canada ou qui est contrôlé et administré par Sa Majesté du chef d'une province; e) immeuble ou bien réel occupé ou utilisé par un ministre fédéral et administré et contrôlé par Sa Majesté du chef d'une province. (federal property) **Exclusions** : propriété fédérale (3) Sont exclus de la définition de propriété fédérale au paragraphe (1) : a) les constructions ou ouvrages, *sauf* : (i) les bâtiments dont la destination première est d'abriter des êtres humains, des animaux, des plantes, des

province, and (e) real property and immovables occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province; (propriété fédérale) frontage or area tax means any tax levied on the owners of real property or immovables that is computed by applying a rate to all or part of the assessed dimension of the property and includes any tax levied on the owners of real property or immovables that is in the nature of a local improvement tax, a development tax or a redevelopment tax, but does not include a tax in respect of mineral rights; **Property not included in the definition federal property** (3) For the purposes of the definition federal property in subsection (1), federal property does not include (a) any structure or work, *unless it is* (i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property, (ii) an outdoor swimming pool, (iii) a golf course improvement, (iv) a driveway for a single-family dwelling, (v) paving or other improvements associated with employee parking, or (vi) an outdoor theatre; (b) any structure, work, machinery or equipment that is included in Schedule II; (c) any real property or immovable developed and used as a park and situated within an area defined as urban by Statistics Canada, as of the most recent census of the population of Canada taken by Statistics Canada, other than national parks of Canada, national marine parks of Canada, national park reserves of Canada, national marine park reserves of Canada,	installations, des biens meubles ou des biens personnels, (ii) les piscines extérieures, (iii) les améliorations apportées aux terrains de golf, (iv) les entrées des maisons individuelles, (v) l'asphaltage des stationnements pour employés et les autres améliorations s'y rattachant, (vi) les amphithéâtres de plein air; b) les constructions, les ouvrages, les machines ou le matériel mentionnés à l'annexe II; c) les immeubles et les biens réels aménagés en parc et utilisés comme tels dans une zone classée comme « urbaine » par Statistique Canada lors de son dernier recensement de la population canadienne, sauf les parcs nationaux du Canada, les parcs marins nationaux du Canada, les réserves à vocation de parc national du Canada ou de parc marin national du Canada, les lieux historiques nationaux, les champs de bataille nationaux et les canaux historiques; d) toute réserve indienne ou toute terre visée à l'un des alinéas c) à e) de la définition de autorité taxatrice au paragraphe 2(1), sauf la partie : (i) où loge une personne n'y vivant que parce qu'elle est employée par Sa Majesté du chef du Canada, (ii) qui est occupée par un ministre fédéral; e) les immeubles et les biens réels pour lesquels aucun titre de concession n'a été délivré par la Couronne, sauf s'ils sont, selon le cas : (i) destinés à un usage particulier sous le régime d'une loi fédérale, (ii) utilisés par des Indiens, au sens de la Loi sur les Indiens, ou des

national historic sites of Canada, national battlefields or heritage canals; (d) any Indian reserve, or any land referred to in any of paragraphs (c) to (e) of the definition taxing authority in subsection 2(1), except for the part (i) that is occupied for residential purposes by an employee of Her Majesty in right of Canada who would not, but for that employment, live on that reserve or land, or (ii) that is occupied by a minister of the Crown; (e) any real property or immovable for which an original Crown grant has not issued, except to the extent that it (i) is designated for a specific use by or under an Act of Parliament, or (ii) is used by an Indian within the meaning of the Indian Act or an Inuk and is prescribed under paragraph 9(1)(e); (f) any real property for which an original Crown grant has not issued, except to the extent that it (i) is reserved in the records of the Department of Indian Affairs and Northern Development at Whitehorse or Yellowknife for the use of a department or an agency of the Government of Canada, and is either situated within a municipality or, in the case of real property that is not situated within a municipality, used in accordance with the reservation, or (ii) is situated within a municipality and is reserved in the records of the Department of Indian Affairs and Northern Development at Whitehorse or Yellowknife for the use of an Indian within the meaning of the Indian Act or an Inuk; (g) any real property or immovable developed or used as a public highway that, in the opinion of the Minister, does not provide, as its primary function, immediate access to real property or immovables owned by Her Majesty in right of Canada; or	Inuit et identifiés conformément à l'alinéa 9(1)e); f) les biens réels pour lesquels aucun titre de concession n'a été délivré par la Couronne, sauf s'ils sont, selon le cas : (i) affectés, dans les registres de Whitehorse ou de Yellowknife du ministère des Affaires indiennes et du Nord canadien, à l'usage d'un ministère ou organisme fédéral et situés dans une municipalité ou, hors des municipalités, utilisés conformément aux conditions de l'affectation, (ii) situés dans une municipalité et affectés, dans les registres de Whitehorse ou de Yellowknife du ministère des Affaires indiennes et du Nord canadien, à l'usage des Indiens, au sens de la Loi sur les Indiens, ou des Inuit; g) les immeubles et les biens réels aménagés ou utilisés comme voies publiques et n'ayant pas, selon le ministre, pour fonction première de permettre l'accès direct à un immeuble ou à un bien réel appartenant à Sa Majesté du chef du Canada; h) les immeubles et les biens réels pris à bail ou occupés par une personne ou par un organisme autre qu'un ministère, constitué ou non en personne morale, sauf exception prévue par règlement du gouverneur en conseil. **Objet** Objet 2.1 La présente loi a pour objet l'administration juste et équitable des paiements versés en remplacement d'impôts. 2000, ch. 8, art. 4 **Pouvoir de verser des paiements** Paiements

(h) unless otherwise prescribed, any real property or immovable leased to or occupied by a person or body, whether incorporated or not, that is not a department.	3 (1) Le ministre peut, pour toute propriété fédérale située sur le territoire où une autorité taxatrice est habilitée à lever et à percevoir l'un ou l'autre des impôts mentionnés aux alinéas a) et b), et sur réception d'une demande à cet effet établie en la forme qu'il a fixée ou approuvée, verser sur le Trésor un paiement à l'autorité taxatrice : a) en remplacement de l'impôt foncier pour une année d'imposition donnée; b) en remplacement de l'impôt sur la façade ou sur la superficie.
Purpose of Act **Purpose** 2.1 The purpose of this Act is to provide for the fair and equitable administration of payments in lieu of taxes. 2000, c. 8, s. 4.	
Authority to make payments 3 (1) The Minister may, on receipt of an application in a form provided or approved by the Minister, make a payment out of the Consolidated Revenue Fund to a taxing authority applying for it (a) in lieu of a real property tax for a taxation year, and (b) in lieu of a frontage or area tax in respect of federal property situated within the area in which the taxing authority has the power to levy and collect the real property tax or the frontage or area tax.	
Regulations by Governor in Council 9 (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without restricting the generality of the foregoing, may make regulations (b) prescribing criteria for the purposes of paragraph (b) of the definition other attribute in subsection 2(1); (e) prescribing the real property and immovables referred to in paragraph 2(3)(h) that are to be included in the definition federal property in subsection 2(1)	**Règlements du gouverneur en conseil** 9 (1) Le gouverneur en conseil peut, par règlement, prendre toutes mesures utiles à l'application de la présente loi et, notamment : b) fixer les critères ayant valeur d'autre élément, pour l'application de l'alinéa b) de la définition de cette expression au paragraphe 2(1) e) préciser les immeubles et les biens réels visés à l'alinéa 2(3)h) qui sont à classer comme propriétés fédérales au sens du paragraphe 2(1)

CONSTITUTION ACT, 1982 (80) PART I CANADIAN CHARTER OF RIGHTS AND FREEDOMS

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.	

FEDERAL COURT RULES SOR/98-106
RÈGLES DES COURS FÉDÉRALES, DORS/98-106

Motion for summary judgment or summary trial 297 No motion for summary judgment or summary trial may be brought in a simplified action. SOR/2009-331, s. 4.	**Requête en jugement sommaire ou en procès sommaire** 297 Aucune requête en jugement sommaire ou en procès sommaire ne peut être présentée dans une action simplifiée. DORS/2009-331, art. 4

Supreme Court of Canada
Registry

Cour suprême du Canada
Greffe

March 22, 2019

[redacted]ue

Attention: [redacted]

Dear Ms. [redacted]

RE: [redacted]
v.
Her Majesty the Queen
File No.: [redacted]

Enclosed please find a copy of the Judgment of this Court in the above proceedings.

If you have any questions, please do not hesitate to get in touch with the Registry of the Supreme Court of Canada at 1-844-365-9662 or registry-greffe@scc-csc.ca.

Yours truly,

Julie Laverty
Director, Registry Branch

Encl.

c.c.: Ms. Jennifer Bond
Mr. Christopher Rupar

301, rue Wellington Street, Ottawa, Ontario K1A 0J1
Tel./Tél. : 613-996-8666 • 1 844 365-9662 • Fax/Téléc. : 613-996-9138
Internet : www.scc-csc.ca • E-mail/Courriel : registry-greffe@scc-csc.ca

Supreme Court of Canada

Cour suprême du Canada

No. [redacted]

[redacted]

BETWEEN:

[redacted]

Applicant

- and -

Her Majesty the Queen

Respondent

JUDGMENT

The motion for a stay of execution of the order for costs made by the Federal Court of Appeal and for other relief is dismissed. The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-[redacted], 20[redacted], dated September [redacted] is dismissed with no order as to costs.

ENTRE :

[redacted]

Demanderesse

- et -

Sa Majesté la Reine

Intimée

JUGEMENT

La requête visant à obtenir un sursis d'exécution de l'ordonnance relative aux dépens rendue par la Cour d'appel fédérale et autre redressement est rejetée. La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro [redacted] est rejetée sans ordonnance quant aux dépens.

C.J.C.
J.C.C.