Federal Court Cour fédérale

**Date: 20250619**

**Docket: T-354-25**

**Citation: 2025 FC 1112**



**Toronto, Ontario, June 19, 2025**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**ERIC BUNN**

**Plaintiff**
**(Responding Party)**

**and**

**SAGKEENG FIRST NATION**

**Defendant**
**(Moving Party)**

# ORDER AND REASONS

## I. OVERVIEW

[1] The Defendant in this matter brings a motion for the following:

1) An Order pursuant to Rules 221(1)(a) and (f) of the *Federal Court Rules* striking out the Plaintiff's Statement of Claim in its entirety, without leave to amend;

2) An Order that the costs of this Motion be payable forthwith by the Plaintiff to the Defendant on a solicitor-and-client basis;

3) In the alternative, if above relief is not granted, an Order extending the time for the Defendant to serve and file its Statement of Defence.

[2] For the following brief reasons, this motion will be granted.



## II. BACKGROUND

### A. *Facts*

[3] The Plaintiff, Eric Bunn, has filed a Statement of Claim against the Defendant, Sagkeeng First Nation [SFN], related to an alleged contingency fee agreement between the parties, purportedly signed in May 2000. The alleged agreement, which has not been produced by the Plaintiff, was for services related to SFN's Treaty Land Entitlement [TLE] Claim. Mr. Bunn claims entitlement to 15% of any settlement proceeds obtained by SFN from the TLE Claim.

[4] SFN is a band within the meaning of the *Indian Act*, located in Treaty 1 territory in Manitoba. The Plaintiff, Mr. Bunn, is a member of SFN who worked for the Band in a number of capacities, including as legal counsel in the early 2000s.

[5] On May 17, 2000, SFN submitted a Treaty Land Entitlement Claim to the Minister of Indian and Northern Affairs through the Specific Claims Branch, seeking compensation from Canada for SFN's outstanding entitlement to reserve lands under Treaty 1.

[6] Mr. Bunn was involved in the early stages of the TLE Claim and purported to act as legal counsel to the Band during that time.

[7] In or around 2006, discussions took place between Mr. Bunn and SFN's then-Chief and Council regarding a formal contract for his legal services in relation to the TLE Claim. A draft agreement was prepared, but appears never to have been finalized or signed. It contemplated: a) payment to Mr. Bunn upon completion of certain benchmarks leading to the Minister's acceptance of the TLE Claim for negotiation; b) a $60,000 annual fee during the negotiation phase and a "bonus" of 2% of the final settlement amount; and c) a dispute resolution clause for disputes related to Mr. Bunn's legal fees.

[8] In 2007, SFN changed legal counsel for the TLE Claim, formally retaining Maurice Law by 2008.

[9] In April 2024, SFN accepted an offer in principle from Canada to settle the TLE Claim, subject to various steps, which include the execution of a Final Settlement Agreement, the establishment of a Settlement Trust, and a community referendum. This is all to say that the offer, in the amount of $100,000,000, has not yet been ratified, and settlement funds have not been distributed.

[10] On January 13, 2025, Mr. Bunn commenced the underlying action. In his brief Statement of Claim, he alleges that, on the same day that SFN's then-Chief and Council submitted the TLE Claim (May 17, 2000), he entered into an agreement with SFN, through Chief and Council. As noted above, according to the Plaintiff, this agreement set out that he would receive 15% of any future settlement amount paid to SFN by Canada as a result of the TLE Claim. In the Statement of Claim, Mr. Bunn seeks the following relief:

- He “would like to be compensated for the work that he put into the claim and which Sagkeeng Chief & Council agreed he should be paid.”

- He “would like the Court to determine there was a contract between Eric Bunn and the Sagkeeng First Nation.”

- He would like “the court to impose an injunction on the Sagkeeng Chief and Council from utilizing any of the money from the Treaty Land Settlement Agreement until this action has been decided.”



## III. ISSUES

[11] The Defendants submit that the Plaintiff’s Statement of Claim should be struck in its entirety, pursuant to R.221(1)(a) and/or R.221(1)(a) of the *Federal Court Rules*. They argue the Claim discloses no reasonable cause of action, and/or that it is an abuse of process. The Defendants also seek solicitor-client costs.

## IV. RELEVANT PROVISIONS

### A. *Federal Court Rules*

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| **Motion to strike** | **Requête en radiation** |
| **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 | **221 (1)** À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d’un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas : |
| **(a)** discloses no reasonable cause of action or defence, as the case may be, | **a)** qu’il ne révèle aucune cause d’action ou de défense valable; |
| **(b)** is immaterial or redundant, | **b)** qu’il n’est pas pertinent ou qu’il est redondant; |

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| **(c)** is scandalous, frivolous or vexatious, | **c)** qu'il est scandaleux, frivole ou vexatoire; |
| **(d)** may prejudice or delay the fair trial of the action, | **d)** qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder; |
| **(e)** constitutes a departure from a previous pleading, or | **e)** qu'il diverge d'un acte de procédure antérieur; |
| **(f)** is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly. | **f)** qu'il constitue autrement un abus de procédure. Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence. |



## V. ANALYSIS

[12] This motion may be dispensed with simply. In short, the Statement of Claim discloses no reasonable cause of action because this Court does not have jurisdiction to consider the contract dispute that lies at the core of the Plaintiff's claim.

[13] As noted by Justice Pentney in *Fitzpatrick v Codiac Regional RCMP Force, District 12, and Her Majesty the Queen*, 2019 FC 1040 (at para 14), the law governing a motion to strike is intended to achieve a balance between ensuring access to the courts, while avoiding the burdens associated with claims that are "doomed from the outset."

[14] The test on a motion to strike is well-established. To strike a statement of claim it must be plain and obvious, assuming that the facts pleaded are true, that the pleading discloses no reasonable cause of action: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17 [*Imperial Tobacco*]). The threshold to strike a claim is high, and the matter must proceed to trial where a reasonable prospect of success exists.

[15] This test does not change where the alleged "fundamental defect" in a statement of claim is jurisdictional: the lack of jurisdiction must be plain and obvious to justify striking out a pleading: *Hodgson v Ermineskin Indian Band No. 942*, 2000 CanLII 15066 at para 10; *Suss v Canada*, 2024 FC 137 at para 6.



[16] In determining whether it is plain and obvious that there is lack of jurisdiction, the Court must apply another test, that being the test to determine whether the Federal Court has jurisdiction over a particular subject, as first set out in ITO International Terminal Operators Ltd. v Miida Electronics Inc., 1986 CanLII 91 (SCC), [1986] 1 S.C.R. 752 at 766, and later affirmed in Windsor (City) v Canadian Transit Co., 2016 SCC 54 [Windsor], at para 34 (the "ITO-Windsor Test"). Under this test, the Federal Court's jurisdiction is not engaged *unless*:

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

[17] In evaluating whether pleadings fall under the Federal Court's jurisdiction, it is essential to properly assess, without undue rigidity or permissiveness, the Plaintiff's actual objectives, as articulated in the Statement of Claim. As the Federal Court of Appeal noted in *Domtar Inc. v Canada (Attorney General)*, 2009 FCA 218, at para 28 (and cited with approval in *Windsor* at para 26), the essential nature of the claim must be determined on "a realistic appreciation of the practical result sought by the claimant."

[18] Applying the above to the facts at hand, it is clear to me that the Statement of Claim in this case was entirely confined to the Plaintiff's assertion that he has a valid and subsisting contract with SFN, and that, with the offer in principle to settle the TLE Claim, he is now owed compensation under this contract. I say this is clear because this is explicitly the relief requested in the Plaintiff's Statement of Claim.

[19] I should note that, in addition to his desire to obtain compensation, Mr. Bunn also asserts some governance concerns with respect to SFN, and in particular with respect to its spending plans. However, I find this concern also falls squarely within Mr. Bunn's contractual dispute with the Defendant. As Mr. Bunn states in the Statement of Claim, he would like the Court to impose an injunction on SFN "until this action has been decided." In other words, his concern is that the Band's spending plans will undermine his ability to recoup funds related to his claim under the alleged contract. At its core, I am convinced that the Plaintiff's claim relates to an allegation that the Defendants have breached what is properly understood as a contingency fee contract between the parties. I would reiterate here that the Defendant disputes that such a contract has ever existed, and the Plaintiff has not provided the contract, despite including many other documents in his responding motion materials.

[20] Having characterized the Plaintiff's claim as being related to his alleged contract with SFN, the question becomes whether this subject matter falls under the Federal Court's jurisdiction. In my view, it is plain and obvious, even on a generous reading of the Statement of Claim, that it does not. In arriving at this finding, I agree with the Defendant that this case is largely analogous to the recent decision of this Court in *Windsun Energy Corp. v Cat Lake First Nation*, 2022 FC 1505 [*Windsun*], which also involved a contractual dispute between a service

provider and a First Nations band. In determining that the statement of claim in that case did not disclose a reasonable cause of action, the Court first found that the dispute did not involve a claim arising out of a contract with or on behalf of the Crown. As such, the Court's jurisdiction under section 17 of the *Federal Courts Act* [the *Act*] was not engaged. The same is true in this case.

[21] Next, the Court in *Windsun* noted that there was no suggestion that the Statement of Claim implicated other explicit grants of jurisdiction set out in the *Act*, such as those found at sections 23 or 26. Similarly, the Plaintiff in this case has pointed to no other authority under the *Act* that could, even conceivably, extend jurisdiction to the contractual dispute he has outlined in his Statement of Claim.

[22] In *Windsun*, the Plaintiff also argued that the Court had jurisdiction to hear the matter under various provisions of the *Indian Act*. Mr. Bunn has not made such arguments, at least in relation to his contractual claims. I would note that Mr. Bunn did reference the *Indian Act* in his motion materials, but these remarks were in relation to the SFN's community consultation process, which has nothing to do with the claims enumerated in the Statement of Claim.

[23] As a result of the above, I have concluded that the Plaintiff's Statement of Claim does not satisfy the first part of the *ITO-Windsor Test*. Put differently, in my view it is plain and obvious that there is no statutory grant of jurisdiction for this Court to hear and determine Mr. Bunn's claims against SFN. I am also satisfied that the flaws contained in the Statement of Claim are structural and may not be remedied by amendment. As a result, I must grant this motion and order that the Statement of Claim be struck, with no leave to amend.

## VI. COSTS

[24] The Defendant seeks an order for costs of this motion, payable forthwith by the Plaintiff to the Defendant on a solicitor-and-client basis. Globally, this translated to a request for costs in the amount of $7,000.

[25] As the Defendant has been successful in this motion, I agree that an order of costs is warranted. However, in the exercise of my discretion, I will limit those costs to $3,000, all inclusive.

**ORDER in T-354-25**

**THIS COURT ORDERS that**:

1. The Defendant Sagkeeng First Nation's motion to strike is granted.

2. The Plaintiff Eric Bunn's Statement of Claim is struck without leave to amend, and this proceeding is dismissed.

3. The Plaintiff, Eric Bunn, shall pay costs to the Defendant in the amount of $3,000 forthwith.

"Angus G. Grant"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-354-25 |
| **STYLE OF CAUSE:** | ERIC BUNN v SAGKEENG FIRST NATION |
| **PLACE OF HEARING:** | HELD BY WAY OF VIDEOCONFERENCE |
| **DATE OF HEARING:** | JUNE 16, 2025 |
| **ORDER AND REASONS:** | GRANT J. |
| **DATED:** | JUNE 19, 2025 |

**APPEARANCES:**

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| Eric Bunn (Self-Represented) | FOR THE PLAINTIFF (Responding Party) |
| Megan E. Young | FOR THE DEFENDANT (Moving Party) |

**SOLICITORS OF RECORD:**

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|---|---|
| Cochrane Sinclair LLP<br>Vancouver, British Columbia | FOR THE DEFENDANT (Moving Party) |