Federal Court Cour fédérale

Date: 20240618

Docket: T-2315-23
Citation: 2024 FC 930

Vancouver, British Columbia, June 18, 2024

PRESENT: Madam Associate Judge Kathleen Ring

BETWEEN:

JAVIER PASCUET

Plaintiff

and

HIS MAJESTY THE KING IN RIGHT OF CANADA,
ATTORNEY GENERAL OF CANADA,
SKYSERVICE BUSINESS AVIATION INC., and SKY SERVICE F.B.O. INC.

Defendants

JUDGMENT

[1] This is a motion in writing on behalf of two of the Defendants, Skyservice Business Aviation Inc. and Sky Service F.B.O. Inc. [collectively, "SkyService"], pursuant to Rules 221 and 369 of the *Federal Courts Rules* [*Rules*], for an Order striking the entirety of the Statement of Claim [the "Statement of Claim" or "Claim"] as against SkyService on the basis that it discloses no reasonable cause of action within the Federal Court's jurisdiction, and dismissing the action against SkyService without leave to amend.

[2] Mr. Pascuet opposes the motion. He submits that the Federal Court has jurisdiction to determine the Claim against SkyService, and he has pled a reasonable cause of action against these two Defendants.

[3] The Claim raises issues with SkyService's mandatory COVID-19 vaccination policy. Before disposing of the motion, I issued a Direction on April 9, 2024 inviting the parties to file further written representations on the relevance, if any, of this Court's recent decision in *Albert et al v. Canada Post Corporation*, 2024 FC 420 [*Albert*] which involved Canada Post's mandatory vaccination practice. SkyService and Mr. Pascuet both filed supplemental submissions. Mr. Pascuet made the following concession on page 2 of his supplemental submissions:

> 6. The plaintiff does however acknowledge that there is insufficient proximity between Skysearch and Canada for Skysearch to be deemed a government actor for the purposes of the Charter. Nor can any of the Charter claims be reasonably maintained against Canada. For this reason, it is the plaintiff's intention to discontinue as against Canada and to amend the pleading to remove any claims for Charter relief as against Skysearch (sic).

[4] The Defendants, His Majesty the King in Right of Canada and Attorney General of Canada, did not file any written representations on SkyService's motion.

[5] The issues to be decided on this motion are as follows:

(a) Should the Claim be struck as against SkyService on the basis that this Court lacks jurisdiction to hear and determine such a claim?

(b) Should the Claim be struck as against SkyService, in whole or in part, on the basis that the Claim otherwise discloses no reasonable cause of action as against SkyService?

(c) If the Claim is struck, should Mr. Pascuet be granted leave to file an amended Statement of Claim?

(d) If the Claim is not struck, should the Court extend the deadline for SkyService to serve and file its Statement of Defence?

[6] For the reasons that follow, I conclude that the Statement of Claim must be struck as against SkyService, without leave to amend.

I. Preliminary Issue – Mr. Pascuet's Request for an Abeyance

[7] In his responding motion record, Mr. Pascuet proposes that this matter should be held in abeyance pending the outcome of the certification motions in the following three proposed class proceedings before this Court, namely: *Hill et al v. HMK et al* (Court File No. T-1081-23); *Payne et al v. HMK* (Court File No. T-2142-23); and *Burke v. HMK et al* (Court File No.T-2008-23).

[8] Mr. Pascuet says that the claimants in the above-noted proceedings make allegations similar to the ones that SkyService claims the Court lacks jurisdiction to adjudicate. Thus, if the Court grants certification of the tortious claims in those matters, it will effectively deal with the jurisdictional argument being advanced by SkyService on this motion.

[9] I am not prepared to entertain Mr. Pascuet's informal request for an abeyance. In accordance with the Court's *Amended Consolidated General Practice Guidelines* dated December 20, 2023, the requirements to be relieved of the obligation to bring a formal motion include confirmation "that all parties either consent to the request or do not oppose the request" (page 12). Mr. Pascuet has not satisfied that requirement. To the contrary, SkyService opposes the request on the basis that an indeterminate abeyance could lead to significant delay, and that Mr.

Pascuet has not demonstrated that those proceedings will fully resolve all of the issues raised on this motion.

[10] In any event, Mr. Pascuet's submissions in support of the informal request are patently insufficient for the Court to properly assess whether an abeyance is warranted: *Mylan Pharmaceuticals ULC v AstraZeneca Canada, Inc.*, 2011 FCA 312 at para 14; *1395804 Ontario Ltd. (Blacklock's Reporter) v Canada (Attorney General)*, 2016 FC 719 at paras 37 to 60.

II. Mr. Pascuet's Claim Against SkyService

[11] On October 31, 2023, Mr. Pascuet commenced the underlying action against the Federal Crown, the Attorney General of Canada and SkyService seeking declaratory relief and damages for multiple alleged wrongdoings arising from the public health response to the COVID-19 pandemic.

[12] The Statement of Claim alleges that Mr.Pascuet was at all material times an employee of SkyService, and that SkyService is an amalgamation of federally incorporated aviation corporations. Mr.Pascuet states that he is not fully vaccinated against COVID-19, and he is opposed to being required to fully vaccinate.

[13] The Claim alleges that October 6, 2021, the Government of Canada made an announcement that employers in the federally regulated air transportation sector would be required to establish vaccination policies ensuring that their employees were fully vaccinated. According to Mr. Pascuet, the October 6th announcement constituted an "Order" which violated his human rights under the *Canadian Charter of Rights and Freedoms* [*Charter*] and other federal legislation.

[14] The Claim pleads that the "Order" made Skyservice "an agent of the Crown in implementing public health policies on behalf of and for Canada" (para 28), and that SkyService issued a mandatory vaccination policy on October 13, 2021 [Policy] designed to implement the vaccination requirements pursuant to the "Order".

[15] The Claim alleges that the requirement of mandatory vaccination and forced disclosure of his private health information regarding such vaccination status to SkyService, under the threat of administrative and/or disciplinary measures ranging from unpaid leave to termination of employment, constituted human rights and *Charter* violations, and other acts of wrongdoing. Mr. Pascuet says that he declined to attest to his medical status regarding the COVID-19 vaccine, as mandated by the Policy, and he was consequently suspended without pay as of October 31, 2021 and thereafter terminated by SkyService for non-compliance with the Policy.

III. <u>Legal Principles on a Motion to Strike</u>

[16] On a motion to strike out a claim under Rule 221(1)(a) of the *Rules*, the applicable test is whether it is "plain and obvious" that the claim discloses no reasonable cause of action. Another way of putting the test is that the claim has no reasonable prospect of success: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at para 36 [*Hunt*]; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 17, [2011] 3 S.C.R. 45.

[17] The Statement of Claim must be read as generously as possible and must accommodate any inadequacy in the allegations that are clearly the result of deficiencies in the drafting of the document *Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441, at para 14 [*Operation Dismantle*].

[18] All of the facts pleaded, unless patently ridiculous or incapable of proof, must be accepted as proved on a motion to strike a pleading: *Hunt* at paras 33 and 34. This rule does not apply, however, to allegations based on assumptions and speculation: *Operation Dismantle* at pages 486 to 487 and 490 to 491. Moreover, the Court need not accept at face value bare allegations, factual allegations which may be regarded as scandalous, frivolous or vexatious, or legal submissions dressed up as factual allegations: *Carten v. Canada*, 2009 FC 1233 at para 31 [*Carten #1*].

IV. <u>This Court has no Jurisdiction over the Claim against SkyService</u>

[19] The "plain and obvious" test applies to the striking out of 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 pleadings at this preliminary stage: *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54 at para 24 [*City of Windsor*]; *Adelberg v. Canada*, 2024 FCA 106 at para 40.

[20] In order to decide whether the Federal Court has jurisdiction over a claim, it is first necessary to determine the essential nature or character of that claim. After the Court has assessed the essential nature of the claim, the second step is to apply the three-part test for jurisdiction laid out in *ITO-Int'l Terminal Operators v Miida Electronics*, [1986] 1 SCR 752, 28 DLR (4th) 741 at page 766 ["*ITO*" or the "*ITO* test"], as described more fully below: *City of Windsor* at paras 24 to 30 and 34 and 35.

[21] Where an objection is taken to the Court's jurisdiction, the Court must be satisfied that there are facts that support an attribution of jurisdiction. The existence of the necessary jurisdictional facts will normally be found in the pleadings and in the affidavits filed in support of

or in response to the motion: *MIL Davie Inc. v. Société d'Exploitation et de Développement d'Hibernia Ltée (1998),* 226 N.R. 369 at para 8.

A. Essential Nature of the Claim

[22] Although *Windsor* involved a claim alleged to arise under section 23 of the *Federal Courts Act*, this Court has held that the characterization of the essential nature of the claim is also mandatory when the claim is alleged to arise under section 17(5)(b) of that *Act* (as in this case): *Apotex Inc. v. Ambrose*, 2017 FC 487 at para 48.

[23] The essential nature of the claim must be determined on "a realistic appreciation of the practical result sought by the claimant". The Court must "look beyond the words used, the facts alleged and the remedy sought and ensure . . . that the statement of claim is not a disguised attempt to reach before the Federal Court a result otherwise unreachable in that Court": *City of Windsor* at para 26.

[24] SkyService argues that the essential nature of Mr. Pascuet's claim against SkyService is an alleged breach of his employment contract with SkyService and related tort claims arising from SkyService's implementation and enforcement of the Policy.

[25] Mr. Pascuet disputes this characterization of the Claim. In his responding motion record, Mr. Pascuet says that the essential nature of his Claim is "discrimination and the violation of his human rights, arising from Skyservice's duties as an agent of the Crown, in the implementation and enforcement of the Order and the Policy" (Motion Record, pages 9 and 10). However, when Mr.Pascuet's motion materials are read in their entirety, his characterization of the Claim lacks

some clarity as his supplemental submissions state that "[t]his court clearly has concurrent jurisdiction to deal with the wrongful dismissal and tort claims brought against Skysearch" (sic).

[26] Based on my review of the Statement of Claim, it is apparent that Mr. Pascuet has alleged multiple wrongdoings by SkyService. The Claim is not one-dimensional in nature. On the one hand, Mr. Pascuet clearly alleges that SkyService's Policy was discriminatory and violated his *Charter* rights and human rights.

[27] However, he also alleges that SkyService's Policy deprived him of employment opportunities, and "created a hostile and toxic work environment" (para 41). Mr. Pascuet says that he was placed on unpaid leave of absence by SkyService without "authorization within any agreement between the Defendants and the Plaintiff" (para 47), and that his rights under the *Canada Labour Code* were violated. If one considers "the practical result sought" by Mr. Pascuet, damages for loss of income are invariably a significant aspect of the relief sought. Indeed, Mr. Pascuet asserts that he is "entitled to significant damages due to the manner in which SkyService suspended and/or terminated his employment" (para 98).

[28] When the Claim is viewed as a whole, I find that the overarching claim against SkyService is that the issuance and implementation of the workplace Policy by SkyService requiring mandatory vaccination and disclosure of medical information violated Mr. Pascuet's human rights and *Charter* rights, and deprived him of employment opportunities and income due to his suspension and termination for non-compliance with the Policy.

B. The Application of the ITO Test

[29] Having assessed the essential nature of Mr. Pascuet's claim, the next step is to determine whether this Court has jurisdiction to deal with this type of claim as between subject and subject, by applying the following three-part *ITO* test for jurisdiction:

> 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.
> 3. The law on which the case is based must be "a law of Canada" as the phrase is used in section 101 of the *Constitution Act*, 1867.

[30] Mr. Pascuet relies on section 17(5)(b) of the *Federal Courts Act* to satisfy the first part of the *ITO* test. It provides that the Federal Court has concurrent jurisdiction 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" [emphasis added].

[31] There are two ways in which an entity can become an agent of the Crown. First, when the Crown exercises sufficient control over the entity that it can be said to be in *de jure* control, which requires a careful examination of the relationship between the parties. Second, where Parliament has expressly legislated the entity to be an agent: *Karim v Canada (Attorney General)*, 2018 FC 453 at para 42, citing *R. v. Eldorado Nuclear Ltd.*, [1983] 2 S.C.R. 551 at pages 573 to 576 [*Eldorado*].

[32] In advancing his section 17(5)(b) argument, Mr. Pascuet submits that "[t]he Claim as against Skyservice is in their capacity as "amalgamated federally incorporated aviations corporations, governed by the *Canada Business Corporations Act*" (Motion Record, para 20). It is

unclear whether Mr. Pascuet is arguing that Parliament expressly legislated SkyService to be an agent of the Crown by virtue of SkyService being federally incorporated corporations under the *Canada Business Corporations Act* or something else. Either way, this argument is ill-founded. The mere fact that SkyService is comprised of aviation corporations incorporated under the *Canada Business Corporations Act* does not, in itself, make it an "agent of the Crown".

[33] As SkyService has not been legislated as an agent of the Crown, the issue is whether SkyService may arguably be an agent of the Crown under the *de jure* control test. The Supreme Court has stated that the greater the degree of control which the Crown, through its ministers, can exercise over the performance of an entity's duties, the more likely it is that the person will be recognized as a Crown agent. The focus is not on how much independence the entity has in fact, but how much he can assert by reason of the terms of appointment and nature of the official: *Eldorado* at pages 573 and 574. In other words, the concept of "agent of the Crown" in subsection 17(5) of the *Federal Courts Act* requires a *de jure* control as opposed to a *de facto* control: *Carten v. Canada*, 2010 FC 857 at para 47.

[34] Mr. Pascuet argues that SkyService became an agent of the Crown under the terms of the "Order". He submits that SkyService exercised little to no discretion or independence in the implementation and application of the Policy, and relied solely on the terms of the "Order" in doing so.

[35] As neither party filed any affidavit evidence on the motion, the Court must examine the Statement of Claim to determine if the necessary jurisdictional facts have been pled to support an attribution of jurisdiction: *MIL Davie Inc. v. Société d'Exploitation et de Développement*

d'Hibernia Ltée (1998), 226 N.R. 369 at para 8. Paragraphs 27 and 28 of the Statement of Claim allege that SkyService is an agent of the Crown. They read:

> 27. It was a term of the Order that if the Policy was implemented by federally regulated industries, including Skyservice, the Government of Canada would not resort to further lockdown measures affecting Canadian businesses, families, children and the economy.
>
> 28. Under the terms of the Order, Skyservice became an agent of the Crown in implementing public health policies on behalf of and for Canada. In the alternative, even if Skyservice is not considered an agent of the Crown via the terms of the Order, it has effected Crown public health and economic policy by issuing its COVID-19 vaccination Policy.

[36] Insofar as the Claim alleges generally that SkyService was acting as an agent of the Crown in implementing federal public health policies, this allegation is a bare conclusion of law: *Carten #1* at para 39.

[37] The only factual allegations pled by Mr. Pascuet to support an agency relationship are that SkyService implemented the Policy pursuant to the "Order" to support the stated objectives of the federal Crown to protect the healthcare system and the economy and avoid further lockdown measures. Assuming, without deciding, that the federal government's announcement on October 6, 2021 constituted an "Order", the alleged "control" being exercised by the Crown over SkyService is the ordinary compliance with legal requirements expected of any federally regulated corporation carrying on a similar business.

[38] I agree with SkyService that while compliance with applicable law necessarily involves a lack of discretion on the part of the complying party, such compliance plainly does not, in itself, result in the Crown having *de jure* control over the entity itself. If it were otherwise, every federally regulated corporation, by complying with its legal requirements as a federally regulated employer,

would automatically be an agent of the Crown. This is an untenable proposition that goes well beyond the intentions of section 17(5)(b) of the *Federal Courts Act*.

[39] Further, Mr. Pascuet's argument that SkyService is under the *de jure* control of the Crown is undercut by his concession in his supplemental submissions that "there is insufficient proximity between Skysearch (sic) and Canada for Skysearch (sic) to be deemed a government actor for the purposes of the *Charter*".

[40] Accordingly, I conclude that it is plain and obvious, based on the absence of the necessary jurisdictional facts in the Claim, that SkyService is not an agent of the Crown, and therefore section 17(5)(b) of the *Federal Courts Act* is not a source of statutory jurisdiction for this Court to entertain the Claim as against SkyService.

[41] In his main submissions, Mr. Pascuet agrees with SkyService that section 23 of the *Federal Courts Act* does not apply to grant jurisdiction to this Court over the claims against SkyService (Motion Record, page 11). However, in his supplemental submissions, Mr. Pascuet appears to say that this Court has concurrent jurisdiction to entertain the claim against SkyService under section 23 because he is a non-unionized employee of a corporation engaged in aeronautics conducting works and undertakings in multiple provinces.

[42] Despite Mr. Pascuet's seemingly contradictory arguments, I agree with his main submission that section 23 of the *Federal Courts Act* has no application in this case. Amongst other things, section 23 requires that a claimant's cause of action, or the right to seek relief, must be created or recognized by a federal statute, a federal regulation or a rule of the common law dealing with a subject matter of federal legislative competence: *City of Windsor* at para 41. Even insofar

as Mr. Pascuet's claims may be characterized as a breach of the *Canada Labour Code*, *Canadian Bill of Rights*, the *Canadian Human Rights Act*, or the *Assisted Human Reproduction Act*, he has not referred the Court to any provision in any of that legislation that creates a right of action in the Federal Court.

[43] For these reasons, it is plain and obvious that Mr. Pascuet has not satisfied the first part of the *ITO* test. There is no statutory grant of jurisdiction. This finding is dispositive, and there is no need to consider whether the second and third parts of the *ITO* test are met in this case. Accordingly, I conclude that it is plain and obvious that the Federal Court has no jurisdiction to entertain Mr. Pascuet's claims against SkyService, and the Statement of Claim must be struck out as against this Defendant on this ground alone.

[44] This is sufficient to dispose of SkyService's motion. For the sake of completeness, however, I propose to briefly address SkyService's argument that the Statement of Claim should also be struck on the basis that it otherwise discloses no reasonable cause of action.

V. The Claim Otherwise Discloses no Reasonable Cause of Action

[45] SkyService submits that the claims pled by Mr. Pascuet as against SkyService are not viable causes of action. In the alternative, it contends that Mr. Pascuet has not pled facts that are capable of giving rise to such a cause of action, if one did exist.

[46] Turning first to the *Charter* claims, Mr. Pascuet concedes in his supplemental submissions that there is insufficient proximity between SkyService and the federal Crown for SkyService to be deemed a government actor for the purposes of the *Charter*. Mr. Pascuet therefore intends to amend the Claim to remove any claims for *Charter* relief as against SkyService. Accordingly, and

for the reasons set out in SkyService's motion record on this issue, which I adopt as my own, I conclude that the claims relating to the *Charter* disclose no reasonable cause of action as against SkyService and should be struck out.

[47] I find that Mr. Pascuet's claims alleging SkyService discriminated against him on the grounds of genetic characteristics, disability, and religion, and deprived him of employment opportunities, due to his vaccine status, in violation of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, are doomed to fail and should be struck out. It is well-established that a violation of human rights legislation does not create a private right of action against the alleged offender. The enforcement of rights protected under the *Canadian Human Rights Act* are matters left to the Human Rights Commission and to human rights tribunals appointed under that *Act*: *Seneca College v. Bhadauria*, , [1981] 2 S.C.R. 181 at 195, 124 D.L.R. (3d) 193; *Ashraf v. Jazz Aviation*, 2022 FCA 13 at para 15.

[48] Likewise, I conclude that Mr. Pascuet's claim for damages for violation of his rights pursuant to sections 2, 122, 122(1) 124, 125, 125.1, 127.1(1), and 128 of the *Canada Labour Code*, RSC 1985, c L-2 disclose no viable cause of action and must be struck. There is no nominate tort based on the breach of a statutory provision alone. A cause of action must exist separate and apart under the law of tort or otherwise. The *Canada Labour Code* does not provide for any civil cause of action in the manner in which this action is framed: *R. in right of Canada v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205; *Canada Post Corp. v. C.U.P.W.*, 1988 CanLII 9394 (FC), [1989] 1 FC 98 at page 116.

[49] In addition, I find that the Statement of Claim as a whole is defective as it fails to plead the requisite material facts in support of the various causes of action pled. The specific requirement to

plead material facts is embodied in Rule 174 of the *Rules,* which provides that a Statement of Claim "shall contain a concise statement of the material facts on which the party relies" [emphasis added]. No cause of action can exist where the plaintiff has not pled the requisite material facts which are capable of giving rise to a cause of action: *Amos v. Canada*, 2017 FCA 213 at para 36; *Keremelevski v. Ukrainian Orthodox Church of St. Mary*, 2018 FC 406 at para 61.

[50] What constitutes a material fact is determined in light of the cause of action and the damages sought to be recovered. A plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability. The Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action: *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16 and 19.

[51] To illustrate the defects in the Claim, Mr. Pascuet makes bald allegations that his human rights and freedoms under the *Canadian Bill of Rights* have been violated. The *Canadian Bill of Rights* "is a federal statute that renders inoperative federal legislation inconsistent with its protections" and is "applicable only to federal law": *Authorson v. Canada (Attorney General)*, 2003 SCC 39, [2003] 2 S.C.R. 40, at paragraphs 10 and 31. Here, no federal law is alleged to "abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of" Mr. Pascuet's human rights, as contemplated by section 2 of the *Canadian Bill of Rights*. Instead, Mr. Pascuet alleges that the so-called "Order" (the October 6, 2021 announcement) and SkyService's Policy infringe his rights.

[52] Moreover, Mr. Pascuet pleads bald conclusions of alleged violations of his rights under the *Canadian Bill of Rights* without the requisite supporting material facts or particulars. For instance, he pleads that his right to freedom of religion under section 1(c) of the *Canadian Bill of Rights* is violated “by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this offends the Plaintiffs sincerely held religious beliefs”. However, Mr. Pascuet fails to plead any material facts as to what religious beliefs he sincerely holds or how the impugned “Order” and/or Policy interferes with his ability to act in accordance with those sincerely held religious beliefs. More broadly, Mr. Pascuet has not explained how the impugned sections of the *Canadian Bill of Rights* can apply to SkyService as a private party.

[53] Recently, this Court struck out a similar claim in *Albert*. The plaintiffs in *Albert*, who are represented by the same legal counsel as Mr. Pascuet, challenge the same “Order” along with Canada Post’s mandatory vaccination practice. Associate Judge Coughlan stated at paragraphs 43 and 44:

> [43] Indeed, in my view, the Plaintiffs simply plead bald conclusions of law without the requisite material facts. This failing is particularly acute given the host of appellate jurisprudence from across Canada dismissing actions and applications alleging *Charter* and other violations stemming from the public health response to the pandemic: *Spencer v Canada (Attorney General)*, 2023 FCA 8; *Turmel v Canada*, 2022 FCA 166; *Harjee v Ontario*, 2023 ONCA 716 (CanLII); *Ontario (Attorney General) v Trinity Bible Chapel*, 2023 ONCA 13 (CanLII) (SCC leave denied); *Beaudoin v British Columbia (Attorney General)*, 2022 BCCA 427 (CanLII).
>
> [44] In this Court, Associate Chief Justice Gagné thoroughly canvassed the body of unsuccessful actions and applications in both the federal and provincial superior courts concerning the imposition of health measures during the pandemic: *Ben Naoum v Canada (Attorney General)*, 2022 FC 1463 at para 42. In the face of that extensive body of jurisprudence, it was incumbent upon the Plaintiffs to plead material facts that would meet the legal test and

> would distinguish their case from the litany of unsuccessful applications and actions. They failed to do so.

[54] The Court's observations in *Albert* apply with equal force in this case. No appeal was taken from the *Albert* decision.

[55] Based on a careful review of the Statement of Claim, I must too conclude that it fails to plead the requisite material facts which are capable of giving rise to any viable cause of action. Accordingly, based on the foregoing, I consider it to be plain and obvious that the Claim does not plead any reasonable cause of action and must be struck out on that basis.

VI. The Claim should be Struck Out Without Leave to Amend

[56] After determining that the Statement of Claim will be struck, I am required by Rule 221 to consider whether to permit Mr. Pascuet to file an amended Statement of Claim. The test for granting leave to amend is whether the defects in the claim can potentially be cured by amendment: *Simon v. Canada*, 2011 FCA 6 at paras 8 and 14.

[57] In this case, the Court has concluded that it has no jurisdiction to entertain Mr. Pascuet's Claim as against SkyService. In these circumstances, I conclude that the Statement of Claim is incurable and should be struck out as against SkyService, without leave to amend: *Enercorp Sand Solutions Inc. v. Specialized Desanders Inc.*, 2018 FCA 215 at para 27.

VII. Conclusion

[58] For these reasons, I conclude that it is plain and obvious that this Court lacks jurisdiction to entertain the Claim as against SkyService, and the Claim otherwise discloses no reasonable

cause of action. Accordingly, the Statement of Claim shall be struck as against SkyService, without leave to amend.

[59] As for costs of the motion, SkyService seeks costs on a full indemnity basis, or such other basis as determined by this Court. Solicitor-client costs are very much the exception in this Court and should only be awarded when one party engages in conduct that deserves sanction, which has often been described as conduct that is “reprehensible, scandalous or outrageous”: *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38, [2010] 2 SCR 453 at para 67. No such conduct on the part of the Plaintiff has been established by SkyService. In the exercise of my discretion, I hereby fix the costs of the motion in the lump sum of $1,200.00, inclusive of disbursements and taxes.

THIS COURT’S JUDGMENT is that:

1. The motion to strike by the two Defendants who are collectively referred to as SkyService in this Judgment is granted.

2. The Statement of Claim is struck out as against SkyService, without leave to amend, and the action is dismissed against these two Defendants.

3. The Plaintiff, Mr. Pascuet, shall pay to SkyService their costs of the motion, hereby fixed in the amount of $1,200.00, inclusive of disbursements and taxes.

“Kathleen Ring”

Associate Judge