

Federal Court



Cour fédérale

Date: 20260116

Dockets: T-2049-19
T-354-20

Citation: 2026 FC 44

Toronto, Ontario, January 16, 2026

PRESENT: The Honourable Madam Justice Heneghan

Docket: T-2049-19

BETWEEN:

KEVIN O'LEARY AND LINDA O'LEARY

Plaintiffs/Defendants by Counterclaim

and

ROSA RAGONE, ANTONIO RAGONE and PAULA BRITO

Defendants/Plaintiffs by Counterclaim

RICHARD RUH and IRV EDWARDS

Third Parties

Docket: T-354-20

AND BETWEEN:

RICHARD RUH and IRV EDWARDS

Plaintiffs

and

ROSA RAGONE, ANTONIO RAGONE, and PAUL BRITO, DAVID OWEN, Litigation Administrator of the Estate of SUSANNE BRITO, DAVID OWEN, personally, LIAM OWEN, a minor under the age of 18 years by his Litigation Guardian, DAVID OWEN, RUBY OWEN, a minor under the age of 18 by her Litigation Guardian, DAVID OWEN, DAVID CASH OWEN, a minor under the age of 18 years by his Litigation Guardian, DAVID OWEN, SANDRA OCSKASY, ALLISON POLTASH, ALEXANDER POLTASH and PAULINE NEW

Defendants

KEVIN O’LEARY and LINDA O’LEARY and RICHARD RUH

Third Parties

AMENDED PUBLIC REASONS AND ORDER
(Following the issuance of Confidential Reasons and Order on December 2, 2025)

I. INTRODUCTION

[1] By a notice of motion dated May 2, 2025 Mr. David Owen, as Litigation Guardian (the “Litigation Guardian”) of the Minor Defendants Ruby Owen and David Cash Owen (the “Minor Defendants”), seeks the entry of judgment against Kevin O’Leary and Linda O’Leary, the Plaintiffs in cause number T-2049-19 and Rosa Ragone, Antonia Ragone and Paula Brito, the Plaintiffs in cause number T-354-20 (collectively “the Plaintiffs”), approving the settlement of their claims, together with a judgment in favour of McLeish Orlando LLP, Counsel for the Minor Defendants, for payment of their fees and disbursements, inclusive of HST.

[2] The Litigation Guardian also seeks an Order sealing the Minutes of Settlement, the within motion record and the judgment, pending further order of the Court.

[3] In the alternative, should the Court not order the sealing of the Minutes of Settlement, the within motion record and the judgment as addressed in paragraph 7 of the Minutes of Settlement, the Litigation Guardian asks that the Minutes of Settlement be “sealed or confidentially protected as ordered by the Court”.

II. THE BACKGROUND

[4] The background of this motion is a collision (the “Collision”) that occurred on the waters of Lake Joseph, on August 24, 2019. The Collision occurred between two vessels, one allegedly owned by Mr. Kevin O’Leary and the other allegedly owned by Mr. Irv Edwards. The first vessel was allegedly operated by Mrs. Linda O’Leary and the second one was allegedly operated by Mr. Richard Ruh.

[5] As a result of the Collision, two passengers died, that is Ms. Susanne Brito and Mr. Gary Poltash. Other passengers were injured.

[6] On December 19, 2019, Mr. Kevin O’Leary and Mrs. Linda O’Leary commenced an action in the Federal Court seeking to limit their liability for damages in relation to the Collision, in cause number T-2049-19. The action was taken pursuant to the *Marine Liability Act*, S.C. 2001, c. 6 (the “MLA”).

[7] On March 6, 2020, Mr. Richard Ruh and Mr. Irv Edwards commenced an action in the Federal Court, in cause number T-354-20, also seeking to limit their liability in respect of the Collision, pursuant to the MLA.

[8] On May 1, 2020, Mr. Kevin O’Leary and Mrs. Linda O’Leary commenced an action in the Federal Court in cause number T-516-20, against Mr. Richard Ruh and Mr. Irv Edwards, alleging negligence in the operation of the vessel allegedly owned by Mr. Edwards and seeking the recovery of general and special damages.

[9] On August 5, 2020, the Litigation Guardian commenced an action in the Federal Court in cause number T-885-20 on his own behalf as the husband of Ms. Brito and on behalf of his three children, all of whom were minors at the time. The action is based in negligence for wrongful death and claimed damages pursuant to the MLA and the *Family Law Act*, R.S.O. 1990, c. F.3, (the “FLA”) for loss of guidance, care and companionship, and loss of dependency and loss of services.

[10] By Orders issued on July 3, 2020 Justice Southcott of the Federal Court ordered that limitation funds (the “Limitation Funds”) be constituted, pursuant to the MLA in the amount of \$1,000,000.00 in both causes number T-2049-19 and T-354-20, to answer claims arising from the Collision.

[11] By the same Orders, all litigation in respect of the Collision was enjoined. The stay of proceedings applied to the actions in the Federal Court and all proceedings commenced elsewhere including in the Ontario Superior Court of Justice. An exception was made for the continuation of summary conviction proceedings before the Ontario Court of Justice.

[12] By Orders issued by Justice McDonald of the Federal Court on February 15, 2022, the Plaintiffs in both causes T-2049-19 and T-354-20 limited their respective liability to \$1,000,000.00, pursuant to the MLA. That means that the total amount of \$2,000,000.00 was available to answer all claims arising in connection with the Collision.

III. THE EVIDENCE

[13] The motion is supported by the affidavits of Mr. J. Patrick Brown, of Counsel to the Minor Defendants, and of the Litigation Guardian. Each affidavit contains exhibits which form part of the evidence in support of the motion.

[14] Mr. Brown swore his affidavit on April 14, 2025. The Litigation Guardian swore his affidavit on April 14, 2025.

[15] In his affidavit, Mr. Brown deposed to the circumstances giving rise to the within actions, including a brief history of the litigation that was commenced in the Ontario Superior Court of Justice and this Court. He also deposed as to the settlement of the claims advanced on behalf of the Minor Defendants, pursuant to the MLA and the FLA.

[16] In his affidavit, the Litigation Guardian deposed to the ages of the Minor Defendants and his role in instructing counsel to pursue claims on their behalf. He also deposed to his opinion that the proposed settlement is reasonable.

[17] The Litigation Guardian, as well, addressed the payment of fees to the firm of Mr. Brown.

[18] The Litigation Guardian further deposed about his awareness, that usually settlement funds on behalf of minor claimants are paid into the Court. He deposed about his request that the settlement funds be paid to him, for investment with his personal investment advisor with RBC Dominion Securities.

IV. THE ISSUES

[19] Counsel for the moving parties frames the issues as follow:

- Are the settlement amounts for the Minor Defendants reasonable?
- Can the Litigation Guardian manage and invest the settlement funds on behalf of the Minor Defendants until they reach the age of 21?
- Are the fees of McLeish Orlando LLP reasonable?
- Are the parties entitled to a Sealing Order?

V. DISCUSSION AND DISPOSITION

[20] According to the decision of the Supreme Court of Canada in *Desgagnés Transport Inc. v. Wärtsilä Canada Inc.*, [2019] 4 SCR 228, as discussed in *Fraser Point Holdings Ltd. v. Vision Marine Technologies Inc.*, 2023 FC 738, the Federal Court can interpret and apply provincial legislation in the exercise of its jurisdiction in matters of navigation and shipping, including claims for damages arising within that subject matter.

[21] The Federal Court has jurisdiction in respect of persons under legal disability, including minor children. In that regard, I refer to the decision in *Prince v Canada* (1994), 80 F.T.R 41.

[22] The amounts proposed to settle the claims of the Minor Dependants must be considered in context. That “context” is the determination by the Order of February 15, 2022 that the Plaintiffs are entitled to limit their liability in respect of the Collision. The sum of \$2,000,000.00 is made available by the Limitation Funds that were constituted.

[23] The claims of the Minor Defendants are based in negligence in the operation of two pleasure crafts that resulted in the death of their mother Susanne Brito. The Minor Defendants seek recovery of damages pursuant to the MLA and FLA for loss of guidance, care and companionship, loss of dependency and loss of services.

[24] Subsections 61(1) and (2) of the MLA are relevant and provide as follow:

Right of dependants to sue in tort

61 (1) If a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part III (Support Obligations), children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1990, c. F.3,

Action délictuelle des personnes à charge

61 (1) Si une personne subit des lésions ou décède à cause de la faute ou de la négligence d'autrui dans des circonstances qui donnent à la victime le droit d'obtenir des dommages-intérêts, ou lui auraient donné ce droit si elle n'était pas décédée, le conjoint, au sens de la partie III (Obligations alimentaires), les enfants, les petits-enfants, les parents, les grands-parents, les frères et les soeurs de la victime ont le droit de recouvrer du tiers la perte pécuniaire qui résulte de la lésion ou du décès de la victime. Ils ont également le droit d'ester en justice à cette fin devant un tribunal compétent. L.R.O. 1990, chap. F.3, par. 61

s. 61 (1); 1999, c. 6, s. 25 (25); 2005, c. 5, s. 27 (28).

Damages in case of injury

(2) The damages recoverable in a claim under subsection (1) may include,

- (a) actual expenses reasonably incurred for the benefit of the person injured or killed;
- (b) actual funeral expenses reasonably incurred;
- (c) a reasonable allowance for travel expenses actually incurred in visiting the person during his or her treatment or recovery;
- (d) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services; and
- (e) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred. R.S.O. 1990, c. F.3, s. 61 (2).

(1); 1999, chap. 6, par. 25 (25); 2005, chap. 5, par. 27 (28).

Dommages-intérêts en cas de lésion

(2) Les dommages-intérêts recouvrables dans le cadre de la demande présentée en vertu du paragraphe (1) peuvent comprendre en outre :

- a) les débours normaux et réellement faits dans l'intérêt de la victime;
- b) les frais funéraires normaux et réellement faits;
- c) une indemnité raisonnable au titre des frais de déplacement réellement faits pour rendre visite à la victime pendant son traitement ou sa convalescence;
- d) si, en raison de la lésion, l'auteur de la demande fournit des services infirmiers, domestiques ou autres à la personne, une indemnité raisonnable au titre du manque à gagner, ou la valeur de ces services;
- e) un montant compensatoire au titre de la perte de conseils, de soins et de compagnie auxquels l'auteur de la demande aurait été raisonnablement en droit de s'attendre si la lésion ou le décès n'avait pas eu lieu. L.R.O. 1990, chap. F.3, par. 61 (2).

[25] The following provisions of section 6 of the FLA are relevant:

Damages for personal injury

6 (1) If a person is injured by the fault or neglect of another under circumstances that entitle the person to recover damages, the dependants of the injured person may maintain an action in a court of competent jurisdiction for their loss resulting from the

Responsabilité pour dommages-intérêts : blessures

6 (1) Lorsqu'une personne subit une blessure par suite de la faute ou de la négligence d'autrui dans des circonstances lui donnant le droit de réclamer des dommages-intérêts, les personnes à sa charge peuvent saisir le tribunal compétent d'une telle réclamation.

injury against the person from whom the injured person is entitled to recover.

Damages for death

(2) If a person dies by the fault or neglect of another under circumstances that would have entitled the person, if not deceased, to recover damages, the dependants of the deceased person may maintain an action in a court of competent jurisdiction for their loss resulting from the death against the person from whom the deceased person would have been entitled to recover.

Inclusion in damages

(3) The damages recoverable by a dependant of an injured or deceased person may include

(a) an amount to compensate for the loss of guidance, care and companionship that the dependant could reasonably have expected to receive from the injured or deceased person if the injury or death had not occurred; and

(b) any amount to which a public authority may be subrogated in respect of payments consequent on the injury or death that are made to or for the benefit of the injured or deceased person or the dependant.

Responsabilité pour dommages-intérêts : décès

(2) Lorsqu'une personne décède par suite de la faute ou de la négligence d'autrui dans des circonstances qui, si le décès n'en était pas résulté, lui auraient donné le droit de réclamer des dommages-intérêts, les personnes à sa charge peuvent saisir le tribunal compétent d'une telle réclamation.

Dommages qui peuvent être inclus

(3) Les dommages-intérêts recouvrables par une personne à charge peuvent comprendre:

(a) une indemnité compensatoire pour la perte des conseils, des soins et de la compagnie auxquels la personne à charge aurait été en droit de s'attendre de la personne blessée ou décédée, n'eût été les blessures ou le décès;

(b) toute somme pour laquelle une autorité publique a été subrogée relativement aux paiements effectués à la personne blessée ou décédée ou à la personne à sa charge ou pour leur compte, par suite de la blessure ou du décès.

A. *Are the proposed settlement amounts reasonable?*

[26] The proposed settlement for each of the Minor Defendants is \$100,788.56 each.

The amount consists of \$100,000.00 in damages and a *pro rata* share in costs in the amount of \$788.56. The settlement was reached in respect of the two limitation actions, for which the total amount available to answer the claims advanced is \$2,000,000.00.

[27] The notice of motion and affidavit of Mr. Brown refer to the settlement of all claims. While a copy of the settlement agreement was attached as an exhibit to an earlier unfiled notice of motion seeking approval of the settlement for the children of the late Ms. Brito, the settlement agreement was not produced in the present motion record.

[28] Counsel for the parties advised that a copy of that agreement could be produced if required by the Court.

[29] In my opinion, production of that agreement is not necessary. It relates to the settlement of claims advanced by persons who are of the age of majority and approval of the Court is not required in respect of those settlements.

[30] In respect of the within actions, the loss in question was the death of Ms. Brito. The pleadings denying liability on the part of the Plaintiffs in causes number T-2049-19 and T-354-20 are only “denials” and “allegations” until established by evidence. The litigation process is lengthy and time-consuming, with no certain outcome.

[31] Mr. Brown tendered his opinion that had the within actions proceeded to trial, there was a possibility that liability would be found against one vessel only, thereby reducing the amount of money available to answer claims to only \$1,000,000.00.

[32] Approval of the Court is required in respect of the settlements for the Minor Defendants because they have not attained the age of majority. In this regard, I refer to the *Age of Majority and Accountability Act*, R.S.O. 1990, c. A.7

[33] Counsel provided authorities in support of the proposed settlement amounts.

[34] I refer to the decision in *To v. The Toronto Board of Education*, [2001] OJ No 3490 (QL) where a jury awarded damages of \$100,000.00 to both the mother and father of a 14 year old boy as damages for the loss of guidance, care and companionship following his wrongful death.

[35] On the basis of the authorities submitted by Counsel for the Minor Defendants, including the decisions in *Fish v. Shainhouse*, [2005] O.J. NO. 4575 and *Wilson v. Beck*, [2013] ONCA 316, I am satisfied that the proposed settlement amount of \$100,000.00 for each of the Minor Defendants is reasonable, bearing in mind that the figure was reached after negotiations among the parties, all of whom were represented by Counsel.

[36] In *Moore v. 7596511 Canada Corp.*, 2021 ONCA 459, the Court said the following at paragraphs 27 and 28:

27 First, it is important to recognize that, while Osborne A.C.J.O. referred to the \$100,000 in *To* as perhaps being viewed at the "high end" of an accepted range for damages of this nature, he just as quickly pointed out that, unlike Alberta with s. 8(2) of its Fatal Accidents Act, R.S.A. 2000, c. F-8, for example, the legislature in Ontario did not establish an upper limit on these types of damages: *To*, at para. 29. In the absence of any such legislative cap, "each case must be given separate consideration" by the courts to determine the appropriate quantum of damages: *To*, at para. 30. Of course, locating the "right" amount for the loss of the guidance,

care, and companionship of a child who has died because of another's negligence verges on the near impossible to calculate, as the courts are called upon to measure the "immeasurable" and to calculate the "incalculable": To, at para. 30, citing *Gervais v. Richard* (1984), 48 O.R. (2d) 191 (H.C.), at p. 201. See also *Fiddler*, at para. 76. Quite simply, there is no neat mathematical formula that can be applied to determine the correct amount.

28 Second, despite the damages awards given in both To and *Fiddler*, both courts were careful to reinforce the idea that, like the absence of a legislative cap for damages of this nature, there is no judge-made cap for this form of non-pecuniary damages: To, at para. 29; *Fiddler*, at para. 76...

[37] The amount may be on the "high" side but bearing in mind the comments of the Ontario Court of Appeal in *Moore, supra*, it is not unreasonable.

[38] Accordingly, I will approve the settlement in favour of each of the Minor Defendants in the amount of \$100,000.00.

B. *Can the Litigation Guardian manage and invest the settlement funds?*

[39] The Litigation Guardian seeks an Order allowing the payment of the settlement funds to him, allowing him to invest and manage the funds until the Minor Defendants reach the age of 21 years. In that regard, he deposed as to his plan to invest the funds with the financial institution he has used for many years and under the direction of an individual with whom he has worked.

[40] Mr. Brown, in his affidavit, acknowledged that in general, settlement funds on behalf of minor claimants are paid into Court but in this case, he supports the plan proposed by the Litigation Guardian to receive and manage the funds.

[41] Other options are available for the receipt of the funds, including payment to the Office of the Children's Lawyer of Ontario, an independent office in the Ministry of the Attorney General of Ontario, mandated to look after the interests of children in certain circumstances.

[42] I am not prepared to authorize the payment of the settlement funds to the Litigation Guardian. I see no reason to depart from the usual practice that settlement funds on behalf of Minor parties be paid into Court.

[43] Considering that the Minor Defendants are close to attaining the age of majority, the funds will be secure and earn interest at the applicable rate, pursuant to the *Financial Administration Act*, R.S.C., 1985, c. F-11.

C. *Are the legal fees reasonable?*

[44] Both Mr. Brown and the Litigation Guardian deposed in their affidavits about the agreement on legal fees. Mr. Brown deposed that fees would be paid at the rate of 30% of the ultimate settlement. As well, Mr. Brown deposed that the Minor Defendants would share *pro rata* of the costs of \$8,600.88 together with H.S.T. of \$1,118.12.

[45] By further agreement, Counsel for the Minor Defendants agreed to charge 25% of the ultimate settlement in fees, together with H.S.T. and disbursements in the amount of \$32,781.00 in respect of each of the Minor Defendants. The balance remaining to be paid to each of the Minor Defendants is \$72,538.56. The balance to be paid includes a *pro rata* share in costs, in the amount of \$788.56 on behalf of each of the Minor Defendants.

[46] In his affidavit, Mr. Brown deposed to the institution of legal proceedings in connection with the accident that caused the death of Ms. Brito. He provided a list of all legal proceedings, including proceedings in the Ontario Court of Justice against Mrs. Linda O’Leary and Mr. Richard Ruh, as the alleged operators of the two vessels involved in the collision. Proceedings were begun in both the Ontario Superior Court and the Federal Court seeking recovery of damages for personal injuries suffered by Mrs. O’Leary and for damages suffered by the Minor Defendants and other family members of Ms. Brito.

[47] The Index of Recorded Entries for causes number T-2049-19 and T-354-20 describe the pleadings filed, including Statements of Defence, Third Party claims, and Notices of Claim in respect of the Limitation Funds.

[48] Mr. Brown deposed that the claims set out in the Statements of Claim in causes T-2049-19 and T-354-20 were vigorously defended. He deposed that the Plaintiffs in cause number T-2049-19 denied any liability for the collision and they alleged that sole responsibility lay with the owner and operators of the other vessel.

[49] Considering those factors and the pleadings and the number of claims advanced, the legal fees of \$100,000.00 for each of the Minor Defendants is reasonable.

[50] I note that according to *The Age of Majority and Accountability Act, supra*, the age of majority in Ontario is 18 years. Section 1 provides as follows:

Age of majority

1 Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years. R.S.O. 1990, c. A.7, s. 1.

Âge de la majorité

1 Quiconque atteint l'âge de dix-huit ans atteint l'âge de la majorité et cesse d'être une personne mineure. L.R.O. 1990, chap. A.7, art. 1.

D. *Should a Sealing Order be granted?*

[51] Finally, there remains the request for a sealing Order, to seal the Minutes of Settlement, the within Motion and motion record, and the resulting Judgment.

[52] In the written submissions filed in cause number T-354-20, Counsel argues that the Minutes of Settlement require the Minor Defendants to “seek” a Sealing Order “for certain filed documents in order to maintain confidentiality”. They refer to the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43 at subsection 137(2) which provides as follows:

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Documents confidentiels

(2) Le tribunal peut ordonner qu'un document déposé dans une instance civile soit traité comme un document confidentiel, qu'il soit fermé et qu'il ne fasse pas partie du dossier public.

[53] In appropriate cases, the Federal Court can issue confidentiality orders pursuant to Rule 151 of the *Federal Courts Rules*, SOR/ 98-106 (the “Rules”) which provides as follows:

Motion for order of confidentiality

151 (1) On motion, the Court may order that material to be filed shall be treated as confidential.

Requête en confidentialité

151 (1) La Cour peut, sur requête, ordonner que des documents ou

Marginal note: Demonstrated need for confidentiality

(2) Before making an order under subsection (1), the Court must be satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings.

éléments matériels qui seront déposés soient considérés comme confidentiels.

Note marginale: Circonstances justifiant la confidentialité

(2) Avant de rendre une ordonnance en application du paragraphe (1), la Cour doit être convaincue de la nécessité de considérer les documents ou éléments matériels comme confidentiels, étant donné l'intérêt du public à la publicité des débats judiciaires.

[54] The moving parties argue that the *Ontario Courts of Justice Act, supra*, allows for the sealing of court filings in certain circumstances. They rely on the decision in *Royal Bank of Canada v. Distinct Infrastructure Group Inc.*, 2022 ONSC 5878 where a number of claims in a complicated commercial case had been settled after a lengthy mediation. However, some claims remain unresolved and the Court found that a sealing order was appropriate to protect the interests of those parties whose claims remained outstanding.

[55] I note that the decision in *Royal Bank of Canada, supra* follows upon the decision in *Sherman Estate v. Donovan*, [2021] 2 S.C.R. 75 where the Supreme Court of Canada restated the law about sealing orders, at paragraph 38, as follows:

[38] The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188, at paras. 7 and 22).

[56] The test is tripartite and conjunctive: that there is a serious risk to an important public interest, that the order sought is necessary to prevent this serious risk because reasonably alternative measures will not protect against this risk, and as a matter of proportionality, the benefits of the order outweigh its negative effects.

[57] In *Sable Offshore Energy Inc. v. Ameron International Corp.*, [2013] 2 S.C.R. 623, the Supreme Court of Canada recognized the important public interest in promoting and protecting confidential settlement agreements.

[58] In the present case, the settlements reached on behalf of the adult claimants are not affected by this motion. The details of those settlements are, and will remain, confidential. The existence of a Settlement Agreement, which was not produced in the motion record, is now before the Court only because Court approval is required in respect of settlement of the claims of the Minor Defendants.

[59] The requirement of such approval was readily within the contemplation of the parties from the commencement of litigation in the Superior Court of Justice and in the Federal Court. The pleadings filed in a number of actions in the Federal Court have been publicly available; there are no confidentiality orders in place.

[60] The statement of claim in cause number T-885-20 sets out the birthdates of the Minor Defendants.

[61] The status of the Minor Defendants as “infants” at law meant that judicial approval would be required relative to any settlement. Had their claims not been settled and the action proceeded to a trial, a court may have awarded damages in a public judgment. I refer to the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rules 1.03 and 7.08 which respectively provide as follows:

1.03 (1) In these rules, unless the context requires otherwise, “disability”, where used in respect of a person, means that the person is,

(a) a minor,

Approval of Settlement

Settlement Requires Judge’s Approval

7.08 (1) No settlement of a claim made by or against a person under disability, whether or not a proceeding has been commenced in respect of the claim, is binding on the person without the approval of a

1.03 (1) À moins que le contexte n’indique autrement, les définitions qui suivent s’appliquent aux présentes règles. «incapable» Les personnes suivantes :

a) le mineur;

Homologation d’une transaction

Homologation par un juge d’une transaction

7.08 (1) L’homologation d’un juge est requise pour que la transaction sur une demande par un incapable ou contre lui, qu’elle ait ou non fait l’objet d’une instance, puisse lier celui-ci. R.R.O. 1990, Règl. 194, par. 7.08 (1).

judge. R.R.O. 1990, Reg. 194,
r. 7.08 (1).

(2) Judgment may not be obtained on consent in favour of or against a party under disability without the approval of a judge. R.R.O. 1990, Reg. 194, r. 7.08 (2).

(2) L'homologation d'un juge est requise pour qu'un jugement par consentement soit rendu en faveur d'une partie incapable ou contre elle. R.R.O. 1990, Règl. 194, par. 7.08 (2).

[62] The affidavits filed in support of the motion for a sealing order do not provide any evidence about a serious risk to a public interest. The grounds for seeking the sealing order are set out in the memoranda of argument filed on behalf of the moving parties and on behalf Mr. Richard Ruh. However, argument is not “evidence”.

[63] The Settlement Agreement has not been produced in support of this motion. In my opinion, its production is not necessary. I am aware of its existence and in any event, no party has opposed the submissions filed on behalf of the Minor Defendants that such an Agreement exists.

[64] Unlike the situation in *Royal Bank, supra*, the disclosure of the settlement in respect of the two Minor Defendants does not give rise to the possibility of revealing sensitive commercial or personal information.

[65] In my opinion, the moving parties have not met the first part of the test set out in *Sherman, supra*, as discussed and applied in a different factual context in *Royal Bank, supra*.

[66] According to the recital about the evidence in the *Royal Bank of Canada, supra* and *Sherman Estate, supra* decisions, affidavit evidence was submitted.

[67] No affidavits were filed on behalf of the Plaintiffs in either cause number T-2049-19 or T-354-20 in response to the within motion. However, written submissions were filed on behalf of the Plaintiffs, in support of the request for a sealing order.

[68] A sealing order is a discretionary order, whether considered pursuant to the Rules or the *Ontario Courts of Justice Act, supra*. The exercise of that discretion is informed by the decision of the Supreme Court of Canada in its decision in *Sherman Estate, supra*.

[69] Since I am not persuaded that the Court's openness in this case poses a "serious" risk to an important public interest, I decline to consider the second and third elements addressed by the Supreme Court of Canada in *Sherman Estate, supra*.

[70] The starting point for a sealing order is to "show" why the circumstances in a particular case should override the long-standing principle in Canada that the courts are "open".

[71] I refer to paragraph 38 of *Sherman, supra*, where the Supreme Court emphasized the primacy of the open court principle.

[72] Upon considering the evidence submitted on this motion, the contents of the court files in causes number T-2049-19, T-354-20, T-516-20 and T-885-20, and the written and oral submissions made, the motion for a sealing Order will be dismissed.

VI. CONCLUSION

[73] In the result, the motion is granted in part.

[74] The settlements on behalf of the Minor Defendants are approved in the amount of \$100,788.56 to each Minor Defendant. The legal fees in the total amount of \$50,000.00 plus H.S.T. in the total amount of \$6,500.00 in respect of those fees will be paid to McLeish Orlando LLP.

[75] The balance of the settlement funds in the amount of \$72,538.56 on behalf of each Minor Defendant will be paid into the Federal Court where the funds will earn interest according to the applicable rate under the *Financial Administration Act, supra*, until each of the Minor Defendants attains the age of majority according to the *Age of Majority and Accountability Act, supra*, when the funds can be paid out, with interest, upon motion pursuant to the Rules.

[76] The motion for an Order sealing the underlying motion record and the Order upon the motion is dismissed.

[77] These Reasons and Order will be filed on a confidential basis pending the expiry of thirty (30) days or upon further Order of the Court.

ORDER IN T-2049-19 and T-354-20

THIS COURT ORDERS that:

1. The settlement fund in the amount of ~~\$100,788.56.00~~ \$100,788.56 on behalf of Ruby Owen, a minor under the age of 18 years, representing damages in the amount of \$100,000.00 and *pro rata* share of costs in the amount of \$788.56, is approved.
2. Legal fees in the amount of \$25,000.00 together with H.S.T. in the amount of \$3,250.00, payable to McLeish Orlando LLP in trust are approved, in respect of Ruby Owen, and that amount shall be paid out to McLeish Orlando LLP in trust.
3. The balance of the settlement funds in the amount of \$72,538.56 will be paid into the Federal Court, to earn interest according to the provisions of the *Financial Administration Act*, R.S.C., 1985, c. F-11, subject to any further Order of the Court.
4. The settlement fund in the amount of ~~\$100,000.00~~ \$100,788.56 on behalf of David Cash Owen, a minor under the age of 18 years, representing damages in the amount of \$100,000.00 and *pro rata* share of costs in the amount of \$788.56, is hereby approved.
5. Legal fees in the amount of \$25,000.00 together with H.S.T. in the amount of \$3,250.00, payable to McLeish Orlando LLP in trust are approved, in respect of David Cash Owen, and that amount shall be paid out to McLeish Orlando LLP in trust.
6. The balance of the settlement funds in the amount of \$72,538.56 will be paid into the Federal Court, to earn interest according to the provisions of the *Financial Administration Act*, R.S.C., 1985, c. F-11, subject to any further Order of the Court.

7. The request for a Sealing Order is dismissed.
8. The Reasons and Order will be filed on a confidential basis for a period of thirty (30) days from the date of the Order, subject to any further Order of the Court.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-2049-19
T-354-20

STYLE OF CAUSE: KEVIN O'LEARY ET AL v. ROSA RAGONE ET AL
RICHARD RUH ET AL v. ROSA RAGONE ET AL

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 2, 2025

PUBLIC ORDER AND REASONS: HENEGHAN J.

DATED: JANUARY 13, 2026

AMENDED: JANUARY 16, 2026

APPEARANCES:

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