Federal Court of Appeal Cour d'appel fédérale

Date: 20260320

Docket: A-108-25

Citation: 2026 FCA 57

CORAM: **RENNIE J.A.**
GLEASON J.A.
ROCHESTER J.A.

BETWEEN:

MATTHEW BRANDON
(THROUGH HIS LITIGATION GUARDIAN
CHRIS GARDINER)

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Ottawa, Ontario, on March 2, 2026.

Judgment delivered at Ottawa, Ontario, on March 20, 2026.

REASONS FOR JUDGMENT BY: ROCHESTER J.A.

CONCURRED IN BY: RENNIE J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

ROCHESTER J.A.

[1] The appellant, Matthew Brandon, appeals a decision of the Federal Court (2025 FC 443) striking his statement of claim without leave to amend. While the action was filed as a proposed class action, it never reached the certification stage. Consequently, the only plaintiff at issue is Mr. Brandon.

[2] While I acknowledge that the circumstances of Mr. Brandon are nothing short of tragic, for the reasons below, this appeal must be dismissed.

I. Background

[3] Mr. Brandon, born in 1991, is a child of Residential School survivors. Due to the abuse he suffered at the hands of his father, at 18 months of age he was placed in successive foster homes until he came under the care of his current foster parents. As a result of the abuse, Mr. Brandon suffered a brain injury from which he never recovered.

[4] Mr. Brandon's proposed amended statement of claim alleges that Canada owed second-generation Residential School survivors a duty of care, which it breached, to teach and provide their parents with the necessary life skills, including effective parenting skills, to function as peaceful and well-functioning adults after leaving the Residential School system. Mr. Brandon alleges that the harms that he suffered were a foreseeable consequence of the psychological, physical, sexual, and spiritual abuse his parents were subjected to.

[5] The action was filed as a proposed class proceeding on April 2, 2024. Prior to a motion for certification, the Crown had advised Mr. Brandon of perceived deficiencies in the claim. As a result, the case management judge ordered Mr. Brandon to provide a written response to the Crown, including any proposed amended statement of claim. Mr. Brandon did not do so by the deadline. Consequently, on December 30, 2024, the Crown brought a motion under Rule 221(1)(a) of the *Federal Courts Rules*, S.O.R./98-106 to strike the claim without leave to amend on the basis that it failed to disclose a reasonable cause of action. In particular, the Crown

alleged that the claim was barred by the release contained in the Indian Residential Schools Settlement Agreement ("IRSSA").

[6] In 2006, various parties, including the Crown in right of Canada, entered into the IRSSA. Its preamble states, among other things, that the parties thereto desire a fair, comprehensive and lasting resolution to the legacy of Indian Residential Schools. The IRSSA resolved the claims of the IRSSA class members. In so doing, it provides for individual compensation for Residential School survivors, along with larger funding initiatives aimed at addressing the intergeneration effects and the legacy of Residential Schools. In addition, the IRSSA includes a comprehensive release.

[7] At the time, the parties to the IRSSA agreed to combine numerous outstanding Residential Schools' litigation into one *omnibus* class action that was filed in nine jurisdictions, including in Saskatchewan where Mr. Brandon resides. The nine superior courts across Canada then approved the IRSSA on substantially the same terms and conditions (see e.g. *Sparvier v. Canada (Attorney General)*, 2006 SKQB 533 at paras. 2–3 [*Sparvier*]). As stated by Justice Ball in the Saskatchewan proceedings, "[t]his settlement is unique in that it responds to historic wrongs perpetrated against First Nations' people in Canada" (*Sparvier* at para. 4). Justice Ball agreed with the decision of Justice Winkler of the Ontario Superior Court in *Baxter v. Canada (Attorney General)*, 2006 CanLII 41673 (ON SC), 83 O.R. (3d) 481 [*Baxter*] which noted that "[f]or over 100 years, Canada pursued a policy of requiring the attendance of Aboriginal children at residential schools […] In its attempts to address the damage inflicted by, or as a result of, this

long-standing policy, the settlement is intended to offer a measure of closure for the former residents of the school[s] and their families." (*Baxter* at para. 2; *Sparvier* at para. 4).

[8] The Saskatchewan judgment approving the settlement of the class proceeding, in accordance with the terms of the IRSSA, was rendered on December 15, 2006 (Q.B.G. No. 816 of 2005 [Saskatchewan Judgment]). Paragraph 1(f) of the Saskatchewan Judgment defines "Class" or "Class Members" as:

> a. each and every person
>
> > i. who, at anytime prior to December 31, 1997, resided at an Indian Residential School in Canada; or
> >
> > ii. who is a parent, child, grandparent, grandchild, sibling or spouse of a person who, at anytime prior to December 31, 1997, resided at an Indian Residential School in Canada,
> >
> > and,
>
> b. who, at the date of death resided in, or if living, as of the date hereof, resided in: […]
>
> > viii. Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan; […].

[9] Paragraph 5 of the Saskatchewan Judgment defines "Family Class" as "…(a) the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member […]". Paragraph 7 orders that the "Class shall consist of the Survivor Class, the Family Class and the Deceased Class."

[10] Paragraph 15 of the Saskatchewan Judgment provides the following release:

> THIS COURT ORDERS AND DECLARES that, subject to the provisions of the Agreement, and in particular, section 4.06 thereof, each Class Member and his or

> her heirs, personal representatives and assigns or their past and present agents, representatives, executors, administrators, predecessors, successors, transferees and assigns, have released and shall be conclusively deemed to have fully, finally and forever released the Defendants and the Other Released Church Organizations and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, partners, principles, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessor, successors, heirs, transferees and assigns from any and all actions, causes of action, common law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which they ever had, now have or may have hereafter have, directly or indirectly or any way relating to or arising directly or indirectly by way of any subrogated or assigned right or otherwise in relation to an Indian Residential School or the operation generally of Indian Residential Schools and this release includes any such claim made or that could have been made in any proceeding including the Class Actions and including claims that belong to the Class Member personally, whether asserted directly by the Class member or by any other person, group or legal entity on behalf of or as a representative for the Class Member.

[11] Paragraph 16 of the Saskatchewan Judgment expands on the release, providing for its application regardless of whether a Class Member participates in the IRSSA or whether a Class Member is eligible for individual compensation:

> AND THIS COURT ORDERS AND DECLARES for greater certainty that the Releases referred to in paragraph 15 above bind each Class Member whether or not he or she submits a claim to the Trustee, whether or not he or she is eligible for individual compensation under the Agreements or whether the Class Member's claim is accepted in whole or in part.

[12] Paragraph 19 of the Saskatchewan Judgment operates as a bar to future actions or proceedings as detailed below:

> THIS COURT ORDERS AND DECLARES that each Class Member and each of his or her respective heirs, executors, administrators, personal representatives, agents, subrogees, insurers, successors and assigns shall not make any claim or take any proceeding against any person or corporation, including the Crown, in connection with or related to the claims released pursuant to paragraph 16 of this judgment, who might claim or take a proceeding against the Defendants or Other

> Released Church Organizations, in any manner or forum, for contribution or indemnity or any other relief at common law or in equity or under any other federal, provincial or territorial statute or the applicable rules of court. A Class Member who makes any claim or takes any proceeding that is subject to this paragraph shall immediately discontinue such claim or proceeding and this paragraph shall operate conclusively as a bar to any such action or proceeding.

[13] Paragraph 21 of the Saskatchewan Judgement clarifies the release as it relates to members of the Family Class:

> THIS COURT ORDERS that, for greater certainty, notwithstanding paragraphs 15, 16, 17, 18, 19 and 20 of this judgement, no action capable of being brought by an individual, except for Family Class Claims, will be released, stayed, dismissed or discontinued, where such action would be released, stayed, dismissed or discontinued only by virtue of the individual being a member of the Family Class.

[14] In the present proceeding, the Federal Court concluded that Mr. Brandon's claim was barred by the IRSSA release, and therefore that it was plain and obvious that the claim would fail. The Federal Court was not persuaded by Mr. Brandon's submission that the validity and enforceability of a release cannot be decided on a motion to strike because a release constitutes a defence. The Federal Court noted that the nine "court approval orders gave the settlement agreement, which was incorporated by reference into those orders, legally binding effect", and thus determined that "the definition of 'class members' and the breadth of the scope of the release, which form part of those court orders, are clear on their face": para. 42.

II. Analysis

[15] While I am mindful that Mr. Brandon's circumstances are nothing short of tragic, the Federal Court did not commit a reviewable error in striking the claim without leave to amend.

[16] Counsel for the Crown submits that the applicable standard of review, when interpreting the terms of the IRSSA and determining the essential nature of the claim, is the highly deferential standard of palpable and overriding error. Counsel for Mr. Brandon submits that the IRSSA is akin to a standard form contract – the interpretation of which has precedential value – and as such is subject to correctness review.

[17] What is at issue is the proper interpretation of the Saskatchewan Judgment. In determining the applicable standard of review, it matters not that large portions of the language contained in the Saskatchewan Judgment were drawn from the IRSSA. Ultimately, the proper interpretation of a court order or judgment is, like a statute, a question of law and thus reviewable on the standard of correctness: *Fontaine v. Canada (Attorney General)*, 2020 ONCA 688 at para. 29; *Onion Lake Cree Nation v. Stick*, 2020 SKCA 101 at para. 44.

[18] With respect to determining the essential nature of Mr. Brandon's claim, the Federal Court's decision is reviewable for palpable and overriding error: *Canada v. Hudson*, 2024 FCA 33 at para. 61.

[19] Mr. Brandon's claim, including as re-framed in the amended statement of claim, does not disclose a reasonable cause of action. I find no reviewable error in the Federal Court's characterization of the claim. The wrongs alleged in Mr. Brandon's claim relate to the abuse his parents were subject to while attending Residential Schools and the Crown's alleged failure to provide his parents with necessary life skills, notably effective parenting skills. The Federal

Court did not err in concluding that these factual allegations are actions that are contemplated by the IRSSA, including the release.

[20] I turn now to the definition of a “Class Member”. Mr. Brandon, a child of Residential School survivors, born in 1991, and living in Saskatchewan at the time the IRSSA was entered into, clearly falls within the Class. Furthermore, Mr. Brandon, as a child of Survivor Class Members, falls within the definition of the Family Class (Saskatchewan Judgment at para. 5). Counsel for Mr. Brandon submits that, as he was a minor in 2006, the IRSSA is voidable and may be rescinded upon attaining the age of majority. I disagree. Paragraph 28 of the Saskatchewan Judgment provides that the IRSSA and the judgment “are binding upon each Class Member, including those persons who are minors or are mentally incapable and that any requirements or rules of civil procedure which would impose further obligations” are dispensed with.

[21] The Federal Court committed no reviewable error in concluding that Mr. Brandon’s claim is barred by the release. Given that Mr. Brandon is a Class Member, and a member of the Family Class, he is bound by the comprehensive release contained at paragraph 15 and his claim is conclusively barred by the operation of paragraph 19 of the Saskatchewan Judgment.

[22] I am not persuaded by counsel for Mr. Brandon’s submission that the language of paragraph 21 of the Saskatchewan Judgment operates to exclude Family Class members from the release or that the Federal Court’s failure to consider that paragraph is a reviewable error. Given the text of paragraph 21, I agree with counsel for the Crown that the language operates to ensure

that an individual who attended a Residential School does not have their claim for individual compensation released and barred solely because they have a family member who is also a Residential School survivor. In short, an individual can be both a member of the Survivor Class and a member of the Family Class – and thus paragraph 21 protects the Survivor Class claim.

[23] Counsel for Mr. Brandon seeks, without success, to draw the Court into the theoretical exercise of envisioning claims by possible class members who differ from Mr. Brandon, and who, in counsel's submission may have claims that are not released or excluded. It is not the role of the Court to consider, at this stage in the action, possible hypothetical claimants who are not before the Court. The only person before the Court is Mr. Brandon. His claim was struck for disclosing no reasonable prospect of success prior to a motion for certification having been brought.

[24] I note that similar arguments were made before the Federal Court. The statements made by the Federal Court with respect to possible proposed class members who are children of Residential School survivors, should be read as applicable to Mr. Brandon's circumstances only. Anything else, given the record and the circumstances of this case, is purely *obiter* and therefore not binding.

[25] In response to Mr. Brandon's submissions on the validity and enforceability of the release, the Federal Court noted the following, that "[t]he Plaintiff's argument that it is confusing whether the definition of 'child' in the IRSSA includes the 'unborn' has no reasonable prospect of success" (para. 42). To the extent that the Federal Court was stating that counsel's argument

has no reasonable prospect of succeeding for Mr. Brandon, I agree. In the present circumstances, neither the Federal Court, nor this Court, should be addressing or commenting on an imagined claim by someone who is not a party to the action.

[26] Counsel for Mr. Brandon pleads, repeatedly, that the effect of the Federal Court's decision is to wipe out thousands of claims of individuals who were not before the Court and who were not parties to the motion below. It does no such thing as, again, the only plaintiff before this Court is Mr. Brandon.

III. Conclusion

[27] For the foregoing reasons, I would dismiss Mr. Brandon's appeal. The Federal Court did not err in striking the amended statement of claim without leave to amend. Mr. Brandon is a member of the Class, and the nature of his claim falls within the release. The Crown has not sought costs, and as such none should be awarded.

"Vanessa Rochester"
J.A.

"I agree.
Donald J. Rennie J.A. "

"I agree.
Mary J.L. Gleason J.A. "

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-108-25
STYLE OF CAUSE:	MATTHEW BRANDON (THROUGH HIS LITIGATION GUARDIAN CHRIS GARDINER) v. HIS MAJESTY THE KING
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MARCH 2, 2026
REASONS FOR JUDGMENT BY:	ROCHESTER J.A.
CONCURRED IN BY:	RENNIE J.A. GLEASON J.A.
DATED:	MARCH 20, 2026

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