Court of King's Bench of Alberta

Citation: Youngchief v The Attorney General of Canada, 2025 ABKB 35

Date: 20250121
Docket: 1914 00167
Registry: St. Paul

Between:

Cynthia Iris Youngchief

Plaintiff

- and -

The Attorney General of Canada, His Majesty the King in Right of Alberta, Le Diocèse de Saint-Paul and/or The Diocese of Saint-Paul, St. Louis Parish, and Board of Trustees of Lakeland Roman Catholic Separate School Division

Defendants

Reasons for Decision – Certification Application
of the
Honourable Justice James T. Neilson

---

[1] The Plaintiff, Cynthia Iris Youngchief, brings this action as Representative Plaintiff pursuant to the *Class Proceedings Act* S.A. 2003 c C-16.5, representing the Survivor Class defined as follows:

> "Survivor Class means all aboriginal persons, wherever they may now reside or be domiciled, who attended a school in Bonnyville, Alberta, with the name Notre Dame during the Class Period."

[2] The Class Period is defined as the period between September 1st 1966 to June 28th 1974.

[3] The action concerns the alleged conduct of the Defendants in their operation of Notre Dame school. It is alleged that the Defendants jointly and severally established, funded, oversaw, operated, supervised, controlled, maintained and supported Notre Dame school through common national and provincial policies and procedures.

[4] The Amended Amended Statement of Claim (the "Claim") alleges that the Survivor Class members were subjected to frequent physical, psychological, and sexual abuse and that the Defendants were jointly and severally negligent and breached their fiduciary duty owed to the Survivor Class members. It is alleged that the Defendants' negligence and breach of fiduciary duty resulted in enormous harm to the class.

[5] The Claim pleads, by way of background, amendments to the *Indian Act* in 1884 that made it mandatory for aboriginal children to attend a day school, industrial school or residential school. The Government of Canada ceased operation of its Indian day school on Kehewin Cree Nation in 1964. There were no replacement schools, teachers, or other educational facilities in Kehewin at that time. It is alleged that the Defendants jointly decided to begin transporting children from Kehewin Cree Nation to and from the nearby Town of Bonnyville to attend school. These day students attended Notre Dame school and now form the Survivor Class as defined.

[6] There have been several changes to the structure of the school districts in place during the Class Period when the Notre Dame school was in operation. The Claim pleads that:

a. In 1943, the Lac La Biche School Division was formed,

b. In 1971, the Beaver River School District #5460 assumed jurisdiction, and

c. On September 25th, 1980, the Lakeland Roman Catholic School District #150 was established.

The Defendants

[7] The Defendant, the Attorney General of Canada ("Canada"), is represented in the proceeding pursuant to s 23 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c C-50. The Claim alleges, *inter alia*, that at all material times, Canada was responsible for the maintenance, funding, operation, oversight and/or management of Canadian schools for aboriginal children including Notre Dame school. The Claim pleads that Canada employed and/or authorized its agents to operate, manage, and oversee schools. It also provided instruction to such agents as to the manner in which those schools were to operate. The Claim further alleges that Canada's maintenance, funding, operation, oversight and/or management of schools, through its agents, breached its duty of care owed to Survivor Class members. Canada was also in breach of its fiduciary duty owed to Survivor Class members. The Claim furthermore alleges that, by virtue of its responsibility to ensure the safety, care and protection of Class members and its authority and control over its agents, and in accordance with s 3 of the *Crown Liability and Proceedings Act*, Canada is vicariously liable for the acts and omissions of its agents in respect of the maintenance, funding, operation, oversight and/or management of Notre Dame school.

[8] The Claim alleges that the Defendant, His Majesty the King in Right of Alberta ("Alberta") has jurisdiction, authority and control over Alberta Education. The Claim alleges that the authority and duties described in the Claim as against Canada were delegated from Canada to Alberta under the *School Act*, R.S.A. 1952, c.329, *School Act*, R.S.A. 1970, c.329, *Department of Education Act*, R.S.A. 1955, c.-95 and the *Department of Education Act*, R.S.A. 1970, c-96. The Claim alleges, *inter alia*, that it owed a duty of care to Class members through its governance and support of Notre Dame school, that the Class members were in the care and control of Alberta's agents at the school, that Alberta had breached its duty to the Class members failing to take reasonable steps to prevent or stop physical, emotional, sexual and psychological

harm, that it was vicariously liable for the wrongful acts of school staff, and that it breached a fiduciary duty owing to the Survivor Class members.

[9] The Defendant, Le Diocèse de Saint-Paul and/or The Diocese of Saint-Paul, is a bilingual diocese consisting of 38 parishes and missions in Northeastern Alberta, including the Defendant St. Louis Parish, situated in the Town of Bonnyville, Alberta, (the "Diocesan Defendants"). The Claim alleges, *inter alia*, that the Diocesan Defendants owed a duty of care to Class members through its support of Notre Dame school, that it exercised care and control over the Class members, that they breached their duty in failing to ensure the Class members were in a safe environment when under their care, that it was reasonably foreseeable that by failing to meet its standard of care, Class members would be subjected to abuse for which compensation is owed, and that they were vicariously liable for the wrongful acts of the school staff and had breached their fiduciary duty to the Class members.

[10] The Claim alleges, *inter alia*, that the Board of Trustees of Lakeland Roman Catholic Separate School Division and its predecessors (the "School District") owed a duty of care to the Class members through its establishment, oversight, operation, supervision, care and control, maintenance and support of the Notre Dame school who were subject to the School District's policies and oversight. The Claim alleges that the School District was obliged to supervise and operate the school with a reasonable standard of care, but that the Class members were systematically subjected to substandard and inappropriate institutional conditions and educational policies. It alleges that the School District breached its duty in failing to ensure policies were in place that guaranteed the Class members were in an abuse free environment and that the School District breached its duty of care by failing to take reasonable steps to prevent or stop physical, emotional, sexual and psychological harm. The Claim also alleges that the School District is vicariously liable for the wrongful acts of school staff, and that it had breached its fiduciary duty to Class members.

Application for Certification of the Class Action

[11] The Plaintiff applies for a certification of this class action pursuant to s 5(1) of the *Class Proceedings Act* that sets out the five preconditions to certification of a class action:

> In order for a proceeding to be certified as a class proceeding on an application made under s 2 or 3, the Court must be satisfied as to each of the following:
>
> (a) the pleadings disclose a cause of action;
>
> (b) there is an identifiable class of 2 or more persons;
>
> (c) the claims of the prospective class members raise a common issue, whether or not the common issue predominates over issues affecting only individual prospective class members;
>
> (d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;
>
> (e) there is a person eligible to be appointed as a representative plaintiff who, in the opinion of the Court,
>
> (i) will fairly and adequately represent the interests of the class,

(ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and notifying class members of the proceeding, and

(iii) does not have, in respect of the common issues, an interest that is in conflict with the interests of other prospective class members.

[12] During the case management process and discussion among counsel for the parties, the Defendants, Canada, the School District and the Diocesan Defendants have arrived at the following agreements to certification.

[13] Canada has agreed to the terms in particular of certification and has agreed not to oppose certification on the following terms:

a. The "Survivor Class" is as now defined;

b. The "Class Period" is as now defined;

c. The "Representative Plaintiff" shall be Ms. Cynthia Iris Youngchief;

d. The common questions of law or fact in this proceeding shall be limited to and certified as follows:

(i) whether and to what extent, each of the defendants were involved in the operation and management of the schools;

(ii) whether each of the defendants owed a duty to the Plaintiff; and,

(iii) whether there was a breach of that duty.

e. Grey Wowk Spencer LLP shall be appointed as Class Counsel for the Survivor Class; and,

f. There will be no costs payable by Canada in respect of the certification application.

[14] The Diocesan Defendants neither consent to certification nor do they oppose it either, on the revised and narrowed terms set out in the amended application for a certification filed on June 3rd, 2024. The Diocesan Defendants will neither consent to nor oppose certification and the Plaintiff will not seek or obtain costs against the Diocesan Defendants in respect of the certification application. The agreement by the Diocesan Defendants not to oppose certification is not an admission of liability and is not an admission of any fact pleaded in the Claim.

[15] The School District does not oppose the certification under the proposed terms:

1. The "Survivor Class" as now defined;

2. the "Class Period" as now defined;

3. the "Representative Plaintiff" shall be Cynthia Iris Youngchief;

4. Grey Wowk Spencer LLP shall be appointed as Class Counsel for the Survivor Class;
5. The common issues shall be limited to and certified as follows:
    (i) whether and to what extent each of the defendants were involved in the operation and management of the school;
    (ii) whether each of the defendants owed a duty to the plaintiff; and,
    (iii) whether there was a breach of that duty.
6. There will be no costs payable to the Board of Trustees in respect of the Certification application.

Certification of the Claim as against Alberta

[16] Alberta objects certification of the Claim as against it on the basis that the pleadings do not disclose a cause of action (s 5 (1)(a)), the Claims of the prospective Class members do not raise a common issue involving Alberta (s 5(1)(c)), and a class proceeding would not be the preferable procedure for the fair and efficient resolution of the common issues as they may affect Alberta (s 5(1)(d)).

[17] As the Alberta Court of Appeal has ruled in ***Spring v Goodyear Canada Inc***, 2021 ABCA 182 at paras 17 and 18 concerning the test for certification:

> [17] The representative plaintiff must establish all five of the preconditions to certification found in s. 5 of the *Class Proceedings Act*. If those five preconditions are met, the action must be certified; if they are not met, the application for certification must be dismissed.
>
> [18] The certification process plays a screening role, but it is limited in scope. At the certification stage, the judge is ruling on a purely procedural question. The judge must not deal with the merits of the case, as they are to be considered only after the application for certification has been granted: ***L'Oratoire Saint Joseph*** at para. 7. Goodyear notes that, at this stage, there is very little evidence to support some aspects of the representative plaintiff's proposed claims. That, however, is not a barrier to certification.

Cause of action

[18] The test for determining if the pleadings disclosed a cause of action under s 5(1)(a) of the *CPA* is the same that applies to an application to strike the claim where it is "plain and obvious" the Plaintiff's claim cannot succeed: ***Alberta v Elder Advocates of Alberta Society***, 2011 SCC 24 at para 20.

[19] The Supreme Court of Canada outlined the general principles that should inform the application of rules on striking pleadings in ***R v Imperial Tobacco Canada Ltd.***, 2011 SCC 42 at paras 22 and 25**:**

> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.
>
> ...
>
> [25] Related to the issue of whether the motion should be refused because of the possibility of unknown evidence appearing at a future date is the issue of speculation. The judge on a motion to strike asks if the claim has any reasonable prospect of success. In the world of abstract speculation, there is a mathematical chance that any number of things might happen. That is not what the test on a motion to strike seeks to determine. Rather, it operates on the assumption that the claim will proceed through the court system in the usual way — in an adversarial system where judges are under a duty to apply the law as set out in (and as it may develop from) statutes and precedent. The question is whether, considered in *the context of the law and the litigation process*, the claim has no reasonable chance of succeeding.

[20] The Alberta Court of Appeal in ***Setoguchi v Uber BV***, 2023 ABCA 45 confirms the approach to be taken when conducting an analysis of the cause of action under s 5(1)(a) of the *CPA* as follows, at para 44:

> [44] Although the s 5(1)(a) test is a low bar, it should not be treated as a perfunctory exercise. "Courts have no justification to ignore the plain text of an enactment and make this criterion completely disappear": ***Bruno*** at para 68. There are compelling reasons for a court to carefully consider whether the pleadings pass the plain and obvious test, by carefully scrutinizing whether the facts as pleaded establish the requisite elements of each cause of action. When a novel claim is presented, that may involve an assessment of whether each element of the cause of action as pleaded is (or should be) recognized in law.

[21] No evidence is permitted on an application to determine if the pleadings disclosed a cause of action. As the Alberta Court of Appeal stated in ***Klassen v Canadian National Railway Company***, 2023 ABCA 150, at para 26:

> [26] While no evidence is permitted on an application to determine if the pleadings disclose a cause of action, the court can refer to any documents or facts that are referred to in the pleadings (such as the municipal bylaw and the whistle cessation procedure). Further, the statement of claim must always be assessed against the legal background. The statement of claim pleads the facts, not the law: R. 13.6(2)(a). The court is required to take notice of the law, including in this case

> the provisions of the *Railway Safety Act* and the statutory instruments made pursuant to it. Further, the statement of claim must be read as a whole, and if the pleadings disclose a complete defence to any part of the claim, the action should not be certified: ***HOOPP Realty Inc v Guarantee Co of North America***, 2015 ABCA 336 at paras. 13-15, 607 AR 377.

[22] The Claim makes explicit reference to the *School Acts* and the *Alberta Department of Education Acts*. In considering whether the Claim discloses a cause of action against Alberta, it is proper for the Court to refer to the legislation as pleaded in the Claim, and any applicable law, in order to determine if a cause of action has been made out against Alberta.

[23] In reviewing the legislation that was in place during the Class Period, and specifically the *School Acts*, it is apparent that both *School Acts* allowed for the establishment of school districts across the province. Each school district had a school board, which operated as independent corporate entities, legally distinct from Alberta: *School Act* 1955 at s 4 and *School Act* 1970 at s 14, and *School Act* 1955 at s 74 and *School Act* 1970 at s 30(1).

[24] Furthermore, the *School Acts* granted the school boards the responsibility and power to:

a. make rules for the management and operation of schools, and make the rules available to teachers and principals: *School Act* 1955 at s 179, *School Act* 1970 at s 65(3)(d);

b. designate principals for schools: *School Act* 1955 at s 370, and *School Act* 1970 at s 82;

c. employ teachers: *School Act* 1955 at s 332(1), 339, and 348, and *School Act* 1970 at s 73, 75 and 78;

d. suspend or dismiss teachers for gross misconduct, neglect of duty, or refusal or neglect to obey any lawful order of the board: *School Act* 1955 at s 350, and *School Act* 1970 at s 79;

e. provide health services and safeguards to pupils: *School Act* 1955 at s 182, and *School Act* 1970 at s 147;

f. keep in force a policy of insurance for indemnifying the board and its employees in respect of claims for damages for death or personal injury: *School Act* 1955 at s 180(d)(i), and *School Act* 1970 at s 65(3)(a);

g. enter into agreements for the education of indigenous students not residing within the district's boundaries: *School Act* 1955 at s 178(6) coming into force through amendments contained in *SA* 1956 c 49, at s 11 and further amended by *SA* 1957 c 85, at s 9(b), and *School Act* 1970 at s 160.

[25] I find that the *School Act* 1955 and the *School Act* 1970 specifically do not give Alberta or the responsible Minister the power to control or monitor the management or operation of schools, or deem the school boards or school staff to be agents of Alberta of the responsible Minister, nor do they give Alberta or responsible Minister the power to control the activities of the school board. Pursuant to the *School Acts*, these duties lie legally with the independent school board.

[26] The Alberta Court of Appeal considered an analogous case as to whether a cause of action for breach of *Charter* rights existed against the Minister of Education for the improper treatment of a student while at school: ***A.H. v Alberta (Minister of Education)***, 2020 ABCA 54. In that case, the Court ruled that no cause of action against Alberta was found to exist. That case arose from allegations that a special needs student was placed in an isolation room without parental consent. The Claim against Alberta alleged that the Minister of Education was "endowed with responsibilities imposed by the [School] Act, and was required to exercise their duties and responsibilities in compliance with the *Charter*" (at para 3). The Court of Appeal upheld the Chambers Justices' decision to strike the claim against the Alberta, holding at paras 4, 5 and 16 as follows:

> [4] No duty imposed by the *School Act* on the Minister is engaged in this case. The Minister is under no obligation to monitor the day-to-day activities of employees of a school board and ensure their compliance with school board policies.
>
> [5] A school board is a corporation and has a separate legal status from that of Alberta Education.
>
> ...
>
> [16] There is no arguable cause of action here. The appellants have not identified any act on the part of the Minister that breaches any duty the Minister owed them or was imposed on the Minister by the *School Act*. If there is a cause of action here, it is against the school board and its employees. The claim is still proceedings against those defendants.

[27] Similarly, the British Columbia Supreme Court in ***Wiggins v British Columbia***, 2009 BCSC 121 held that the Minister of Education did not owe a duty of care to parents of students wrongfully charged certain school fees. The Court stated at para 34:

> [34] With respect, nothing in the governing statute itself, the *School Act*, supports that plaintiff's assertion that the Province has a statutory duty to monitor and control the compliance of boards of education with law and policy regarding the charging of school fees. As the defendant submits, the purpose of the *School Act* is to establish a structure for the provision of educational services by independent boards. The statute clearly envisions boards of education as independent, elected bodies that operate with considerable autonomy. As such, the imposition of liability on the Province for the failure to control or monitor the schools or boards is contrary to the scheme of the *School Act*.

[28] I find that the Claim does not disclose a cause of action against Alberta in negligence. The Plaintiff's alleged breaches of duty may apply to the School District and its predecessors, but not to Alberta. Furthermore, applying the reasoning of the Supreme Court of Canada in ***Cooper v Hobart***, 2001 SCC 79, because of the statutory provisions governing Alberta Education and its School Boards, there is no "close and direct relationship" between the Survivor Class members and Alberta during the Class Period. The same analysis applies to the allegations relating to vicarious liability – ***K.L.B. v British Columbia***, 2003 SCC 51, the alleged fiduciary duty and the allegations regarding substandard education.

[29] As I find that the Claim does not support a cause of action as against Alberta, it follows that s 5(1)(c) and (d) have not been satisfied as against Alberta.

Conclusion

[30] The Court certifies this class action as against the Defendants, The Attorney General of Canada, the Diocesan Defendants and the School District, as follows:

1. The Survivor Class means all aboriginal persons, wherever they may now reside or be domiciled, who attended a school in Bonnyville, Alberta, with the name Notre Dame during the Class Period.
2. The Class Period is defined as the period between September 1st, 1966 to June 28th, 1974.
3. The Representative Plaintiff shall be Cynthia Iris Youngchief;
4. Grey Wowk Spencer LLP shall be appointed as Class Counsel for the Survivor Class;
5. The common issues shall be limited to and certified as follows:
    (i) whether and to what extent each of the Defendants were involved in the operation and management of the school;
    (ii) whether each of the Defendants owed a duty to the Plaintiff; and,
    (iii) whether there was a breach of that duty.
6. There will be no costs payable by these Defendants in respect of the certification application.

[31] The application for certification is dismissed as against the Defendant, His Majesty the King in Right of Alberta, with costs for an application with brief under Column 1 of Schedule C of the *Rules of Court*.

[32] Finally, the Court directs that counsel for the Plaintiff prepare an updated Proposed Litigation Plan for consideration by counsel for the parties against which this class action has been certified. A Case Management Conference will be scheduled in order for the Court to confirm a Proposed Litigation Plan.

Heard on the 23rd day of September, 2024, with subsequent written submissions on the 25th day of October, 2024.
Dated at the Town of St. Paul, Alberta this 21st day of January, 2025.

James T. Neilson
J.C.K.B.A.

Appearances:

Leighton B.U. Grey, KC
Grey Wowk Spencer LLP
for the Plaintiff, Cynthia Iris Youngchief

Alethea LeBlanc, Colin LaRoche and Laura Klassen Russell
Department of Justice Canada
for the Defendant, Attorney General of Canada

John-Marc Dube and Frances Chiu
Alberta Justice Civil Litigation
for the Defendant, His Majesty the King in Right of Alberta

C. Vincent Kurata
McCuaig Desrochers LLP
for the Defendants, The Diocese of Saint-Paul and St. Louis Parish

Phillip Tinkler and Cristina Wendel
Dentons Canada LLP
for the Defendant, Lakeland Roman Catholic Separate School District #150