

Federal Court of Appeal



Cour d'appel fédérale

Date: 20251217

Docket: A-94-25

Citation: 2025 FCA 230

**CORAM: GLEASON J.A.
BIRINGER J.A.
PAMEL J.A.**

BETWEEN:

STEVENS & COMPANY LAW CORPORATION

Appellant

and

**GARRY LESLIE MCLEAN, ROGER AUGUSTINE, CLAUDETTE
COMMANDA, ANGELA ELIZABETH SIMONE SAMPSON,
MARGARET ANNE SWAN, MARIETTE LUCILLE BUCKSHOT, and
HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by
THE ATTORNEY GENERAL OF CANADA**

Respondents

Heard at Vancouver, British Columbia, on December 16, 2025.

Judgment delivered from the Bench at Vancouver, British Columbia, on December 16, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

BIRINGER J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20251217

Docket: A-94-25

Citation: 2025 FCA 230

**CORAM: GLEASON J.A.
BIRINGER J.A.
PAMEL J.A.**

BETWEEN:

STEVENS & COMPANY LAW CORPORATION

Appellant

And

**GARRY LESLIE MCLEAN, ROGER AUGUSTINE, CLAUDETTE
COMMANDA, ANGELA ELIZABETH SIMONE SAMPSON,
MARGARET ANNE SWAN, MARIETTE LUCILLE BUCKSHOT, and
HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by
THE ATTORNEY GENERAL OF CANADA**

Respondents

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on December 16, 2025).

BIRINGER J.A.

[1] The appellant, Stevens & Company Law Corporation, filed claims on behalf of 33 individuals under a process contemplated by a settlement agreement between the Government of

Canada and former students at Indian Day Schools: see *McLean v. Canada*, 2019 FC 1074 (Settlement Approval Order). The Federal Court (*per* Grammond J.) approved contingency fees of 3%, which was at a rate less than the appellant had sought: 2025 FC 171 (Decision). This is an appeal of the Federal Court’s judgment.

[2] The respondent, the Attorney General of Canada, filed a memorandum and appeared at the hearing for this appeal but takes no position regarding the outcome. The other respondents, clients of the appellant, did not file a memorandum or appear as a party at the hearing.

[3] Under the Settlement Approval Order, class members were entitled to free legal services from class counsel to file their individual claims: see also *McLean v. Canada*, 2019 FC 1075 at para. 47. Class members could also retain different counsel, such as the appellant, at their own expense. Counsel fees for individual claims were subject to approval under Rule 334.4 of the *Federal Courts Rules*, S.O.R./98-106, which empowers the Federal Court to review fee arrangements in class proceedings to ensure their “fairness, transparency and reasonableness”: *Jack v. McLean*, 2021 FCA 65 at para. 18 [*McLean FCA*].

[4] At the Federal Court, the appellant sought approval under Rule 334.4 of the contingency fees negotiated with their clients—5% for each client in all but one case, where they requested 4%. The motion judge was unable to conclude that 5% was “fair and reasonable” in the circumstances and, exercising his discretion under Rule 334.4, determined that 3% was: Decision at paras. 17-26. A discretionary decision is entitled to substantial deference on appeal.

[5] The appellant asks that we set aside the Federal Court’s Decision and award the fees originally sought. Before this Court, the appellant submits that the motion judge erred in principle by departing from the typical approach used to calculate contingency fees in class proceedings, by disregarding the terms of the fee arrangements made with their clients and by failing to consider factors relevant to a fee assessment.

[6] We disagree. The motion judge was well aware of the context and properly determined that, while representing these clients, the appellant bore much reduced risks compared to counsel with full carriage of a class proceeding, as the settlement agreement with the Government of Canada had already been negotiated: Decision at paras. 20-21. It was appropriate for the motion judge to take these reduced risks into account in exercising his discretion under Rule 334.4.

[7] The appellant also submits that the motion judge erred by applying excessive scrutiny to the appellant’s records.

[8] Again, we disagree. As the motion judge noted, the deficient dockets prepared by the appellant made it difficult—if not impossible—to determine the amount of work done on behalf of each client and whether that work was performed by a lawyer or an administrative staff member: Decision at paras. 23-24. Given this uncertainty, it was appropriate for the motion judge to exercise his discretion and depart from the contracted fee percentage, substituting a fee which he determined was fair and reasonable to the clients. We note that a 3% contingency fee was considered to be “fair and reasonable” for class counsel that had complete responsibility for

the case in the Indian Day Schools proceeding: *McLean v. Canada*, 2019 FC 1077 at paras. 51-56; aff'd *McLean FCA*.

[9] We find no reviewable error in the Federal Court's Decision, which, at the end of the day, was a discretionary one.

[10] Accordingly, we will dismiss the appeal. As no costs were sought, none are awarded.

"Monica Biringer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-94-25

STYLE OF CAUSE: STEVENS & COMPANY LAW CORPORATION v. GARRY LESLIE MCLEAN, ROGER AUGUSTINE, CLAUDETTE COMMANDA, ANGELA ELIZABETH SIMONE SAMPSON, MARGARET ANNE SWAN, MARIETTE LUCILLE BUCKSHOT, and HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: DECEMBER 16, 2025

REASONS FOR JUDGMENT OF THE COURT BY: GLEASON J.A.
BIRINGER J.A.
PAMEL J.A.

DELIVERED FROM THE BENCH BY: BIRINGER J.A.

APPEARANCES:

Greg Palm FOR THE APPELLANT

Travis Henderson FOR THE RESPONDENT
THE ATTORNEY GENERAL OF CANADA

SOLICITORS OF RECORD:

Hamilton Duncan Law Corporation
Surrey, British Columbia

Shalene Curtis-Micallef
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT
THE ATTORNEY GENERAL OF
CANADA