

## **Federal Court certifies privacy class action by Medical Marijuana patients against Health Canada**

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The Federal Court of Canada has certified a class action commenced on behalf of more than 40,000 medical marijuana licensees alleging that Health Canada violated their privacy.

In November 2013, Health Canada sent notices to over 40,000 participants of the Marihuana Medical Access Program (MMAP) to advise of changes to regulations governing the use of medical marijuana in Canada. The notices were delivered in oversized envelopes that had the words "Health Canada - Marihuana Medical Access Program" on the return address, revealing to anyone who saw the envelope that the recipient was licensed to possess or produce medical marihuana for medical purposes. Previously, Health Canada's mailings to MMAP members were discreet and made no mention of marijuana on the envelopes. Despite the Government of Canada's acknowledgement of the error, it insists that no one was harmed by the breach.

In March 2015, the Office of the Privacy Commissioner of Canada concluded that Health Canada violated federal privacy laws. However, in the recent certification decision, the Court found that the class action is necessary to provide access to justice because the Privacy Commissioner cannot order the Government of Canada to compensate class members harmed by the breach. The Government has 30 days to appeal the certification decision.

McInnes Cooper, Branch MacMaster LLP, Charney Lawyers, and Sutts Strosberg LLP are jointly representing the plaintiffs in the medical marijuana privacy breach class action filed in the Federal Court against the Government of Canada. The plaintiffs seek damages for breach of contract, breach of confidence, invasion of privacy and *Charter* violations.

"We are very glad to see this case moving forward. The certification decision means that the Court has agreed that this is an appropriate case for a class action and that allowing all of the class members to proceed in a group is in the interests of justice," said Ward Branch of Branch MacMaster LLP. "The Government of Canada has fought us at every turn, but have also lost each motion to date. We are hopeful that they will now see the wisdom of sitting down to resolve the issues created by this error."

"This is not over yet, but the thousands of affected program members should take some comfort that every legal claim we advanced on their behalf has been approved to go forward," said David Fraser of McInnes Cooper.

"As citizens of this great country, we rely on our government to protect our sensitive personal information from being disclosed and to protect our privacy during all communications. This decision sends a clear message to the government that our Courts consider privacy to be of the utmost importance and expect our government to take its privacy obligations seriously or face the consequences," said Ted Charney of Charney Lawyers.

"Over one thousand people have registered on our secure website to tell us how the breach affected them. We will continue to pursue justice for those harmed by the breach," said David Robins of Sutts, Strosberg LLP.

While it is not necessary to “opt in” to participate in the class action, class members are urged to visit the [www.marijuanaaction.com](http://www.marijuanaaction.com) website to obtain updates and to register because the information collected on the secured site will assist class counsel in communicating with class members and moving the case forward. Those who have already registered do not need to re-register but should update their information if their circumstances change or to report further harm suffered from the breach.

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#### **About Branch MacMaster LLP**

Branch MacMaster LLP is a boutique litigation law firm established in 1998 and located in Vancouver, British Columbia. The firm focuses on class actions, health, insurance, and personal injury. The firm provides responsive, flexible, and cost-effective service to their clientele.

#### **About Charney Lawyers**

Charney Lawyers is a Toronto, Ontario firm with an established reputation for excellence in advocacy. The firm is experienced in personal injury, class proceedings, commercial litigation, insurance defence, employment law, medical malpractice, food borne illness, construction law and appeals.

#### **About McInnes Cooper**

McInnes Cooper is among the top business and litigation law firms in Canada, with more than 200 lawyers in seven Canadian offices, serving clients across North America and abroad. The firm is a market leader in energy and natural resources, business, litigation, employment, tax, real estate and insurance law. McInnes Cooper is the exclusive member firm in Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island for Lex Mundi – the world’s leading network of independent law firms with in-depth experience in 100+ countries worldwide.

#### **About Sutts Strosberg LLP**

Sutts, Strosberg LLP is a nationally recognized law firm committed to excellence in litigation, with offices in Windsor and Toronto. The firm has a special interest in class actions, having represented groups or classes of individuals in every province and territory, and in every level of court, and is experienced in complex civil and commercial disputes, corporate, commercial and financial transactions, medical malpractice cases, personal injury cases, family law and criminal law.

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