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"Patients, Not Users" - Privacy of class claimants upheld in case against Health Canada

HALIFAX, Feb. 26, 2014 /CNW/ - In a decision released on Tuesday, the Federal Court of Canada (the Court) agreed that to deny the plaintiffs anonymity in the court proceeding would disclose the very information they seek to protect and exacerbate the damage and/or risk of harm that has already been caused by Health Canada's mailing that identified them as a participant in the Program.

Health Canada, relying on newspaper articles and internet research, argued that public opinion about marijuana use has changed to be more accepting. The Court rejected this evidence as irrelevant, explaining:

"What the Plaintiffs' marijuana use discloses is their medical and health information. The Plaintiffs are patients, not simply "users". Disclosing their identities discloses that a course of treatment has been prescribed by them by a medical doctor, and that they suffer from serious health conditions and symptoms. Identifying the Plaintiffs by name or information that discloses their personal identity also discloses that they have or are likely to have medical marijuana in their homes - something that Health Canada itself saw as a serious safety and security risk.

Accordingly, I am satisfied that in the within case of John Doe and Suzy Jones, without the protection they seek on this motion, the important issues they raise in their Amended Statement of Claim may not be determined in this forum, and that the issues they raise regarding patient rights, privacy and whether Health Canada owes a duty of care and has breached that duty and is liable are issues that are in the public interest to be determined. The Plaintiffs have requested only that their personal identity be protected and with minimum intrusion on the open court process."

The law firms of Sutts, Strosberg LLP, Charney Lawyers, Branch MacMaster LLP and McInnes Cooper commenced a proposed class action against the Government of Canada on behalf of all persons who were sent a letter from Health Canada in an envelope that referred explicitly to the "Medical Marijuana Access Program".

Jane O'Neill of McInnes Cooper who brought the motion on behalf of the plaintiffs says, "We are very pleased that the Court has recognized the importance of ensuring that the Plaintiffs' right to keep their health information private is maintained throughout this proceeding."

"This is a victory for access to justice," said Ted Charney of Charney Lawyers, co-counsel for the proposed class. "It is common sense that the Court should step up to protect the Plaintiffs so they can have their day in Court without being re-victimised in the process."

"It is important that that the Court recognized that this is not just about medical marijuana," said Ward Branch of Branch McMaster, co-counsel for the proposed class. "But that the members of the proposed class are affected by serious health conditions which were disclosed by Health Canada's privacy breach."

Class members are encouraged to register and stay up-to-date at www.marijuanaaction.com.

SOURCE McInnes Cooper

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