

Medical pot users seek class action against Health Canada

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Lawyers are in Federal Court in Halifax this morning to certify a class action suit against Health Canada for medical marijuana users who feel their privacy was compromised by a mailing sent by the department in November 2013. (TIM KROCHAK / Staff / File)

Lawyers representing plaintiffs in a proposed class action, claiming Health Canada breached privacy rights and jeopardized the safety of medical marijuana users, will be seeking damages of up to \$20,000 per person, a court in Halifax heard Wednesday.

Federal Court Justice Michael Phelan is hearing a certification application for a proposed class action, put forward by medical marijuana users and growers across Canada, who were licensed under the previous federal medicinal marijuana program.

The claim alleges that in November 2013 the department sent letters to about 40,000 people explaining changes to the federal medical marijuana access program, and because the return address on the envelopes clearly stated they came from the Health Canada medical marijuana program anyone who may have seen them knew the recipient was either licensed to possess or grow marijuana for medical purposes.

The claim alleges that Health Canada was reckless, careless and negligent in sending the mail-out, which breached confidentiality and the personal security of medical marijuana program users.

The allegations have not been proven in court and Health Canada has not yet filed a defence.

The lead plaintiffs, a Nova Scotia man and an Ontario woman, are identified by the pseudonyms John Doe and Suzie Jones because a confidentiality order protects their identities.

In court Thursday, Ted Charney, one of several lawyers representing the plaintiffs, read aloud copies of Health Canada emails, which he said indicate the federal department's use of the over-sized, non-discreet, envelopes in the mail-out, was not a simple clerical error. Instead, they indicate the decision received approval at "the director level" within the federal department, he said.

The emails show a Health Canada staffer first asked a Canada Post employee for a quote for the cost of sending the envelopes by registered mail, however, it was decided not to send them that way, said Charney, of Charney Lawyers in Toronto.

Health Canada sent its own envelopes to Canada Post to be used for the mail-out but they were damaged when they arrived there. An email from a Health Canada staffer to a Canada Post employee refers to a time pressure to get the mail-out done and in a subsequent email, the staffer, whose name is redacted from the emails, gives Canada Post the go-ahead to use the envelopes for the mail-out.

About 1,800 people have registered with the proposed class action. Two hundred and forty one of those have reported a home invasion or security breach since the mail-out and 341 have reported they have changed residences because of the mail-out, Charney said

One of the lead plaintiffs is a health professional in a small community in Nova Scotia. Following the mail-out, he believed that people in the community were aware he was licensed to use medicinal marijuana. He feared a home invasion and suffered anxiety and stress about possible career repercussions, Charney said.

McInnes Cooper in Halifax and three other law firms, one in British Columbia and two in Ontario are jointly representing affected users.

If the case moves forward, lawyers will argue that there was a breach of security of person under the Canadian Charter of Rights and Freedoms, David Fraser, of McInnes Cooper told the court.

“It will be alleged and argued ... that Health Canada knew about the risks that would be presented by disclosing this information.”

The Office of the Privacy Commissioner of Canada received more than 300 complaints about the mail-out, with recipients citing concerns such as job loss and damage to their reputations and safety. The commissioner’s office investigated and, in March, released a finding that Health Canada violated the federal Privacy Act and mishandled personal information.

Phelan has not yet decided whether the commissioner’s report or parts of it, can be used in the certification application.

Lawyers for Health Canada are expected to argue against the class action certification in court on Friday.

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