

Alberta court clears way for foster-care lawsuit

BY KAREN KLEISS, CANWEST NEWS SERVICE MAY 17, 2009

Edmonton — The provincial government has failed in its attempt to quash a multi-million dollar class action lawsuit filed on behalf of Alberta foster children.

In a decision released Friday, Alberta's highest court dismissed an appeal by the Director of Child Welfare and the Public Trustee's Office, which argued that a lower-court judge made legal mistakes in his decision to certify the class action in February last year.

The Court of Appeal upheld the lower-court ruling, and said the class action can go ahead.

The lawsuit, filed on behalf of more than 400 one-time foster children, claims the government should have taken legal action to get financial compensation for children who suffered injuries before or after they became wards of the state.

The plaintiffs were all subject to temporary and permanent guardianship orders between July 1966 and February 2004, which means the government was acting as their parent at some point during that time.

The plaintiffs are not claiming that child welfare authorities didn't react properly to injury or abuse. However, they claim that before or after they were taken into care they suffered injuries that entitled them to civil damages or victims of crime compensation, but child welfare authorities failed to pursue those claims. It is a class-action lawsuit about lawsuits.

For example one woman, now 28, was just seven weeks old when her mother and stepfather physically assaulted her so violently she was hospitalized for more than a month. Her parents were jailed and she was taken into care, but child welfare authorities never sought compensation for her under victims-of-crime laws.

Another lead plaintiff was five years old when he was placed in a foster home where he was repeatedly sexually assaulted by the son of his foster parents. His abuser was charged and pleaded guilty, but again, child welfare authorities never sought compensation.

Both plaintiffs claim the government should pay compensation now.

The Public Trustee's Office is named in the suit because it is the government body that should be advancing claims on behalf of children in care.

In its appeal, the government argued in part that it is too late for many of the claims to go to court, and that the remaining claims are too different to be lumped together into one class action lawsuit. The Court of Appeal rejected those arguments.

Vancouver-based class action lawyer David Klein and local lawyers Mark Freeman and Robert P. Lee are leading the action. Lee estimates roughly 20,000 Albertans are in a position to join.

“This lawsuit is important is because it creates accountability. Our system has had problems for decades, and it hasn’t improved much, or at all, or maybe it has gotten worse,” Lee said.

“Now the government has to account for its mistakes. That is how things will change in the child welfare system — only with accountability. When it starts to affect the government in the pocketbook, I think that is when we will start to see changes in the child welfare system.”

Lee said the government can still appeal to the Supreme Court of Canada.

However, if the government chooses not to appeal, lawyers will begin the process of notifying other Albertans who may wish to join the class action.

A spokesperson for the government could not immediately be reached for comment.

The suit was launched in 2005, and since then Alberta Children’s Services has implemented a referral process to address the legal interests of the roughly 6,500 children who are in the care of the province.

Edmonton Journal

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