IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Richard v. HMTQ,***
2008 BCSC 1275

Date: 20080922
Docket: S024338
Registry: Vancouver

Between:

William Joseph Richard and W.H.M.

Plaintiffs

And

Her Majesty the Queen in Right of the Province of British Columbia

Defendant

Before: The Honourable Madam Justice Satanove

Reasons for Judgment

Counsel for the Plaintiffs: D.A. Klein

Counsel for the Defendant: D.C. Prowse, Q.C., W. Branch, A.G. Lieberman A. Murray, I.D. Aikenhead, Q.C.

Date and Place of Trial/Hearing: September 5, 2008 Vancouver, B.C.

[1] The plaintiffs seek the following relief:

(a) an order approving the form and manner of notice of class certification to

class members pursuant to s. 19 and s. 22 of the ***Class Proceedings Act***, R.S.B.C. 1996, c. 50 ("***CPA***");

(b) an order specifying the time and manner for class members to opt out pursuant to s. 16(1) of the ***CPA***;

(c) an order requiring the defendant to pay for the cost of notice pursuant to s. 24 (1) of the ***CPA***;

(d) an order requiring the defendant to make immediate production of:

(i) copies of any documents provided by the defendant to Dulcie McCallum in preparation of her report, entitled 'The Woodlands School Report: An Administrative Review, The Need to Know", submitted to the Ministry of Children and Family Development (the "McCallum Report"); and

(ii) any documents concerning issues of employee discipline during the class period (the "Employment Files");

(e) an order requiring the defendant to make production, following the expiry of the opt out deadline, of any documents related to class members who have not opted out (the "Class Member Files");

(f) authorizing the Public Guardian and Trustee (PGT) to release documents, other than documents which are privileged or which relate to class members who opt out.

[2] The defendant agrees to the granting of the relief sought in (a), (b) and (d)(ii). The defendant agrees to the granting of the orders sought in (c) subject to the defendant's right to order and pay for the publication of the Notice directly.

[3] The main issue in dispute is the depth and breadth of disclosure of documents. The plaintiff and defendant have agreed that the defendant will disclose the documents in (d)(i) and (f) above that pertain to individuals who fall within the current class definition. However, the defendant refuses to produce documents in (e) above regarding sterilization issues on the ground there is no evidence that sterilization was ever conducted at Woodlands.

[4] I disagree with the defendant that there is no evidence regarding sterilization. At p. 22 of the McCallum Report, the author states:

> There is some documentation recording the use of admissions to Woodlands as a means by which families and family doctors relied on the facility for a person to be considered for sterilization.

[5] Again, at p. 20 of the Report of the PGT, sterilization is listed as one of the issues of concern that appeared in the review of the residents' files.

[6] The defendant may deny that sterilization ever took place in fact, but under the circumstances the plaintiff is entitled to test this denial. Therefore the order for production of documents in category (d)(i) and (f) will include documents referring to sterilization.

[7] The defendant objects to disclosure of the Class Member Files on the grounds of: (a) relevancy, (b) impracticality, (c) privacy and (d) the ***Youth Criminal Justice Act***, S.C. 2002, c.1.

[8] The Class Member Files are not to be confused with Woodlands' administration files pertaining to personnel, complaints or employee discipline procedures. The Class Member Files, of which there are approximately 2,200 or more relating to residents within the Class definition, are the files pertaining to individual residents of Woodlands.

[9] The defendant submits firstly, that the only documents of relevance in these files are the Unusual Occurrence Reports, copies of which are in the administration files that have already been produced; and secondly, that any evidence of abuse contained in these files is not relevant to the common issues, only the individual claims.

[10] The plaintiffs submit that these files may contain evidence of abuse that went unreported, which is part of their allegation of systemic negligence.

[11] The defendant relies on the two decisions of Madam Justice Humphries in ***Rumley v. British Columbia***, 2002 BCSC 1653, A.C.W.S. (3d) 36, and ***Rumley v. HMTQ***, 2003 BCSC 234, 12 B.C.L.R. (4th) 121, wherein she strictly limited the examination for discovery of more than four representative plaintiffs and redefined the common issues to avoid evidence of individual occurrences. These decisions are helpful in their observations of the potential unmanageability of class action examination for discovery and trials, but the case before me has not yet arrived at that stage of proceedings. We are in the initial stage of discovery which envisions fairly broad document disclosure. Use of some of those documents may be circumscribed at a later stage, but I am of the view that broad disclosure is necessary at this stage in keeping with the principles of Rule 26(1) of the ***Rules of Court***.

[12] I am aware of the decision of McEachern C.J. (as he then was) in ***Peter Kiewit Sons Company of Canada Ltd. v. British Columbia Hydro & Power Authority*** (1982), 134 D.L.R. (3d) 154, 36 B.C.L.R. 58, wherein he draws the line at document disclosure that would incur enormous expense for what may be a futile search. I do not think that this is such a case in light of the *prima facie* findings in the McCallum Report and Report of the PGT.

[13] Further, I do not agree that production of the Class Member Files will result in breach of third party rights. The Notice being sent out to potential members specifically addresses the confidentiality issue and tells them how to opt out of the class if they wish to retain confidentiality. By remaining a class member and becoming part of the litigation they are effectively giving up confidentiality as far as the litigation is concerned. That is not to say that their personal information will be publicized at large. In addition to the implied undertakings of counsel, in this case plaintiffs' counsel and staff have signed an express confidentiality agreement. I am satisfied that reasonable means have been employed to protect confidentiality as far as possible.

[14] If I am wrong in dismissing the defendant's relevancy, breadth and privacy arguments, I am of the opinion that plaintiffs' counsel is impliedly authorized to obtain the documents in any event. While there appears to be no previous decision expressly stating this, the law is clear that members of a plaintiff class are clients of counsel for the representative plaintiff, and share a

solicitor/client relationship with him or her.

[15] Justice Butler, in a previous decision in this case at 2007 BCSC 1107, 284 D.L.R. (4th) 481, scrutinized the duties and obligations of plaintiff's counsel in a class action and concluded that there existed a solicitor/client relationship between counsel and class members that included a duty to act in the best interests of the class as a whole. If plaintiffs' counsel is expected to fulfill the duties and obligations of a solicitor for the entire class he must, by implication, be authorized to act for the entire class without the need for individual, signed consents. Therefore, I am ordering production of the Class Member Files, subject to the restrictions of the ***Youth Criminal Justice Act***.

[16] The rest of the relief sought in the plaintiffs' notice of motion is adjourned.

"The Honourable Madam Justice Satanove"