

Ottawa asks court to turf medical pot case

CLARE MELLOR STAFF REPORTER

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Medical marijuana plants are tended to at a B.C. facility. Health Canada told a trial in Halifax that it didn't disclose personal information in a mailout to medical marijuana users. (THE CANADIAN PRESS)

Health Canada made “an administrative error” but did not misuse or disclose personal information when it sent a mailout to about 40,000 medical marijuana users and growers across the country, federal government lawyers told a court in Halifax on Friday.

They are asking the Federal Court to throw out an application to certify a class action against Health Canada, which claims the department violated the privacy and security of people enrolled in a federal medical marijuana program.

“There was no release of personal information,” Paul Vickery, a government lawyer, told the court.

After hearing from government lawyers Friday, Justice Michael Phelan reserved decision on whether to allow the case to go to trial. Lawyers representing the plaintiffs made their arguments Thursday.

The plaintiffs' claim alleges that in November 2013, Health Canada sent out letters outlining changes to the federal medical marijuana access program, allowing the name of the program, contained in the return address, to show on the envelope.

The plaintiffs allege Health Canada was negligent, careless and reckless in sending out the envelopes because anyone who saw them would know the recipient was either licensed to possess or grow marijuana for medical purposes. It claims this breached privacy and jeopardized the safety of people in the program.

But Vickery argued Friday that putting the return address of the marijuana program on the envelopes does not show Health Canada acted in bad faith.

The department has admitted it made an administrative error with the mailout and email records show that once somebody complained, officials acted appropriately to find out how the incident occurred.

“We say there is no pleading in fact which supports anything, other than that Health Canada was acting in good faith,” he said.

Vickery said Canada Post employees are required to abide by confidentiality rules and that it is speculation that people seeing the program's name on the envelope would conclude the recipient was part of the federal medical marijuana access program.

“We say there is no such supporting evidence. It is merely speculation,” Vickery said.

“The mere presence of the return address is insufficient to support the (class-action) application,” he said.

Vickery said there is no evidence that anyone who received the mailout was injured by it. He said the case is also not suitable as a class action because recipients likely had different experiences of the mailout and would have received it in different ways, depending on their type of residence and mailbox.

About 1,800 people across the country have registered with the proposed class action. McInnes Cooper in Halifax, as well as law firms in Ontario and British Columbia, are jointly representing claimants.

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.

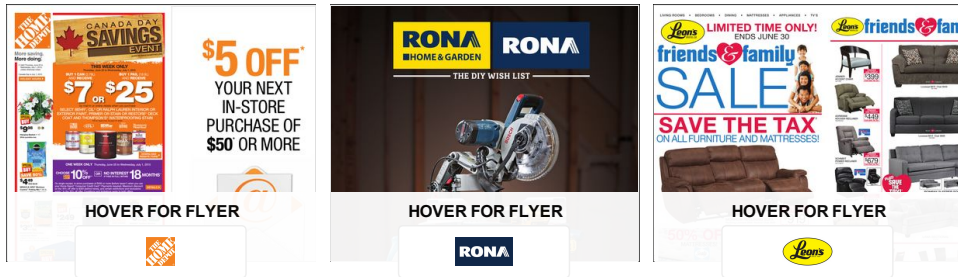
Other proposed class actions

in the case also exist, the court heard.

The Office of the Privacy Commissioner launched an investigation after more than 300 people who received the mailout in 2013 filed complaints with the office citing concerns about job loss and damage to their reputations and safety due to the alleged confidentiality breach.

The commissioner's officer released a report in March, finding that Health Canada violated the federal Privacy Act with the mailout.

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