

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Richard v. British Columbia*,
2011 BCSC 1490

Date: 20111104
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

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50
and amendments thereto

Before: The Honourable Chief Justice Bauman

Reasons for Judgment

Counsel for the Plaintiffs:

David A. Klein

Counsel for the Defendant:

D. Clifton Prowse, QC
Ward K. Branch
Andrew D. Gay

Counsel for the Public Guardian and
Trustee of British Columbia:

Alison L. Murray, QC

Place and Date of Hearing:

Vancouver, B.C.
12 September 2011

Place and Date of Judgment:

Vancouver, B.C.
04 November 2011

[1] The representative plaintiffs in this class action proceeding apply for an extension of the claims deadline set out in the agreement settling this proceeding which was approved by this Court on 07 July 2010.

[2] The proceeding concerns claims arising out of the Class Members' residency at the Woodlands School in New Westminster.

[3] The background of the litigation is fully set out in my reasons approving the settlement, indexed as 2010 BCSC 773.

[4] The Settlement Agreement provides that:

Class Members, or their legal representative, will have 12 months from the first day of publication of notice of Court approval of this settlement to submit a written claim for compensation

[5] On the facts, the claims deadline expired on 19 September 2011. Class counsel, Klein Lyons, have been formally retained by 715 Class Members to make claims under the Settlement Agreement . A further 48 Class Members have indicated a desire to similarly retain Klein Lyons.

[6] To date, only 10 claims have been filed with the Woodlands Class Action Registry; none of the claims have been adjudicated or settled.

[7] Paragraph 16 of the order approving the settlement provides:

16. The Public Guardian and Trustee or any Class Member will be at liberty to apply to the Court to extend the claims deadline for any particular Class Member, so long as such application is made within six months following the end of the claims period under the Settlement Agreement.

[8] No issue is taken with respect to the jurisdiction of this Court to extend the claims deadline in accordance with the application now before me.

[9] In his written submissions, Mr. Branch, counsel for the defendant, concludes so:

In the peculiar facts of this case and in the interest of justice, we are prepared, on a "without prejudice basis", to consider consent to: a fixed period adjustment of 6 months, with liberty to any class member to reapply at

that time, on condition that the class member provide, within 3 months, a “without prejudice” interim claim form that provides the basic factual detail requested in sections 1 and 2 of the Claim Form, so that the Defendant can accurately assess its global exposure within a reasonable time. We attach a copy of a proposed Interim Claim form as Schedule A.

[10] The defendant’s position permits the Court to discuss the reasons for the required extension in a summary fashion.

[11] Briefly, the claims process is much more complicated and time consuming than any of the parties contemplated. The adjudicating judges under the settlement have not yet been able to issue their so-called “precedential” decisions in the first tranche of claims. The parties anticipate that these decisions will provide critical guidance in many of the remaining claims.

[12] The delay has occurred despite the diligence of all in this initial stage of the adjudication process.

[13] The entire claims process is made even more challenging because of the vulnerability of many of the Class Members. In my reasons approving the settlement, I highlighted this evidence from the Public Guardian and Trustee:

As set out in the Woodlands Project Report, 127 interviews of former residents were conducted. Many of those interviewed could not read or write. Many were non-verbal and only able to communicate by making vocalization sounds, nodding their head to indicate “yes” or “no” or by making signs to indicate a response. Some of those who were non-verbal became visibly upset or agitated when the name Woodlands was raised with them. The majority of those interviewed resided in group homes. Many of those interviewed apparently did not have family and so were interviewed in the presence of caregivers or members of MCFD. I understand the staff of the PGTBC were concerned that many of the 127 individuals lacked legal capacity, and had no available family to assist them.

[14] In light of the difficulties experienced to date in advancing the claims in a timely manner, Mr. Klein seeks an indefinite extension to the claims deadline.

[15] The defendant, as I have said, is prepared to accept a six-month extension subject to certain conditions. The defendant submits that an indefinite extension of

the claims deadline would unfairly deny it the certainty it bargained for and attained in the Settlement Agreement .

[16] It is important to stress that the defendant does not question the Court's discretion (of course to be exercised judicially) to extend the claims deadline under paragraph 16 of the order. Accordingly, I will not review the jurisprudence cited before me on this issue.

[17] I agree with the defendant that the application requires the Court to strike a balance between the parties which recognizes that in the give and take of the settlement negotiation process, each side made compromises to achieve their respective goals. It would be unfair, after the fact, to effectively take from one party a critical part of what it gained in the process through negotiation and compromise.

[18] But in all the circumstances of this settlement, I do not believe that a substantial extension of the claims deadline can be so construed (especially in light of the fact that no limitation period attaches to these claims or at least a very substantial number of them). Still, an indefinite extension is not appropriate. I would, at this time, extend the claims deadline by one year to 19 September 2012, without prejudice to the plaintiffs' right to apply for further extensions. It is not appropriate to condition this extension, as the defendant proposes, by requiring the Class Members to file a so-called "without prejudice interim claim" within three months. In my view, such a condition would effectively make the claims deadline extension illusory in the circumstances of the difficulties facing the plaintiffs and their counsel in advancing the claims process.

"The Honourable Chief Justice Bauman"