

Vancouver woman files class action suit against B.C. ear bank

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VANCOUVER (CP) - A Vancouver woman has filed a class action lawsuit against the B.C. ear bank after being told she could be at risk for HIV and hepatitis B and C because the tissue she received for ear surgery may not have been properly screened or sterilized.

Margaret Birrell had surgery on her eardrum in 1994 but was sent a letter by her doctor last month informing her that she should get tested for the infectious diseases. The tests came back negative on Monday.

But Birrell's lawyer, David Klein, said his client has suffered regardless of the test results.

"The suit is for the anxiety and inconvenience and expense related to having to get tested," Klein said.

"She was extremely anxious about having had the surgery so long ago and not being told right away that she should go and get tested."

The lawsuit raises issues similar to the tainted blood scandal in the 1980s and '90s and suits resulting from unsterilized hospital equipment in other parts of Canada, Klein said.

In December, an Ontario Superior Court judge certified a \$150-million lawsuit, which claims 912 men were exposed to unsterilized equipment at Sunnybrook Hospital in Toronto.

The men were treated with improperly sterilized wands used to obtain prostate biopsies between December 1999 and August 2003.

"A case like this has implications that are much broader than a single tissue bank for a single hospital," Klein said.

About 5,000 people could potentially join the lawsuit, Klein said.

An investigation by Health Canada in 2002 revealed that the ear bank's record keeping practices meant it couldn't confirm whether tissue donors had been screened or bones and membranes from the ears of cadavers had been sterilized.

The facility operated at St. Paul's Hospital and was shut down in October 2002 when Health Canada began an investigation.

It was Canada's only transplant tissue bank devoted to collecting bones and membranes for ear surgeries.

Klein said he expects individual financial claims to be modest and that unlike in Ontario, British Columbia class actions don't have to state any monetary remedies.

Defendants named in the lawsuit include the University of British Columbia, under whose medical direction the bank operated, Providence Health Care Society, which runs St. Paul's Hospital, and the Vancouver Coastal Health Authority, which funds the hospital.

Clay Adams, spokesman for the authority, said that between 1985 and 2002, 87 hospitals and individual doctors across Canada and from two U.S. cities - Pittsburgh and Cincinnati - withdrew a total of 6,016 specimens of transplant material from the ear bank.

He said everyone involved had been notified of the risks to patients.

"Certainly we feel that all sorts of appropriate steps were taken once it became evident that there were some issues around the ear bank inventory," Adams said.

No one who received tissue from the bank has contracted an infectious disease, he said.

"The belief was that the tissues had been screened, that the appropriate measures were taken (but) the unfortunate problem being that the paperwork was never maintained adequately to confirm that."

Dr. Perry Kendall, provincial health officer for B.C., said in 2003 the chance of a tissue recipient acquiring a disease from the transplant was exceedingly low.

The risk of getting hepatitis B or C from such a transplant is about one in 10,000 and the risk of contracting HIV is one in 25,000, Kendall said.

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