

\$210 million sought over use of stolen parts in transplant surgery

Monforton launches action in human tissue case

BY MARK BOURRIE
For Law Times

A Windsor-based lawyer has filed a class-action suit over modern-day body snatching that, he claims, has left hundreds of Canadians vulnerable to HIV, hepatitis, and venereal diseases.

Greg Monforton, of Greg Monforton and Partners LLP and president-elect of the Ontario Trial Lawyers Association, announced the suit March 22. The class action asks for \$210 million in damages against companies that sold illegally harvested and untested human tissue and bone used in transplant surgery.

The tissue was taken from bodies in the U.S. and sold across the continent. Theft of the tissue became a public scandal when investigators revealed bone

had been taken from the corpse of 95-year-old historian Alistair Cooke, host of the PBS TV show *Masterpiece Theatre*.

Cooke was cremated after dying from lung cancer in New York in March 2004. The tissue thieves forged donor forms and a death certificate that claimed his cause of death was a heart attack. They also changed his age on the form to 85 so they could sell his bones to two transplant companies for \$7,000.

Apparently, they found no buyers.

"Most of the tissue that was imported into Canada was used for orthopaedic surgery. It was taken without permission from bodies in morgues and funeral homes, and it was often replaced in the corpses with PVC plastic pipe," says Monforton.

"The scam was very macabre.



The macabre case of illegal and possibly infected human tissue could be very far-reaching, says Greg Monforton.

It was also very profitable and very far-reaching," he says. The most recent information provided

by Health Canada indicates that about 300 separate tissue parts that originated with Biomedical Tissue Services (BTS) made their way into Canada, he adds.

Monforton says the number of affected patients in Canada could be much higher, as "one bone sample can be used on more than one surgery."

About half of the tissue was used for dental surgeries, mostly partial jaw reconstructions, before it was voluntarily recalled by the distributors last October. The rest was used in orthopaedic and neurological procedures.

"Even if they have not contracted a disease, the people who had this material transplanted into them must live with the stress and anxiety of not knowing if they have been infected with something that may not be treatable, and that may shorten their lives," Monforton says.

Nine other plaintiffs have joined the class action, but none has yet tested positive for any diseases. However, Monforton notes many of the diseases they're being tested for have very long dormancy periods.

The Windsor lawyer has teamed with Motley Rice LLC of Mt. Pleasant, South Carolina.

The Canadian class-action suit names Clarence Renaud, 68, as representative plaintiff of the proposed class. Renaud allegedly received illegally harvested and untested bone and tissue as part of a routine back surgery at Hotel-Dieu Grace Hospital in Windsor on April 27, 2003.

Renaud says he was contacted by Health Canada and warned that he had been implanted with tissue that was illegally taken from a body. The provenance of the bone used in his surgery is unknown, as the people who collected and sold the material are accused of falsifying records.

Defendants in the case include allograft (grafts of human tissue) distributors Zimmer Dental Medical Incorporated, Biogenics Inc., Medtronic of Canada Ltd., and the now defunct Biomedical Tissue Services Ltd., along with two of its founders.

The alleged body-snatching racket was run by former Manhattan dentist Michael Mastromarino, who surrendered to prosecutors in New York in late February.

He arrived at the police station with two of the "cutters" who dismembered the corpses, Chris Aldorasi and Lee Cruscer. The fourth member of the group, Joseph Nicelli, an embalmer, turned himself in two days later.

Health Canada warned in October 2005 that 125 people across the country received human bone, skin and tendons that were imported from the U.S. and not properly screened.

It also warned that the tissue

was not adequately screened for such diseases as HIV, Hepatitis B and C, syphilis and human T-cell lymphotropic virus (HTLV I and II).

Windsor's Hotel Dieu Hospital reported that 21 people who underwent procedures at their hospital would need to be tested for infectious diseases. The potentially tainted tissues were used in surgeries performed between January 2003 and October 2005.

In a lawsuit filed in the United States, one woman has alleged that she contracted syphilis after receiving tainted tissue from BTS.

Monforton says hundreds of Canadians are terrified that their bodies may have been infected with viruses from tissue that was used in operations in Canada.

"We don't know how many people got this tissue, and what percentage of the material is contaminated and infected. It is simply unacceptable that Mr. Renaud and many other Canadians have been receiving tissue implants that were illegally acquired and potentially diseased. These innocent people now endure the stress and anxiety of not knowing if they have been infected with various communicable diseases," Monforton says.

And, while Renaud has not yet tested positive for diseases, the suit alleges that due to long incubation periods for HIV and other potentially deadly diseases, he could test positive for an illness in the future, thus increasing his emotional distress and requiring him to undergo repeated testing.

Two of the defendants, Mastromarino and Nicelli, who ran BTS, were recently charged in State Supreme Court in Brooklyn, New York, for operating a corrupt \$4.6-million enterprise to harvest human tissue from funeral homes and sell it for use in transplants and research.

Hospitals across North America have reported receipt of the illegally harvested and potentially dangerous tissue. Monforton believes the problem may extend far beyond what has been included in the recent BTS case.

"It's certainly one of the most macabre cases in Canada," he says. "It could affect thousands of people across the country. Investigators in this country and the U.S. are still trying to unravel the dealings of Mastromarino and Nicelli."

"So far, we know that they ran a pretty sophisticated and far-reaching fraud that involved people working in funeral homes and crematoria.

"They stole tissue, forged consent forms and death certificates, and made the tissue untraceable. Now, the only way people will know if they're infected is by getting tested," he says.

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