

CLASS ACTION



'IT'S ABOUT OBTAINING JUSTICE':

David Klein & His Pioneering Class Action Work

ABOVE: David Klein speaks about the compensation awarded to former Woodlands residents alongside Health Minister Adrian Dix and Woodlands survivor Bill McArthur. "This was a long overdue, but gratifying settlement. It was the right thing to do."
– David Klein

BELOW: David Klein with his client, Janet Merlo, at the Ottawa news conference announcing the settlement of the RCMP gender harassment class action. "It was a good day for current, former and future women in the RCMP. It was a good day for Canada"
– David Klein

BY ALYSE KOTYK

There aren't many lawyers who can say they had a hand in BC's first class action, but that's only one item on David's Klein's list of career accomplishments.

President of the Trial Lawyers Association of British Columbia from 1998 to 1999, Klein has been called a "pioneer" by his colleagues and was plaintiff's counsel in the first class actions certified in BC, Manitoba and Newfoundland.

"There's no lawyer in Canada who can demonstrate that kind of pathfinding in three different provinces from coast to coast," said Doug Lennox, senior lawyer at Klein Lawyers and colleague of Klein's for the past 16 years. "He's very persistent and he never gives up."

Klein, who grew up in Winnipeg, went to the University of Manitoba for arts, then studied law at the University of Toronto and the University of Manitoba, says he entered the field with optimism.

"I went into law idealistically, as many law students do, hoping I could do work that was meaningful to me and meaningful to society at large," he said.

"It took a long time before I reached that point in my career."

For the first few years, Klein had a practice working on general litigation, real estate transactions, wills and estates but what he really became passionate about was class action law.

"Class action work is one of those rare areas where you can effect positive social change through the civil justice system," he said.

Klein's first class action in BC proved just that, when he and his team took on the silicone gel breast implant case. While the use of silicone gel breast implants was restricted in the 1990s, many women still had medical symptoms resulting from the implants. On Aug. 1, 1995, when the British Columbia Class Action Statute came into effect, Klein filed the first class action in the province.

"(The class action) affected thousands of women who had been harmed by this defective product," Klein said. "It allowed them to pursue claims that otherwise couldn't have been brought. As individual lawsuits they were just too expensive and complex to institute."

For Klein, this is the key to class action work.

"The power of class action suits is in aggregating all of those claims, putting into a single suit so that we have strength in numbers," he said.

From this point on, the focus of Klein's practice became class actions. He's since been able to recover hundreds of millions of dollars for victims in lawsuits ranging from defective drugs to discrimination, from negligence to deceptive marketing. Klein has been repeatedly recognized as one of Canada's top class action lawyers.

One client who has been impacted significantly by Klein's work is Janet Merlo, former RCMP member and lead plaintiff in the

RCMP gender-based harassment and discrimination class action. The suit, originally filed in 2012, sought to address the ongoing degradation and humiliation experienced by women in the Force.

When Merlo and a few colleagues first spoke out against the way they were treated in the RCMP, they didn't know just how far the problem reached.

"None of us realized at the onset just how big this case was going to get," she said.

For Merlo, working through such an upsetting case was made easier with Klein's support.

"He's just so kind and calm to work with, especially during a very emotional lawsuit," she said.

"I knew that if my anxiety got the best of me or if I was really upset all I needed to do was make contact with (David)...he kept the communication lines open and I always felt that I wasn't imposing if I needed to ask a question."

A settlement was reached in May 2017 and included an apology by the RCMP Commissioner, initiatives aimed at eliminating gender harassment and discrimination in the RCMP and a compensation package with a total estimated value of over \$100 million for women who experienced harassment or discrimination while working for the RCMP. Currently, more than 2,000 women have made claims on incidents dating back as far as 1974, with that number expected to rise.

"Through this lawsuit, David has secured financial compensation for hundreds of women that never would have been able to do it on their own. I wouldn't have been able to do it on my own. I don't have the finances to take on the government and wait while they draw it out and draw it out until you're just so bankrupt it's not worth it anymore," Merlo said.

"I don't know how I can ever thank David for all he's done and if he can take on cases for other people that change lives like that then it's amazing."

After working together for more than a decade and a half, Lennox has seen his fair share of Klein taking on these "life-

changing cases" and throughout, he says Klein has been "willing to go the distance."

In particular, Lennox says Klein's persistence through the Woodlands class action has been notable. The Woodlands case sought compensation for former residents of the provincial institution for individuals with developmental disabilities and mental illness that operated from 1878 until 1996. Just this March, Minister of Health Adrian Dix announced that people who resided at Woodlands prior to August 1, 1974, will receive \$10,000 in compensation. For those who resided in Woodlands after August 1, 1974, a maximum of \$10,000 would be awarded, taking into account payments previously awarded.

For Klein and his team, who began work on the Woodlands case in 2006, the road to this result was a long one.

"Woodlands is a great example of working on a case for 12 years and finally getting the result that clients had been seeking," Lennox said. "In spite of a number of setbacks and court decisions that went against us, David kept at it."

While this is only a glimpse at the number and scope of cases that he and his firm have worked on, Klein says he hopes to continue working on socially important cases while growing his practice. This summer, Klein Lawyers will open an office in Montreal, bringing an increased presence across the country.

Reflecting on his work, Klein said he's proud of the way he's been able to touch people's lives in a positive way.

"When people come to us with a case, they've tried almost every other avenue. They have no one else to turn to who will listen to what's happened to them, try to understand it and see if there's a path towards resolution," he said.

"It's not about having a trial, it's about obtaining justice."

Names and class action details:

<https://www.callkleinlawyers.com/about-us/staff/>

<https://www.callkleinlawyers.com/class-actions/current/rcmp/>

<https://www.callkleinlawyers.com/class-actions/current/woodlands/>

<https://www.callkleinlawyers.com/class-actions/settled/breast-implants/>

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