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# Court certifies Vancouver summer school class-action lawsuit

BY JANET STEFFENHAGEN, VANCOUVER SUN    APRIL 7, 2011

METRO VANCOUVER - A North Vancouver couple has won the right to proceed with a class-action lawsuit against the Vancouver board of education on behalf of thousands of families who paid tuition fees for their high-school students to take academic courses at summer school between 2003 and 2007.

Sarah and Ali Agha Riazi are the representative plaintiffs in a case that could cost the cashstrapped Vancouver board millions of dollars and is expected to spread across the province.

Their lawyer, Jim Poyner, says he will now proceed with similar class-action applications in 26 other school districts in B.C., including all of those in Metro Vancouver.

"There are literally thousands of people who have paid fees that they shouldn't have had to pay," Poyner said Wednesday in an interview. "It's a pretty strong case."

The B.C. Supreme Court's decision to certify the classaction lawsuit means that, barring an appeal, the case may proceed to trial. But Poyner, whose firm specializes in classaction lawsuits, said most such actions are settled after certification and he knows of only a handful that resulted in trials in B.C. during the past 16 years.

Vancouver school superintendent Steve Cardwell said the district is reviewing the decision with its lawyers and will discuss it with trustees before deciding whether to appeal. "It's one of those major cases and we want to be careful ... [and] make sure we're following all the necessary legal parameters," he added.

Poyner filed the application for certification in 2009, two years after former education minister Shirley Bond ordered school districts to stop charging tuition for students attending summer school for academic credit, saying the fees -which ranged from \$200 to \$500 per course -were illegal. She ordered districts to refund all such fees in 2007.

Poyner took the position that if the fees were illegal in 2007, they were also illegal in preceding years (subject to the statute of limitations). He filed applications for certification in 27 districts but decided not to proceed in 26 of those until the Vancouver application was decided.

The Vancouver case is believed to involve more than 3,000 students enrolled in summer school each year from July 30, 2003 until 2007.

Poyner estimated the total cost of refunds for Vancouver would be between \$8 million and \$11 million.

During a hearing last year and in written submissions, the school district argued against certification, saying there were no true common issues. The court would have to examine each claim individually

to determine if the courses taken were indeed part of the graduation program or if they were optional, making the case "a monster of complexity and cost," it contended.

But Justice Jane Dardi disagreed, saying the case turns on the statutory interpretation of the School Act, which states when school districts may charge fees. "On balance, the common issues are likely to predominate over the individual issues," she wrote in a 24-page judgment released Wednesday.

The Riazis declined The Vancouver Sun's request for an interview, as did Education Minister George Abbott. An Education Ministry spokesman said Abbott wouldn't comment while the matter is before the courts.

This is Poyner's second attempt to win tuition-fees refunds. In 2006, he sought certification for a class-action lawsuit against the B.C. government over school fees, but the court refused, saying school districts, not the province, impose fees.

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