



No. S-090663
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**CANADIAN INDEPENDENT MEDICAL CLINICS ASSOCIATION,
CAMBIE SURGERIES CORPORATION, DELBROOK SURGICAL CENTRE INC.,
FALSE CREEK SURGICAL CENTRE INC., OKANAGAN HEALTH SURGICAL CENTRE
INC., and ULTIMA MEDICAL SERVICES INC.**

PLAINTIFFS

AND:

**MEDICAL SERVICES COMMISSION OF BRITISH COLUMBIA,
MINISTER OF HEALTH SERVICES OF BRITISH COLUMBIA
and ATTORNEY GENERAL OF BRITISH COLUMBIA**

DEFENDANTS

AND:

SPECIALIST REFERRAL CLINIC (VANCOUVER) INC.

DEFENDANT BY COUNTERCLAIM

NOTICE OF MOTION

To: The Plaintiff, Cambie Surgeries Corporation ("Cambie")
And to: Its counsel
Irwin G. Nathanson, Q.C.
Nathanson, Schachter & Thompson LLP,
Barristers & Solicitors,
#750 - 900 Howe Street,
Vancouver, B.C. V6Z 2M4

To: The Defendant by Counterclaim, Specialist Referral Clinic
(Vancouver) Inc. ("SRC")
And to: Its counsel
William S. Clark
Harper Grey LLP
3200 - 650 West Georgia Street
Vancouver, B.C. V6B 4P7

TAKE NOTICE that an application will be made by the Defendant, Medical Services Commission, to Madam Justice L. Smith at the courthouse at 800 Smithe Street, in the

City of Vancouver, in the Province of British Columbia, at 10:00 a.m. on 14 October 2009, for:

- (1) An Order directing that the Plaintiffs' constitutional challenge to the *Medicare Protection Act* be heard and decided in proceeding no. S-090663 (the "Action") rather than in proceeding no. S-088484 (the "Petition");
- (2) An Order directing that the Petition be stayed pending a determination of the said constitutional challenge;
- (3) A Warrant authorizing an inspector or inspectors named in the Warrant to enter the Cambie Surgery Centre, a surgical facility operated by Cambie and located in premises at 2836 Ash Street, in the City of Vancouver, Province of British Columbia (the "Surgery Centre"), to inspect its records and/or the records of practitioners and to make copies of those records;
- (4) A Warrant authorizing an inspector or inspectors named in the Warrant to enter the Specialist Referral Clinic, a clinic operated by SRC and located in premises at Suite 121, 555 West 12th Avenue, in the City of Vancouver, Province of British Columbia (the "Referral Clinic"), to inspect its records and/or the records of practitioners and to make copies of those records;
- (5) An Injunction requiring Cambie to permit the inspector or inspectors to enter the Surgery Centre and inspect its records and/or the records of practitioners and to make copies of those records;
- (6) An Injunction requiring the SRC to permit the inspector or inspectors to enter the Referral Clinic and inspect its records and/or the records of practitioners and to make copies of those records;
- (7) An Injunction restraining Cambie from hindering, molesting or interfering with an inspector or inspectors who has or have been authorized to carry out an audit of the Surgery Centre;
- (8) An Injunction restraining the SRC from hindering, molesting or interfering with an inspector or inspectors who has or have been authorized to carry out an audit of the Referral Clinic;
- (9) An Order directing that proceedings in both the Action and the Petition be stayed pending the completion of the audits of the Surgery Centre and the Referral Clinic;
- (10) Costs of this application; and
- (11) Such further and other relief as to this Honourable Court may seem just and appropriate.

The applicant will rely on Rule 44, section 36 of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286, section 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, section 30 of the *Provincial Court Act*, R.S.B.C. 1996, c. 379, and the inherent jurisdiction of the Court.

At the hearing of the application, the applicant will rely on the following affidavit(s) and other documents:

1. Affidavit #1 of Bob de Faye, sworn 23 July 2009.

The applicant estimates that the application will take two (2) days.

If you wish to receive notice of the time and date of the hearing or to respond to the application, you must, within the proper time for response,

- (a) deliver to the applicant
 - (i) 2 copies of a response in Form 124, and
 - (ii) 2 copies of each of the affidavits and other documents, not already in the court file, on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
 - (i) one copy of a response in Form 124, and
 - (ii) one copy of each affidavit and other document, not already in the court file, on which you intend to rely at the hearing.

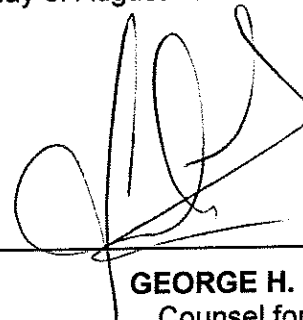
TIME FOR RESPONSE

If the application is for a final judgment under Rule 18A, the response must be delivered on or before the 11th day after the delivery to you of the notice of motion.

In all other cases, the response must be delivered on or before the 8th day after the later of

- (a) the last date fixed for entry of appearance by you, and
- (b) the date on which the notice of motion was delivered to you.

DATED at Victoria, British Columbia, on this 18th day of August 2009.



For:

GEORGE H. COPLEY, Q.C.
Counsel for the Defendant
the Medical Services Commission

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GEORGE H. COPLEY, Q.C.
Ministry of Attorney General
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