IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cambie Surgeries Corporation v. British Columbia (Medical Services Commission),* 2012 BCSC 1511

Date: 20121015
Docket: S090663
Registry: Vancouver

Between:

Cambie Surgeries Corporation, Chris Chiavatti by his litigation guardian Rita Chiavatti, Mandy Martens, Krystiana Corrado by her litigation guardian Antonio Corrado and Erma Krahn

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

And

Duncan Etches, Glyn Townson, Thomas MacGregor, The British Columbia Friends of Medicare Society, Canadian Doctors for Medicare, Mariël Schooff, Daphne Lang, Joyce Hamer, Myrna Allison, and Carol Welch

Intervenors

Before: The Honourable Chief Justice Bauman

Reasons for Judgment

Counsel for the Plaintiffs:	Joana Thackeray
Counsel for the Defendants:	George H. Copley, Q.C.
Counsel for the Defendant by Counterclaim:	William S. Clark
Counsel for the Intervenors, Mariël Schooff, Daphne Lang, Joyce Hamer, Myrna Allison, and Carol Welch:	Marjorie S. Brown
Counsel for Intervenors, BC Health Coalition:	Catherine J. Boies Parker
Counsel for the Applicant, British Columbia Anesthesiologists' Society:	D. Murray Tevlin John E. Chesko
Place and Date of Hearing:	Vancouver, B.C. October 9, 2012
Place and Date of Judgment:	Vancouver, B.C. October 15, 2012

[1] The British Columbia Anesthesiologists Society ("BCAS") brings this application for permission to intervene in this action questioning the constitutionality of certain sections of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286. The impugned provisions restrict the ability of physicians and facilities to charge fees to patients for medical services in British Columbia.

[2] The plaintiffs consent to the application. The defendants oppose it.

[3] The BCAS is a voluntary organization for anesthesiologists. Its notice of application states that its members:

> ...are closely involved in virtually every patient undergoing surgery, in every surgical subspecialty, throughout the province. The Anesthesiologist's medical involvement begins with pre-operative assessment and medical preparation of patients waiting for surgery, through surgery, and extends after surgery into the recovery period and beyond. Anesthesiologists are also involved in other facets of medical care including obstetric analgesia (child birth), non-surgical programs (including intensive care units, emergency, interventional radiology, cardiology procedures, MRIs to psychiatry anesthesia.)

[4] The Court has already granted intervenor status to the named intervenors in decisions pronounced by Justice L. Smith and indexed at 2009 BCSC 1596 and 2010 BCSC 927. Essentially, my colleague concluded that these interventions would significantly add to the range of perspectives that would be brought before the Court in this litigation, which is said to go to the "constitutional validity of public health care in British Columbia".

[5] Justice Smith conveniently summarized the law in British Columbia at para. 188 of her judgment at 2009 BCSC 1596. She did so by borrowing Justice Rowles' discussion of the principles in *Gehring v. Chevron Canada Limited*, 2007 BCCA 557, 75 B.C.L.R. (4th) 36 (Chambers).

[6] I adopt that summary of the principles. I must consider the nature of the issue before the Court, in particular, whether it is a public law issue; whether the case legitimately engages the interests of the would-be intervenors; the

representativeness of the applicant of a particular point of view or "perspective" that may be of assistance to the Court; and whether the proposed intervenor is likely to "take the litigation away from those directly affected by it".

[7] All of these considerations here favour the applicant. While the defendants submit that the proposed intervenor's history of interactions with the government, on issues arguably irrelevant to those raised in the pleadings in this case, would suggest that it will allow these issues to improperly intrude in these proceedings, to "hijack" the proceedings in the language of the cases, I am satisfied that conditions can be imposed on the nature of any evidence that may be led by the BCAS at the appropriate time in these proceedings.

[8] Accordingly, I would allow the application on the same basis as did Justice Smith in the case of the BC Health Coalition intervenors (see paras. 207-210, 2009 BCSC 1596).

"Chief Justice Bauman"