



No. S090663  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CAMBIE SURGERIES CORPORATION

PLAINTIFF

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

NOTICE OF APPLICATION

Name of applicant: MEDICAL SERVICES COMMISSION OF BRITISH COLUMBIA.

To: CAMBIE SURGERIES CORPORATION, Plaintiff ("Cambie"), and SPECIALIST  
REFERRAL CLINIC (VANCOUVER) INC. (the "SRC"), Defendant by Counterclaim;

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on 27 September 2012 at 9:45 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. A declaration that Cambie and the SRC have contravened s. 17(1) of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286 (the "Act"), and continue to contravene that section, by charging:

- a. beneficiaries under the Medical Services Plan;
- b. employers acting on behalf of beneficiaries;
- c. insurers acting on behalf of beneficiaries;
- d. charitable organizations acting on behalf of beneficiaries;
- e. workplace health and safety co-ordinators acting on behalf of beneficiaries;
- f. law firms acting on behalf of beneficiaries;
- g. diagnostic clinics acting on behalf of beneficiaries;
- h. physicians acting on behalf of beneficiaries; and
- i. other persons acting on behalf of beneficiaries

for benefits, or for materials, consultations, procedures, use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit, provided to those beneficiaries;

2. An order that until Cambie's claim has been decided, Cambie and the SRC are enjoined and prohibited from charging beneficiaries under the Medical Services Plan, or any person acting on behalf of a beneficiary, where that charging is for a benefit provided to that beneficiary, or for materials, consultations, procedures, use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit;

3. A declaration that Cambie and the SRC have contravened s. 18(3) of the *Medicare Protection Act*, and continue to contravene that section, by charging:

- a. beneficiaries under the Medical Services Plan;

- b. charitable organizations acting on behalf of beneficiaries;
- c. law firms acting on behalf of beneficiaries; and
- d. other persons acting on behalf of beneficiaries

for or in relation to benefits provided to those beneficiaries by medical practitioners who have made an election under s. 14 of the Act (“opted-out practitioners”) and the amount of the charge is greater than the amount payable under the Act for the rendering of that benefit; and

4. An order that until Cambie’s claim has been decided, Cambie and the SRC are enjoined and prohibited from charging beneficiaries under the Medical Services Plan, or any person acting on behalf of a beneficiary, where that charging is for or in relation to benefits provided to those beneficiaries by opted-out practitioners and the amount of the charge is greater than the amount payable under the Act for the rendering of that benefit.

## Part 2: FACTUAL BASIS

1. The applicant Medical Services Commission is a statutory body consisting of nine members appointed by the Lieutenant Governor in Council pursuant to the Act. The Commission’s responsibilities under the Act include administering the Medical Services Plan (“MSP”), under which medically required services (“benefits”) are provided by enrolled medical practitioners to residents of British Columbia who are enrolled in the MSP (“beneficiaries”).
2. Section 17(1) of the Act provides as follows:
  - 17(1) Except as specified in this Act or the regulations or by the commission under this Act, a person must not charge a beneficiary
    - (a) for a benefit, or
    - (b) for materials, consultations, procedures, use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit.
3. Section 18(3) of the Act provides as follows:

- 18(3) If a medical practitioner described in section 17 (2) (c) renders a benefit to a beneficiary, a person must not charge the beneficiary for, or in relation to, the service an amount that, in total, is greater than
- (a) the amount that would be payable under this Act, by the commission, for the service, or
  - (b) if a payment schedule or regulation permits or requires an additional charge, the total of the amount referred to in paragraph (a) and the additional charge.
4. Section 36 of the Act authorizes the Commission to appoint inspectors to audit, *inter alia*, the billing or business practices of persons who carry on a business for profit or gain and who, in the course of their business, allow or participate in the rendering of a benefit to beneficiaries by practitioners.
5. The Commission appointed inspectors to audit Cambie and SRC in order to obtain the necessary information to determine whether either or both are in breach of the Act.
6. The inspectors carried out the audits between January and November of 2011. The Commission received their report in May of 2012 (the "Audit Report").
7. On the basis of the Audit Report, the Commission has determined that Cambie and SRC have been, and will likely continue to be, in breach of sections 17 and 18 of the Act, and has requested that they confirm they will stop those breaches.
8. Cambie and SRC have not confirmed that they will stop breaching the Act.

*Particulars of the Breaches*

9. Cambie carries on business as the Cambie Surgery Centre, operating at 2836 Ash Street, Vancouver.
10. Cambie provides surgical procedures to pre-screened patients. It advertises its specialties as:
- a. Orthopaedic surgery;

- b. Plastic and cosmetic surgery;
  - c. Pediatric dental and oral surgery;
  - d. General surgery;
  - e. Laparoscopic surgery;
  - f. Gynecology;
  - g. Ophthalmology;
  - h. Urology;
  - i. Ear, nose and throat;
  - j. Vascular surgery; and
  - k. Neurosurgery.
11. The SRC carries on business as the Specialist Referral Clinic, operating at #121-555 West 12<sup>th</sup> Avenue, Vancouver.
12. SRC's services mainly consist of medical consultations or evaluations, referred to variously as "Independent Medical Assessments" ("IMAs"), "Independent Medical Examinations" ("IMEs"), "Medical Legal Reports" or "Medico Legal Reports," and "Independent Medical Consultations" ("IMCs").
13. IMAs, IMEs, and IMCs are performed by a physician at SRC. Where they involve consideration of medical treatment, the physician may arrange for surgery at Cambie.
14. SRC may also act as a referring agency for health pre-screening services.
15. No surgical procedures are performed at SRC.
16. Where an SRC service results in a recommendation for patient surgery at Cambie, SRC will usually levy and collect the surgery fee from the patient, or from someone else on behalf of the patient, on behalf of Cambie in advance of the surgery. In such cases SRC retains a portion of the prepaid surgery fee before remitting the balance to Cambie.

17. The audit of Cambie and SRC involved a review of a sample of patient records for services rendered during the following time periods:
  - a. 14-20 December 2010 and 12-14 August 2008 (for Cambie);
  - b. 13-21 January 2011 and 21-31 August 2008 (for SRC).
  
18. In addition, the audit involved a review of Cambie's and SRC's records relating to 40 individual beneficiaries who had contacted either the Commission or the Ministry of Health and reported having been charged for medical services.
  
19. The Audit Report found that, of the 468 services provided at Cambie and SRC that were reviewed:
  - a. 223 were benefits;
  - b. 205 of those 223 had been charged to a beneficiary, and 21 had been rendered by an opted-out practitioner;
  - c. 170 of those 205 had been charged to the beneficiary, 10 had been charged to an employer of the beneficiary, 10 had been charged to an extended health and benefits provider, and the remainder had been charged to law firms, charitable organizations, diagnostic clinics, or other persons on behalf of the beneficiaries;
  - d. At least 93 of the 205 benefits resulted in a claim being submitted to MSP;
  - e. In the case of 9 of the 205 benefits charged, a claim was submitted to MSP by the beneficiary, or by the opted-out practitioner on behalf of the beneficiary, and the charge to the beneficiary exceeded the MSP claim; and
  - f. 16 of the 170 benefits charged to the beneficiary had been provided by an opted out practitioner.
  
20. The Audit Report conclusively demonstrates that both Cambie and SRC have breached ss. 17(1) and 18(3) of the Act, in that they have:

- a. charged beneficiaries, or other persons on behalf of beneficiaries, for the provision of benefits or for materials, consultations, procedures, use of an office, clinic or other place or for other matters that relate to the rendering of a benefit to the beneficiaries by medical practitioners; and
- b. charged beneficiaries, or other persons on behalf of beneficiaries, for services provided by opted-out practitioners that would be benefits if provided by an enrolled practitioner, in an amount greater than that payable under the Act for those benefits.

### Part 3: LEGAL BASIS

1. Section 45.1 of the Act provides as follows:

- 45.1(1) The commission may apply to the Supreme Court for an injunction restraining a person from contravening section 17 (1), 18 (1) or (3), 18.1 (1) or (2) or 19 (1) or (2).
- (2) The court may grant an injunction sought under subsection (1) if the court is satisfied that there is reason to believe that there has been or will be a contravention of this Act or the regulations.
- (3) The court may grant an interim injunction until the outcome of an action commenced under subsection (1).

2. The evidence establishes that Cambie and SRC have contravened, and will continue to contravene, sections 17(1) and 18(3) of the Act.
3. The contraventions having been established, the public interest in enforcement of the Act is engaged, and there is no need for the Commission to establish additional or irreparable harm.

*Maple Ridge (District) v. Thornhill Aggregates Ltd.* (1998), 162 D.L.R. (4<sup>th</sup>) 203 (B.C.C.A.).

4. The Commission is therefore entitled to the orders sought.

Part 4: MATERIAL TO BE RELIED ON

- 1. Affidavit of Stephen Abercrombie, sworn 8 August 2012;
- 2. Affidavit of Lee Peacock, sworn 20 August 2012;
- 3. Affidavit of Bob de Faye, sworn 23 July 2009; and
- 4. The pleadings herein.

The applicant estimates that the application will take two days.

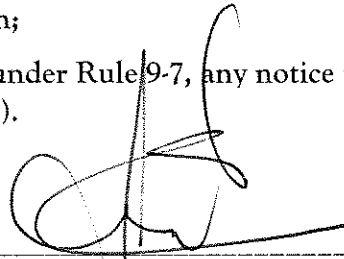
This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: 22 August 2012



JONATHAN PENNER

applicant  lawyer for applicant(s)



*To be completed by the court only:*

Order made

in the terms requested in paragraphs ..... of Part 1 of this notice of application

with the following variations and additional terms:

.....  
.....  
.....

Date: .....[dd/mmm/yyyy].....

.....  
Signature of  Judge  Master

**Appendix**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts