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Affidavit #1 of Gordon Denford
Sworn October 2, 2012
No. S090663
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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.

DEFENDANTS BY COUNTERCLAIM

**DR. DUNCAN ETCHES, DR. ROBERT WOOLARD, DR. GLYN TOWNSON, THOMAS
MCGREGOR, THE BRITISH COLUMBIA FRIENDS OF MEDICARE SOCIETY,
CANADIAN DOCTORS FOR MEDICARE, MARIËL SCHOOFF, DAPHNE LANG,
JOYCE HAMER, MYRNA ALLISON, and CAROL WELCH**

INTERVENORS

AFFIDAVIT #1 OF MR. GORDON DENFORD

I, Gordon Denford, business owner, of 617 Senanus Drive, Saanichton, British Columbia,
MAKE OATH AND SOLEMNLY AFFIRM THAT:

1. I am a business owner and a former member of the Medical Services Commission (the “Commission”). As such, I have direct knowledge of the information stated herein, except where stated to be on information and belief.
2. I make this affidavit in support of Cambie Surgeries Corporation’s (herein referred to as “CSC”) and Specialist Referral Clinic’s (“SRC”) opposition to the injunction sought by the Commission to prohibit SRC and CSC from providing medical services in contravention of certain provisions of the *Medicare Protection Act* (the “Act”) (specifically sections 17(1) and 18(3), which relate to billing practices for benefits under the *Act*) prior to a ruling on the constitutionality of these provisions.
3. As I explain below, I believe that if the residents of British Columbia are not able to pay a facility fee for surgeries at CSC or obtain timely medical assessments at SRC, just as residents, for example, of Alberta can lawfully do, it will have a negative impact on the ability of the residents of British Columbia to access timely health care.

Access to Health Care Concerns for Elderly Citizens

4. Over the last two decades, I have created and developed the Berwick Retirement Communities, a chain of five retirement facilities across British Columbia (the “Berwick Communities”). The Berwick Communities provide independent living, assisted living and licensed residential care services for the elderly.
5. In developing the Berwick Communities for the elderly, I have direct knowledge of the needs of people who have urgent medical concerns and require surgery. In particular, the inability of Berwick Communities’ client base to receive timely care significantly impacts their quality of life. Delays in receiving treatment can result in these individuals living out the last years of their life with impaired mobility, poor health, and significant pain.

6. In my experience, many of Berwick Communities' clients who required medically necessary treatment, such as cataract surgery or joint replacement surgery, were required to wait upwards of two years to receive the medical treatment. The prolonged suffering that results from deteriorating vision and degenerating joints can essentially confine an elderly individual to their room until they are able to receive the medical procedure, and drastically reduces their quality of life.
7. In order to address the unnecessary and harmful wait times to Berwick Communities' clients, in 1993, I contacted an ophthalmologist and orthopedic surgeon and developed a plan to provide a selection of medically necessary services to my clients. We intended to develop two surgical suites at one of the Berwick Retirement Communities, for ophthalmological procedures and smaller scale orthopedic surgeries.
8. The proclamation of the *Act* in 1996 essentially prohibited our plan to implement these surgical suites at Berwick Communities. Accordingly, I did not proceed with this development.
9. On December 6, 2000, I was appointed to the Commission, which was formed pursuant to the *Act*, as a public representative. In this role, I represented the beneficiaries of the *Medical Services Plan*, which are the citizens of British Columbia. I held this role for eight years, until July 2008.
10. In August 2004, I was appointed to represent the Commission on the Surgical Services Steering Committee ("PSSSC"), housed under the Provincial Health Services Authority of British Columbia. The PSSSC was a provincial project formed to address the pressing concerns with lengthy wait times for surgical services. Part of the PSSCC's mission was to develop a methodological framework to prioritize surgeries, which would be done through a central registry throughout the province – the Surgical Provincial Registry ("SPR").


11. As a member of the Commission and the PSSSC, I attended meetings for both organizations, and reported regularly to the Commission.
12. In July, 2005, I submitted a written report to the Commission which outlined the progress of the SPR. While the efforts of the SPR were focussed on the demand side of surgeries (i.e. how to prioritize them), my report identified various inefficiencies and lack of productivity on the supply side, for example, lack of operating room time, which contributed greatly to the wait lists for surgery in British Columbia. The Commission decided to forward my report to the Deputy Minister of Health, Dr. Penny Ballam, who had earlier recommended the appointment of a public representative from the Commission to the PSSSC in July 2004.
13. Shortly prior to the submission of my report on the SPR to the Commission in July 2005, the BC Nurses Union had filed a Petition in BC Supreme Court in April 2005, seeking that the Court review the billing practices of some private surgical clinics in BC, including CSC and False Creek Surgical Centre. Also, in June 2005, the Supreme Court of Canada had issued its decision in the *Chaoulli* case, and the Commission was briefed on the implications of that decision for British Columbia.
14. As a result of these three events, the issue of private medical care in British Columbia was specifically discussed by the Commission at a meeting, which to the best of my recollection, took place in late July, 2005. At that meeting, it was apparent to me that all of the members of the Commission were aware, and had been aware for a long time before that, of the activities of a number of the private surgical clinics in British Columbia, including CSC, and their role as an alternative to the long waiting lists in the public system, as well as their billing practices in terms of charging a facility fee for surgical procedures.
15. Among other things, we discussed the fact that the Workers Compensation Board and ICBC were regular clients or at least supporters of the private surgical clinics in providing surgical services to their injured beneficiaries. We also discussed the fact that

the existence and operation of the private surgical clinics was valuable in terms of reducing wait list times for surgery in the public hospitals. My recollection is that, although not unanimous, the consensus of the Commission was that little, if any, benefit would be served by attempting to interfere with or restrict the operations of the private surgical clinics and that restricting their operations would only increase the wait lists in the public system.

16. In sum, the Commission was aware for many years of the billing practices at CSC, in terms of charging a facility fee for medically necessary surgery procedures which are a benefit under the *Act* and for several years took no action to prevent this activity by CSC.

17. In my opinion, it is important that the constitutionality of the restrictions on the provision of private medical care to BC residents be determined by the Court. It is also my opinion that if an injunction against SRC and/or CSC were to be issued before the constitutionality of the provisions in issue is determined, residents of British Columbia who want to pay a fee for timely treatment at CSC or SRC will not be able to do so. These patients will be added to the lengthy wait lists in the public health care system. This will not help the public health care system in British Columbia. Rather, by increasing the wait times, it will further limit the access to timely health care in British Columbia.

AFFIRMED BEFORE ME at the City of)
Victoria, in the Province of British)
 Columbia, this 2nd day of October, 2012)


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A Commissioner for taking affidavits)
 in the Province of British Columbia)

Robert Connolly

Barrister, Solicitor & Notary Public

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 MR. GORDON DENFORD