



Affidavit #1 of Dr. Marcel Dvorak  
October 5, 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 DR. MARCEL DVORAK**

I, Marcel Dvorak, surgeon, of 4188 West King Edward Avenue, Vancouver, BC, MAKE OATH AND SOLEMNLY AFFIRM THAT:

1. I am a surgeon who works both within public hospitals in British Columbia and at the Cambie Surgeries Corporation (herein referred to as “CSC”). As such, I have direct knowledge of the information stated herein, except where stated to be on information and belief, in which case I believe it to be true.
2. I make this affidavit in support of CSC’s opposition to the injunction sought by the Medical Services Commission (the “**Commission**”) to prohibit CSC and Specialist Referral Clinic (“SRC”) 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, it will have a negative impact on the ability of the residents of British Columbia to access timely health care.

#### **My Professional Qualifications**

4. I am an orthopaedic surgeon with sub-specialty training in spine surgery.
5. I completed my medical degree in 1984 at the University of Ottawa.
6. In 1990, I completed residency training to specialize in orthopaedic surgery at the University of British Columbia, and became a Fellow of the Royal College of Physicians and Surgeons of Canada.

7. In 1991, I completed Spine Fellowships at the University of Western Ontario, the University of Bern, Switzerland, and in Paris, France.
8. I am a Professor and the Head of the Division of Spine, in the Department of Orthopaedics, at the University of British Columbia.
9. I am the Medical Director of the Combined Neurosurgical and Orthopaedic Spine Program at Vancouver General Hospital.
10. I am the Cordula and Günter Paetzold Chair in Clinical Spinal Cord Injury Research at the University of British Columbia.

**My work as a surgeon in public hospitals in British Columbia**

11. I have had an orthopaedic surgery practice at the Vancouver General Hospital since 1992. I specialize in adult spine trauma, arthritis, and deformity.
12. At Vancouver General Hospital, I have one clinic per week where I see approximately 30 patients who have been referred to me for a surgical spine consultation.
13. I have been allocated 1 and ¼ operating room (“OR”) days per week. Depending on the complexity of the procedure, I typically conduct three surgeries during my weekly allocated OR time, and approximately 160 surgeries a year.
14. Since I am a Professor at the University of British Columbia, and I have to allocate time to my academic (research, teaching, and administrative) responsibilities, my surgical load is lower than a typical surgeon’s practice. However, being allocated less than two OR days per week is not due to academic responsibilities, but is a product of the availability of elective operating time and it’s rationing within the public health care system. I would use more OR time if it was available.

15. As I am limited by the available elective operating time, I must restrict the number of patients I see to keep my waiting list at a manageable length. This means that I must tell patients that I cannot see them. This is the fundamental issue – as a result of rationing issues approximately half of the patients that require surgical consultation for a spine issue are not seen by a specialist, or are placed on extremely lengthy wait lists, upwards of a year, just to receive an initial consultation. Following this, the patient must wait to receive the procedure. This second waiting time could be another year.
16. This is in stark contrast to my profession's internal guidelines for accessing medical care. The Canadian Spine Society's benchmarks for most of the types of 'elective' or non-emergent, procedures I perform state that patients should not wait longer than three to six months for care.
17. If patients wait longer than three to six months, they face unnecessary and increasing levels of pain, risk of neurological deterioration, and significant distress about the lack of access to timely care.
18. Making someone wait an extended period of time for the treatment of spinal degenerative conditions, that can prevent an individual from walking, is completely unacceptable. These patients are suffering a great amount of pain unnecessarily and risking worsening in their symptoms and disability.
19. The OR time in public hospitals is restricted due to limited resources. This has resulted in a need for clinics such as CSC.

#### **My work as a surgeon at CSC**

20. I perform surgeries at CSC for patients who are entitled to expedited treatment through Worksafe BC. Although I do not personally perform private pay surgeries at CSC, I support CSC's provision of these services to BC residents due to the unacceptable wait times in the public healthcare system.

21. By allowing patients to pay a facility fee for surgical services at CSC, this allows them, as well as others within the public system, to have their health care needs addressed more quickly. This does not reduce the surgical time in the public system, because surgeons in the public system are and will continue to fully utilize their elective operating time, and will continue to experience rationing of the public hospital OR time.
22. CSC surgical suites are available at all times during the day and week. They are not restricted to certain times as in the case in the public hospitals. Therefore, I am able to perform elective surgeries in the evenings and weekends at CSC, unlike in the public hospitals.
23. Due to various government regulations and limitations set out by the Royal College of Physicians and Surgeons of Canada (“RCPSC”), the procedures I can perform at the CSC are restricted. I currently perform three to four surgeries per year at CSC.
24. According to the RCPSC, I am able to perform 1 and 2 level decompressions and 1 level cervical fusions. I am limited from doing any lumbar fusions or more extensive cervical procedures.
25. My patients at CSC are able to access immediate care. I am able to schedule all of my patients at CSC in for procedures well within a week of their desired treatment date.
26. I am a strong defender of the public health care system. In fact, I chose not to move to the United States and practice there because of this belief. However, I do not support the monopoly on health care that the government has established.
27. In my view, there is no reason to not allow private insurance and providers to exist alongside a publically funded universal health care system, and give British Columbians the right to choose between the systems. This will help, not hurt, the public system because it will lead to reduced wait times for everyone.

28. For some people, expedited care is of great importance because of their job requirements or their life circumstances. These decisions are contextual, and not only depend on the type of injury, but how much the impairment affects their capacity to carry on their normal lives. For example, a 68-year-old woman who needs elective spine surgery may have to wait up to two years before she receives it. This extended wait, in addition to the prolonged pain and suffering, will affect and delay her ability to travel, engage with family, or be an active member of her community. Because of her age, receiving timely care is of great importance to such a patient.
29. While it may be unreasonable to ask for expedited care within the public system, this person should have the option to spend her own money to receive medical care so that she can enjoy her life.
30. Similarly, someone who is self employed would likely place a high priority on obtaining timely elective surgery and should be free to pay to obtain timely care in British Columbia.
31. I support the patient's right to be able to choose to pay for private care or insurance and am in support of Dr. Day's provision of private health care services.

### **Consequences of an Injunction**

32. An injunction against SRC and CSC will hinder, not help, the British Columbia public health care system, as patients scheduled for treatment at SRC and CSC will be added to the wait lists in the public health care system, and further compound the extensive wait times faced by the citizens of British Columbia.
33. The public health care system will not be harmed by allowing SRC and CSC to continue operation until the adjudication of the constitutionality of the restrictions at issue in the *Act*. In contrast, because my colleagues and I are underutilized in the public health care system, the service provided at SRC and CSC allows for more surgeries to be conducted


in British Columbia, which is a benefit to all of the citizens in the province.

**AFFIRMED BEFORE ME** at the City of )  
Vancouver, in the Province of British )  
Columbia, this 5 day of October, 2012 )

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

*Ania Kolodziej*  
*Exp. August 31, 2014*

  
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**DR. MARCEL DVORAK**