



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

STATEMENT OF DEFENCE TO COUNTERCLAIM

FORM 19 (RULE 23(4))

1. The Defendant by Counterclaim, Specialist Referral Clinic ("SRC") denies each and every allegation in the Counterclaim of the Defendant, the Medical Services Commission ("MSC Counterclaim", "MSC") and the Counterclaim of the Defendant, the Minister of Health Services of British Columbia ("MHS Counterclaim", "MHS"), except where expressly admitted herein.

Defence to the MSC Counterclaim

2. SRC admits paragraph 42 of the MSC Counterclaim.

3. In answer to the whole of the MSC Counterclaim, the MSC has failed to plead material facts that support the relief sought, or that permit the SRC to respond meaningfully to its claims.
4. In particular, the MSC has failed to specify a time range over which it alleges breaches of the *Medicare Protection Act* are alleged to have occurred at SRC.
5. In answer to paragraphs 51, 52 and 53 of the MSC Counterclaim, the MSC has failed to plead sufficient particulars to permit SRC to respond to its Counterclaim. The MSC has failed to specify the source, date and content of the alleged documentation. The MSC has failed to state with any particularity its “reason to believe” as alleged in paragraph 53. SRC puts the MSC to strict proof of these paragraphs or, alternatively, paragraphs 51, 52 and 53 should be struck from the Counterclaim.
6. In answer to paragraphs 54 to 58 and the Prayer for Relief (including injunctive relief) of the MSC Counterclaim, although the Commission informed SRC of the authorization of an audit on or about September 15, 2008, the MSC’s inspector, Mr. Anton Glegg, agreed to postpone the arrangement of dates for the audit until mid-November, 2008 to permit SRC to seek legal advice. Discussions occurred between legal counsel for SRC, Cambie Surgery Centre and the SRC in respect of the proposed audit through December 2008. In these discussions, MSC failed to specify the “reasonable grounds” on which it directed the on-site audit pursuant to s. 36 of the *Medicare Protection Act*. This action was commenced January 28, 2009. At no time prior to the commencement of this litigation was SRC advised of a specific date for the audit to take place.
7. In response to the Prayer for Relief of the MSC Counterclaim, the MSC has failed to confirm that it will not seek to inspect records relating to services falling outside the scope of the Medical Services Plan, and outside its statutory authority. Such services include:
 - (a) Cosmetic surgery services/consultations;

- (b) Services rendered to patients who are not enrolled beneficiaries under the Plan, such as patients from other countries or other provinces;
 - (c) Services falling within the ambit of excluded schemes, such as services provided under the jurisdiction of the *Workers Compensation Board*, or the RCMP;
 - (d) Medical-legal assessments (assessments done at the request of a lawyer or insurer for the purposes of litigation and/or the determination of eligibility for benefits under an insurance policy).
8. Further, SRC has a duty of confidentiality in relation to patient records, pursuant to the *Personal Information Protection Act*, under the common law of confidentiality pertaining to medical records, and in the case of medical-legal assessments, legal professional privilege. This duty is particularly important where the records sought to be examined fall outside the statutory authority of the MSC. No orders should be made in respect of paragraphs (a), (b) and (c) of the Prayer for Relief without a prior determination by the court as to the scope of the audit in relation to the above confidentiality and privilege concerns.

Defence to the MHS Counterclaim

9. In answer to the whole of the MHS Counterclaim, the MHS Counterclaim discloses no reasonable cause of action against SRC.
10. In answer to paragraphs 63, 65 and the Prayer for Relief of the MHS Counterclaim, the MHS lacks standing to seek declarations with respect to the alleged “Acknowledgment Forms”, since, on the facts as pleaded by the MHS, any such forms would represent agreements between private parties. Also, on the basis of the facts alleged in the Counterclaim, the MHS seeks relief in relation to agreements involving private party individuals but has failed to join those private parties in the action.

11. In answer to paragraphs 66 - 72 and the Prayer for Relief of the MHS Counterclaim, SRC owes no duties to MHS related to fiscal transfers to the province under the *Canada Health Act* and there is no basis in law for the claim advanced.
12. The MHS has failed to plead that any deductions from transfers to the province pursuant to the *Canada Health Act* have been made on account of any conduct of SRC.
13. Alternatively, even if it can be proven that any statutory breach by SRC has caused monetary loss to MHS, which is not admitted but expressly denied, there is no cause of action for breach of statute, and no basis on which to make an award of damages herein.

WHEREFORE the Defendant by Counterclaim SRC claims as against the defendants MSC and MHS, or each individually:

- (a) Dismissal of the Counterclaim;
- (b) Costs; and
- (c) Such further and other relief as this Court may deem just.

Dated: 1 May 2009

HARPER GREY LLP
Harper Grey LLP
HARPER GREY LLP
(Per William S. Clark)
Solicitor for the Defendant by Counterclaim

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