



No. S-090663
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, ERMA KRAHN, WALID KHALFALLAH by his litigation guardian DEBBIE WAITKUS, and SPECIALIST REFERRAL CLINIC (VANCOUVER) INC.

PLAINTIFFS

AND:

MEDICAL SERVICES COMMISSION OF BRITISH COLUMBIA,
MINISTER OF HEALTH OF BRITISH COLUMBIA,
and ATTORNEY GENERAL OF BRITISH COLUMBIA

DEFENDANTS

AND:

DR. DUNCAN ETCHES, DR. ROBERT WOOLLARD, GLYN TOWNSON,
THOMAS McGREGOR, BRITISH COLUMBIA FRIENDS OF MEDICARE
SOCIETY, CANADIAN DOCTORS FOR MEDICARE, MARIËL SCHOOFF,
DAPHNE LANG, JOYCE HAMER, MYRNA ALLISON, CAROL WELCH,
and the BRITISH COLUMBIA ANESTHESIOLOGISTS' SOCIETY

INTERVENORS

COUNTERCLAIM

Filed By: The Defendant Minister of Health of British Columbia.

To: The Plaintiffs CAMBIE SURGERIES CORPORATION and SPECIALIST REFERRAL CLINIC (VANCOUVER) INC., and to their Solicitors;

This action has been brought by the plaintiffs against the defendants for the relief set out in the further amended notice of civil claim filed in this action.

TAKE NOTICE that the defendant the Minister of Health of British Columbia claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this counterclaim, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a response to counterclaim in Form 4 in the above-named registry of this court within the time for response to counterclaim described below and SERVE a copy of the filed response to counterclaim on the address for service of the defendant(s) bringing this counterclaim.

YOU OR YOUR LAWYER may file the response to counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to counterclaim within the time for response to counterclaim described below.

Time for response to counterclaim

A response to counterclaim must be filed and served on the defendant(s) bringing this counterclaim,

- (a) if you were served with the counterclaim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the counterclaim anywhere elsewhere, within 49 days after that service, or
- (d) if the time for response to counterclaim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

1. Except where expressly noted otherwise, terms and abbreviations defined in the Further Amended Notice of Civil Claim and the Response to the Further Amended Civil Claim have the same meanings in this Counterclaim.
2. The defendant Minister claims as Plaintiff by Counterclaim against Cambie and SRC.
3. The Minister repeats the facts contained in paragraphs 4, 10-30, and 34-46 of Part 1 of the Response to the Further Amended Civil Claim.

4. Cambie and SRC (jointly, the “Unlawful Billing Clinics”), and each of them, have at all material times planned, organized, arranged, participated in, facilitated, assisted, and been wilfully blind to unlawful billing practices, particulars of which include, but may not be limited to:

- (a) The charging of fees for
 - i. the rendering of a benefit; and/or
 - ii. materials, consultations, procedures, use of an office, clinic or for any other matters that related to the rendering of a benefit, contrary to the Act; and

- (b) The facilitation of and participation in billing practices of medical practitioners that are contrary to the Act, including charging beneficiaries unauthorized fees for:
 - i. benefits,
 - ii. materials, consultations, procedures, use of an office, clinic or for any other matters related to the rendering of a benefit;
 - iii. amounts in excess of those permitted by the law; and/or
 - iv. services in respect of which a claim has also been submitted to the Commission.

5. The full particulars and extent of the Unlawful Billing Clinics’ participation in the activities described in the foregoing paragraph are uniquely within the knowledge of the Unlawful Billing Clinics.

Part 2: RELIEF SOUGHT

1. Damages for the unlawful actions of the Unlawful Billing Clinics.
2. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.
3. Costs of this action.
4. Such further and other relief as to this Honourable Court may seem just and appropriate.

Part 3: LEGAL BASIS

1. There is a strong public interest in maintaining a health care system that operates in a fair, efficient, and cost-effective manner, and in particular one that is, and is perceived to be, reasonably fair and equitable in the allocation of available medical resources throughout the population. The Unlawful Billing Clinics' violations of the law, and specifically their unlawful billing practices, undermine that public interest and threaten public confidence in the public health care system.
2. The Province is entitled, under the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8, to annual payments intended, *inter alia*, to protect the principles of public administration, comprehensiveness, universality, portability, and accessibility of the health care system, and to contribute to providing the best possible health care system for the residents of British Columbia (the "Canada Health Transfer").
3. Under the provisions of the *Canada Health Act*, Canada may deduct from the monies payable under the Canada Health Transfer any amounts that have been unlawfully billed by medical practitioners or others for or in relation to benefits available under the Act.
4. At all material times, the Unlawful Billing Clinics, and each of them, have known or ought to have known that their unlawful billing practices could cause loss to the Province because amounts unlawfully charged to beneficiaries could be deducted by Canada from the Canada Health Transfer.
5. The Unlawful Billing Clinics, and each of them, through the planning, arranging, organizing, and charging of unauthorized fees, and/or through the receipt or handling of other direct or indirect payments in connection with the provision of insured services, have themselves been engaged in unlawful billing practices in British Columbia and also have aided, abetted, assisted, and facilitated the unlawful billing practices of others who practised in the Unlawful Billing Clinics' facilities or who arranged payment through or with the participation of those

facilities. The particulars of the nature and extent of these violations are uniquely within the knowledge of the Unlawful Billing Clinics.

6. In acting unlawfully as they have, the Unlawful Billing Clinics have, and each of them has, intended to cause economic loss to the Province, or been wilfully blind or reckless with respect to whether such loss would occur.

7. The Province has suffered and will continue to suffer losses as a consequence of the acts and omissions of the Unlawful Billing Clinics, and each of them.

8. The Minister pleads and relies on:

- (a) The *Canada Health Act*, R.S.C. 1985, c. C-6;
- (b) The *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (c) The *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.

Address for Service of Claiming Party:

Ministry of Justice
Legal Services Branch
PO BOX 9280 STN PROV GOVT
1001 Douglas Street
Victoria, B.C. V8W 9J7

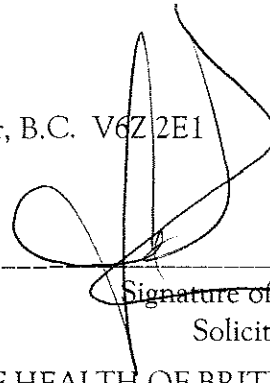
Fax number address for service (if any): Facsimile: (250) 356-9154

E-mail address for service (if any): Jonathan.Penner@gov.bc.ca

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street, Vancouver, B.C. V6Z 2E1

Date: 10 January 2013



Signature of Jonathan Penner
Solicitor for Defendant,

MINISTER OF HEALTH OF BRITISH COLUMBIA

filing party lawyer for filing party

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.