



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 Medical Services Commission of British Columbia.

To: The Plaintiffs CAMBIE SURGERIES CORPORATION and SPECIALIST REFERRAL CLINIC (VANCOUVER) LTD., 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 Medical Services Commission 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 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 Commission claims as Plaintiff by Counterclaim against the Plaintiffs Cambie and SRC.

3. The Commission repeats the facts contained in paragraphs 6-12, 18-30, and 47-78 of the Response to the Further Amended Civil Claim.
4. 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.
5. The inspectors carried out the audits between January and November of 2011. The Commission received their report in May of 2012 (the "Audit Report").
6. 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.
7. Cambie and SRC have not confirmed that they will stop breaching the Act.

*Particulars of the Breaches*

8. Cambie carries on business as the Cambie Surgery Centre, operating at 2836 Ash Street, Vancouver.
9. 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.

10. SRC carries on business as the Specialist Referral Clinic, operating at #121-555 West 12<sup>th</sup> Avenue, Vancouver.

11. 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").

12. 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.

13. SRC may also act as a referring agency for health pre-screening services.

14. No surgical procedures are performed at SRC.

15. 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.

16. 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).

17. 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 and reported having been charged for medical services.

18. 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.

## Part 2: RELIEF SOUGHT

1. A Declaration that Cambie and SRC have contravened s. 17 of the Act.

2. A Declaration that Cambie and SRC have contravened s. 18 of the Act.
3. An Interim Injunction restraining Cambie and SRC from contravening s. 17 of the Act.
4. An Interim Injunction restraining Cambie and SRC from contravening s. 18 of the Act.
5. A Permanent Injunction restraining Cambie and SRC from contravening s. 17 of the Act.
6. A Permanent Injunction restraining Cambie and SRC from contravening s. 18 of the Act.
7. Costs of this action.
8. Such further and other relief as to this Honourable Court may seem just and appropriate.

### **Part 3: LEGAL BASIS**

1. Under section 45.1 of the Act, the Commission may apply to the Supreme Court for an injunction restraining a person from contravening, *inter alia*, subsections 17(1) or 18(1) or (3) of the Act. The Supreme Court may grant such an injunction if satisfied that there is reason to believe that there has been or will be a contravention of the Act. The Supreme Court may also grant an interim injunction.
2. 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 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.

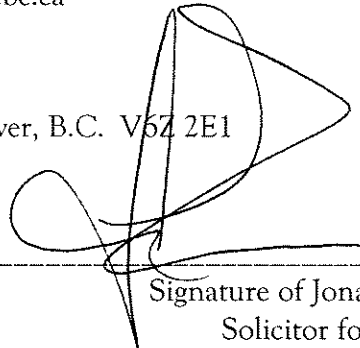
3. The Commission is therefore entitled to the relief sought.

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,  
 MEDICAL SERVICES COMMISSION 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.