



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, 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, THE 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

**NOTICE OF APPLICATION**

**Name(s) of applicant(s):** The Intervenors, Dr. Duncan Etches, Dr. Robert Woollard, Glyn Townson, Thomas McGregor, the British Columbia Friends of Medicare Society, Canadian Doctors for Medicare

To: The Plaintiffs

And To: The Defendants

And To: The Intervenors, Mariel Schoof, Daphne Lang, Joyce Hamer, Myrna Allison, Carol Welch and the British Columbia Anesthesiologists' Society

TAKE NOTICE that an application will be made by the applicants to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on the 12 May 2014, at 9:45 a.m. for the orders set out in Part 1 below:

**Part 1: ORDER(S) SOUGHT**

1. order granting the applicants the right to adduce expert reports by the experts identified in paragraphs 9-42 of Affidavit #1 of Adam Lynes-Ford, made 01 Apr 2014 (the “Expert Evidence”);
2. a direction that the Expert Evidence be served and filed on or before June 1, 2014; and
3. such further and other relief as to this Honourable Court seems just.

**Part 2: FACTUAL BASIS**

1. On November 20, 2009, Justice Smith granted and ordered, among other things, that the applicants be and are added as intervenors and that possibility of the applicants “leading evidence will not be determined until the proceedings are further advanced and until it is known what evidence the parties themselves intend to bring forward.”
2. On January 10, 2013, Chief Justice Bauman (as he then was), ordered, among other things, that the applicants “may submit evidence at the hearing of this action in a form and with such limits as are determined by the Court.”
3. On August 13, 2013, the applicants gave notice to the parties and intervenors in this action of their intention to adduce the Expert Evidence.
4. On December 18, 2013, this Court directed that the plaintiffs file their evidence by March 15, 2014, and that the applicants advised of their intention to bring their application to adduce further expert evidence by April 1, 2014. and that they would require about two months after the decision in respect of this Application to file expert reports, if any, that they are permitted to file.
5. The trial of this matter has been set on a peremptory basis for September 8, 2014 for a period of 19 weeks.
6. The Expert Evidence is neither duplicative nor merely corroborative of evidence led in these proceedings to date.

**Part 3: LEGAL BASIS**

1. This Court has ordered that the applicants “may submit evidence at the hearing of this action in a form and with such limits as are determined by the Court.”

Order After Case Planning Conference, dated January 10, 2013, para. 1(d)

2. The Expert Evidence will be of assistance in resolving the issues in this case and will not

unduly encumber the record. The Expert Evidence is neither duplicative nor merely corroborative of evidence that the parties in the action seek to lead.

*Adler v. Ontario* (1992), 8 O.R. (3d) 200 (Ont. Ct. Gen. Div.)

- 3. Directing that the Expert Evidence be filed June 1, 2014, will allow the applicants time to have the Expert Evidence prepared and to ensure that it is neither duplicative nor merely corroborative of the evidence that the parties in the action have led.
- 4. There is no prejudice to the parties in imposing such a deadline given they have been on notice since August 2013 that the applicants would seek to introduce the Expert Evidence and, further, given that the parties will have months to consider the Expert Evidence prior to the commencement of the trial herein.

**Part 4: MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of Adam Lynes-Ford, made April 1, 2014.

The applicants estimate that the application will take 1 hour.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: April 24, 2014




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Signature of  applicant(s)  
 lawyer for the applicant(s)  
**JOSEPH J. ARVAY, Q.C.**

***To be completed by the court only:***

Order made

- in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application
- with the following variations and additional terms:

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Date: \_\_\_\_\_

Signature of  Judge  Master

**APPENDIX**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts