



No. S090663
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

CAMBIE SURGERIES CORPORATION, CHRIS CHIAVATTI, MANDY
MARTENS, KRYSTIANA CORRADO, WALID KHALFALLAH by his litigation
guardian DEBBIE WAITKUS, and SPECIALIST REFERRAL CLNIC
(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, GYLN TOWNSON,
THOMAS McGREGOR, BRITISH COLUMBIA FRIENDS OF MEDICARE
SOCIETY, CANADIAN DOCTORS FOR MEDICARE, MARIEL SCHOOFF,
DAPHNE LANG, JOYCE HAMER, MYRNA ALLICON,
And the BRITISH COLUMBIA ANESTHESIOLOGISTS' SOCIETY

Intervenors

And:

THE ATTORNEY GENERAL OF CANADA

Pursuant to the *Constitutional Question Act*

TRIAL BRIEF

Filed by: The Attorney General of Canada ("AGC")

The trial of this action is scheduled for 24 weeks and is scheduled to begin on September 6, 2016. The total time needed respecting items 2,4,5,9 and 11 is 18.5 hours.

The AGC expects the trial to complete within the scheduled time.

1. Summary of Issues and Positions

The following are the issues of relevance to the AGC and her position on each:

Issues of relevance	AGC's position
Have the plaintiffs established that they experienced a	The plaintiffs cannot establish a deprivation.

deprivation of their life, liberty, or security of the person contrary to section 7 of the Canadian <i>Charter of Rights and Freedoms</i> (" <i>Charter</i> ")?	
If the plaintiffs can establish a deprivation of their life, liberty, or security of the person contrary to section 7 of the <i>Charter</i> , is the deprivation in accordance with the principles of fundamental justice?	If the plaintiffs can establish a deprivation, it is in accordance with the principles of fundamental justice.
Can the plaintiffs establish that sections 14, 17, 18 and/or 45 (the "Impugned Provisions") are arbitrary?	No, they cannot establish that there is no connection between the Impugned Provisions and the purpose of the <i>Medicare Protection Act</i> RSBC 1996, c 286 ("Act"), which includes access to medical care based on need and not an individual's ability to pay.
Can the plaintiffs establish that the Impugned Provisions are overbroad?	No, they cannot establish that the Impugned Provisions overreach by capturing some conduct that bears no relation to the legislative objective.
Can the plaintiffs establish that the Impugned Provisions are grossly disproportionate?	No, they cannot establish that the impacts of the Impugned Provisions on s.7 protected rights are so extreme that they are <i>per se</i> disproportionate to any legitimate governmental interest.
Can the plaintiffs establish that the Impugned Provisions are vague?	No, they cannot establish that the Impugned Provisions do not provide sufficient guidance for legal debate as to the scope of prohibited conduct or of an "area of risk", or are not intelligible.
Can the plaintiffs establish that the Impugned Provisions violate section 15 of the <i>Charter</i> ?	<p>No, the plaintiffs cannot establish that the Impugned Provisions violate section 15 of the <i>Charter</i>.</p> <p>The Impugned Provisions do not create a distinction on the basis of an enumerated or analogous ground, including disability. Contrary to the plaintiffs' claims, differential treatment of individuals who fall within different legislation, and differential treatment of</p>

	<p>individuals based on the nature and type of employment and injuries suffered as a result thereof, are not grounds recognized under s.15(1) of the <i>Charter</i>.</p> <p>Additionally, the plaintiffs' claims of differential treatment based on the grounds of age or of a fundamental interest at stake cannot succeed, because the evidence will demonstrate that the Impugned Provisions do not create a distinction on these grounds.</p> <p>Finally, if the Impugned Provisions were found to create a distinction on the basis of an enumerated or analogous ground, the evidence will demonstrate that the distinction does not have the effect of perpetuating arbitrary disadvantage on the plaintiffs on the basis of an enumerated or analogous ground.</p>
<p>If the plaintiffs can establish that the Impugned Provisions violate section 7 or section 15 of the <i>Charter</i>, are the Impugned Provisions saved by section 1 of the <i>Charter</i>?</p>	<p>Yes, the Impugned Provisions are saved by section 1 of the <i>Charter</i>.</p> <p>The Impugned Provisions further the pressing and substantial objective of providing access to necessary medical care within British Columbia's public health care system based on need and not an individual's ability to pay.</p> <p>The Impugned Provisions are rationally connected to this objective, as the evidence will demonstrate that allowing user fees, extra billing or private insurance worsens access to insured health services and increases wait times in the public system. Canada's evidence on the reasons for the enactment of the <i>Canada Health Act</i> R.S.C. 1985, c.C-6 will further demonstrate decreased and inequitable access to insured health services resulting from user fees and extra billing.</p>

The Impugned Provisions impair any rights impacted no more than is reasonably necessary to accomplish the objective. Among competing policy options in the area of health care, the Impugned Provisions fall within a range of reasonable alternatives to government to fulfill its objective. While other potential models for delivering public health care may exist, it is reasonable for the government to pursue its objectives through a fully public system, which, as the evidence will demonstrate, seeks to balance a number of competing rights and interests, including those of vulnerable individuals.

The benefits of the Impugned Provisions for the collective good sought to be achieved outweigh the costs of any rights limitations imposed. The positive impact of the Impugned Provisions on individuals who cannot afford private health care, or would be ineligible for private insurance because of, for example, chronic health conditions, outweighs any negative impact on more privileged individuals who are currently only able to access limited private health care services and unable to access private health care insurance.

The evidence will demonstrate a reasoned apprehension of harm that a private health care system would increase the cost to the public system - for example, the public system will need to pay competitive rates for medical services rather than the existing fee schedule.

The evidence will also demonstrate that there is a reasonable apprehension that, as an already limited number of

	<p>physicians devote more time to a private system, there would be less physicians available for a public system, resulting in increased wait times for those left in the public system.</p> <p>The evidence will also demonstrate that because the public system will be left to be used mostly by marginalized populations, political support and a willingness to focus taxpayer funds will decline, which may result in a decrease in quality of care within the public system.</p> <p>The evidence will further demonstrate a reasonable apprehension that private facilities will focus on simpler, less risky procedures, leaving public facilities to handle more complicated, costly and risky procedures.</p>
--	---

2. Witnesses to be Called

The following are the names and addresses of the witnesses the filing party intends to call at trial, the issue(s) each will address, an estimate of the time each will need for giving direct evidence, and the filing party's opinion on whether, if the court so orders or the parties all consent, the witness's direct evidence could conveniently be given by affidavit:

Name	Address	Issue	Time in hours needed	Direct evidence by affidavit (Y/N)
Gigi Mandy, Executive Director of	c/o Department of Justice	Federal role in health; creation of Canada's public health care	1 hour	Yes

the Canada Health Act Division of Health Canada	Canada: #900 - 840 Howe Street, Vancouver, BC, V6Z 2S9	insurance system; enactment, interpretation and enforcement of the <i>Canada Health Act</i> RSC 1985, c C-6.		
Lindy Vanamburg, Assistant Director, Acute Care & Quality, Health Care System Division, Strategic Policy Branch, Health Canada	c/o Department of Justice Canada: #900 - 840 Howe Street, Vancouver, BC, V6Z 2S9	Federal wait time initiatives	0.5 hours	Yes
Dr. John Frank	c/o Department of Justice Canada: #900 - 840 Howe Street, Vancouver, BC, V6Z 2S9	Impact of access to universal publicly funded healthcare on outcomes beyond health, and impact of a parallel privately funded healthcare system on outcomes beyond health	0.5 hours	No

3. Expert Reports

The following are the expert reports the AGC will offer as evidence at trial:

Name of Expert	Date of Report
Dr. John Frank	July 27, 2016

4. Witnesses to be Cross-Examined

The following are the names of the witnesses the AGC anticipates cross-examining at trial, and a time estimate for each

Name	Time Needed
Dr. Michael Bliss	1 hour
Dr. Ake Blomqvist	1 hour
Nadeem Esmail	1 hour
Peter Holle	1 hour
Dr. Robert Hollinshead	1 hour
Dr. Daniel Kessler	1 hour
Yanick Labrie	1 hour
Dr. Alistair McGuire	1 hour

Professor John McGurran	1 hour
Dr. Albert Schumacher	1 hour

5. Objection to Admissibility

The AGC intends to object to the admissibility of all or a part of the following expert reports:
NIL

6. Documents and Exhibits

The AGC has not yet discussed a common book of documents or an agreement governing the use and admissibility of documents with the other parties. The AGC intends to discuss these matters with the other parties prior to trial and will likely adopt the same approach used by the plaintiffs and defendants.

7. Admissions

The AGC will admit the following facts at trial: NIL

8. Authorities

The AGC expects there will be a joint brief of authorities.

9. Time Required for Submissions

The AGC estimates that two hours will be required for an opening statement and one day will be required for closing submissions.

10. Orders That May Affect the Conduct of the Trial

One order pertains to the AGC's role in this litigation:

On April 13, 2016, the AGC advised the Court of her intention to participate in this litigation pursuant to the *Constitutional Question Act* RSBC 1996, c 68, and the Court ordered an amendment to the style of cause to reflect her participation.

11. Orders or Directions to be Applied for at the Trial Management Conference:

Nil

12. Settlement

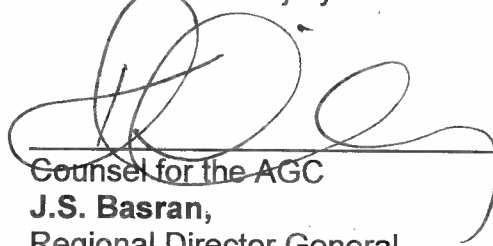
1. The AGC is not aware whether settlement discussions or mediation sessions have taken place.
2. A mediation is not scheduled before the date set for trial.

3. The court at the trial management conference will not be asked to assist the parties' efforts to settle.

13. Trial to be heard with or without jury

The trial of this action is to be heard by the court without a jury

Dated: August 4, 2016

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a long horizontal stroke extending to the right.

Counsel for the AGC
J.S. Basran,
Regional Director General
Per: Ken Manning
Department of Justice
British Columbia Regional Office