IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cambie Surgeries Corporation v. British Columbia (Medical Services Commission),* 2016 BCSC 1292

Date: 20160712
Docket: S090663
Registry: Vancouver

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/Applicants

And

Medical Services Commission of British Columbia, Minister of Health Services of British Columbia, and Attorney General of British Columbia

Defendants/Respondents

Dr. Duncan Etches, Dr. Robert Woolard, Glyn Townson, Thomas McGregor, British Columbia Friends of Medicare Society, Canadian Doctors for Medicare, Mariel Schooff, Daphne Lang, Joyce Hamer, Myrna Allison, Carol Welch, and the British Columbia Anesthesiologists' Society

Intervenors

Before: The Honourable Mr. Justice Steeves

Reasons for Judgment

Counsel for the Plaintiffs/Applicants:	Peter Gall, Q.C. R. Grant, Q.C. & Selina Gyawali
Counsel for the Defendants/Respondents:	Jonathan Penner, E.W. (Heidi) Hughes, & Kate Saunders
Counsel for the Party pursuant to the Notice of Constitutional Question:	Ken Manning, & Paul Singh

Counsel for the Intervenors, Dr. Duncan Etches, Dr. Robert Woollard, Glyn Townson, Thomas McGregor, British Columbia Friends of Medicare Society, and Canadian Doctors for Medicare:	Joseph Arvay, Q.C. & Alison Latimer
Counsel for the Intervenors: Mariël Schooff, Daphne Lang, Joyce Hamer, Myrna Allison, and Carol Welch	Allison Tremblay & Craig Bavis
Counsel for the Intervenor: British Columbia Anesthesiologists' Society	Wanda Simek
Application conducted via written submissions only:	Vancouver, B.C. June 6, 2016
Place and Date of Judgment:	Vancouver, B.C. July 12, 2016

A. INTRODUCTION

[1] This litigation arises from the plaintiffs' challenge under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*]. They claim that ss. 14, 17, 18, and 45 of the *Medicare Protection Act,* R.S.B.C 1996, c. 286 [*MPA*] violate their rights under ss. 7 and 15 of the *Charter*.

[2] In the current application the intervenors Dr. Duncan Etches, Dr. Robert Woollard, Glyn Townson, Thomas McGregor, British Columbia Friends of Medicare Society, and Canadian Doctors for Medicare (the "Coalition Intervenors") challenge the standing of the two corporate plaintiffs, Cambie Surgeries Corporation ("Cambie") and Specialist Referral Clinic ("SRC") (collectively, the "Corporate Plaintiffs").

[3] The other intervenors (except the British Columbia Anesthesiologists Society ("BCAS")), the defendants, and Attorney General of Canada have filed submissions and they take no position on this application. BCAS has not filed a submission.

[4] This application was conducted by means of written submissions.

B. BACKGROUND

[5] The Notice of Constitutional Question in this case was filed on October 8, 2009, and an amended version signed on March 15, 2016. It asks:

1. Do sections 14, 17, 18, and 45 of the *MPA* infringe the rights guaranteed by ss. 7, 15 of the *Charter*?

2. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Charter*?

[6] Even at this early stage there is a complicated history and I set out some of it here.

[7] In May 2007, the defendant Medical Services Commission (the "MSC") wrote to the Corporate Plaintiffs and indicated concerns regarding extra billing. In September 2008, the MSC informed the Corporate Plaintiffs that it intended to conduct an audit of their records and it would use investigation procedures under the *MPA*.

[8] In December 2008, a petition (the "Petition") was commenced by Mariël Schooff, Daphne Lang, Joyce Hamer, Myrna Allison, and Carol Welch (collectively, the "Patient Intervenors"). Ultimately the respondents were the MSC, Cambie, SRC, and False Creek Surgical Centre Inc. The Petition challenged extra-billing and user charges and sought, among other things, a declaration that the MSC was not acting in accordance with its obligations under the *MPA*.

[9] In January 2009, in a separate action, with six corporate plaintiffs, Cambie filed a Writ of Summons against the MSC, the Minister of Health Services of British Columbia, and the Attorney General of British Columbia — the current defendants. It claimed that ss. 14, 17, 18, and 45 of the *MPA* violated the plaintiffs rights under ss. 7 and 15 of the *Charter* (the "Constitutional Action").

[10] Statements of Defence were filed in February 2009. A Notice of Constitutional Question was served by the plaintiffs on the Attorneys General of British Columbia and it appears on Canada in August 2009. The Attorney General of Canada became a party pursuant to s. 8(7) of the *Constitutional Question Act*, R.S.B.C. 1996, c 68 on March 31, 2016.

[11] In June 2010, Notices of Discontinuance were filed by five of the corporate plaintiffs with the result that Cambie remained the sole corporate plaintiff. In September 2012 and January 2013 the current individual plaintiffs and SRC were added. The latest Notice of Civil Claim (a fourth) was filed March 14, 2016 and a response by the defendants was filed the same day.

[12] In February 2009, a counterclaim in the Constitutional Action was filed by the Minister of Health and the MSC. It was against the plaintiffs and also against SRC,

which became a defendant by counterclaim. The latest counterclaim was filed on January 11, 2013.

[13] The Coalition and the Patient Intervenors were added to the Constitutional Action by orders dated November 20, 2009 and July 2, 2010, respectively.

[14] The following previous judgments and orders are also part of the history of this litigation:

(a) Under the Petition, on November 20, 2009, Justice L. Smith ordered that the constitutional issues ought to be decided in the Constitutional Action rather than the Petition and she stayed the Petition (*Schooff v. Medical Services Commission,* 2009 BCSC 1596). She also granted an injunction to permit the defendant MSC to conduct an audit of Cambie and SRC as of March 1, 2010.

(b) On September 9, 2010 the Court of Appeal allowed appeals by Cambie and SRC and set aside the injunction (2010 BCCA 396) but without prejudice to the right of the MSC to apply for a warrant under the MPA. Cambie then consented to an audit which was completed in 2012. On the basis of the audit, the MSC sought confirmation from Cambie that it would cease violations of the *MPA*. When that confirmation was not given, the MSC applied for an interim injunction. It subsequently agreed to defer its application to facilitate a timely trial.

(c) On November 20, 2009 Justice L. Smith also granted intervenor status in the Constitutional Action to the Coalition Intervenors (2009 BCSC 1596). On July 2, 2010 she added five more individual intervenors, the Patient Intervenors, the petitioners in the Petition (2010 BCSC 927). On October 15, 2012 Chief Justice Bauman granted intervenor status to BCAS (2012 BCSC 1511). By order of January 2013 he varied the rights of all intervenors.

(d) A number of orders have been made with respect to the disclosure of documents and other procedural matters in the Constitutional Action, including adjournments of previous trial dates and discoveries.

(e) Under the Constitutional Action, on November 25, 2015, Associate Chief Justice Cullen ordered an interim stay of ss. 14, 17, 18, and 45 of the *MPA*, the provisions that are challenged by the plaintiffs on constitutional grounds (2015 BCSC 2169). The legal basis of the stay was the court's inherent jurisdiction and the need to prevent the "clogging or obstruction of the stream of justice" (at para. 144). The specific concern was that the enforcement duties of the MSC had become entangled with this litigation, in particular through discovery hearings. The stay restrained the audit by the MSC of the Corporate Plaintiffs on an interim basis but future enforcement actions were not foreclosed (at para. 150). There is a dispute between the parties about whether a stay is the same as an injunction.

[15] In very broad terms the result of the above is that the Petition is stayed and the Constitutional Action and counterclaim are proceeding. As Justice L. Smith stated, this litigation is the best way to determine the issues under the *Charter*.

[16] The trial will commence on September 6, 2015.

C. ANALYSIS

[17] As above, the Coalition Intervenors challenge the private and public standing of the Corporate Plaintiffs. In the Constitutional Action the Corporate Plaintiffs claim that their rights under ss. 7 and 15 of the *Charter* are violated by ss. 14, 17, 18, and 45 of the *MPA*. I am not deciding here whether there have been violations of those provisions.

[18] According to the Coalition Intervenors, the Corporate Plaintiffs do not have standing as of right and they are only being a "busybody" by participating in this litigation. Nor do they have standing as a public interest party because they do not have a real stake or genuine interest in the litigation and the individual plaintiffs can

reasonably and effectively represent the interests of the Corporate Plaintiffs. The Coalition Intervenors also say that the private, individual plaintiffs are the appropriate parties to advance this litigation.

[19] For their part, the Corporate Plaintiffs say that the Coalition Intervenors are exceeding the proper role of intervenors by challenging the status of a party, that any such challenge should have been made five years ago (before extensive pre-trial procedures such as discovery were commenced), and that the submissions of the Coalition Intervenors are "confused and misguided". With respect to the substance of the challenge by the Coalition Intervenors, Cambie says they have standing as either a private or public party.

[20] The following issues are to be decided here:

(a) Can intervenor challenge the standing of a party? and

(b) Do the Corporate Plaintiffs have a private or public interest in the subject matter of this litigation?

[21] I will consider each of these issues in turn.

(a) An intervenor's ability to challenge the standing of a party

[22] The Corporate Plaintiffs oppose the application by the Coalition Intervenors by, first of all, saying it is inappropriate for an intervenor to challenge the status of a party.

[23] As general context, I note the following concise statement of the status of intervenors in litigation (*Can. (A. G.) v. Aluminum Co. of Can.* (1987), 10 B.C.L.R. (2d) 371 at 382-383 (C.A.); cited in *Kitimat (District) v. Alcan Inc.,* 2006 BCCA 562 at para. 45 and *Schooff* at para. 31):

> I will use the term "intervener" to describe persons or associations that are permitted to participate in proceedings to promote their own views, though the proceedings will not determine their legal rights.

[24] A brief review of the role of intervenors in this litigation is also useful.

[25] The Coalition Intervenors were first granted that status in November 2009 and the extent of their role has been the subject of previous judgments.

[26] In *Schooff*, Justice L. Smith accepted that the applicants have a strong interest in the litigation, they might have positions different from defendants, and the "range of perspectives brought before the Court will be significantly more complete with the applicants than it would be without them" (at para. 205). She declined to decide at that time whether the Coalition Intervenors could lead evidence. She also noted there were no cases where an intervenor had been given the right of discovery and she declined to make it in this case.

[27] In another judgment under this Action (2010 BCSC 927), dated July 2, 2010, Justice L. Smith added the Patient Intervenors and discussed the case law on intervenors and joinder of parties (*Can. Lab. Congress v. Bhindi* (1985), 61 B.C.L.R. 85 at 85, 94 (C.A.); *Kitimat* at paras. 24, 32-38; *Ipsos S.A. et al v. Angus Reid et al*, 2005 BCSC 1114 at para. 107; *B.C. Fisheries Survival Coalition v. Canada*, [1999] B.C.J. No. 660 at paras. 5, 10; *B.C. Citizens First Society v. British Columbia (Attorney General)*, 1999 CarswellBC 583 (S.C.); *British Columbia Teachers' Federation v. British Columbia (Attorney General)*, 2008 BCSC 1599 at paras. 15-21).

[28] In her July 2, 2010 judgment Justice L. Smith also decided that the intervenors would be permitted to submit evidence and make legal argument. They would also be permitted to apply to cross-examine on affidavits. She again declined discovery for intervenors and decided they would not receive all documents produced by the parties. Access to specific documents listed by the parties would be by application. A subsequent order by Chief Justice Bauman on January 10, 2013 permitted the intervenors to apply for discovery.

[29] Overall, the intervenors in this case enjoy the status as set out in the authorities and as qualified in the specific judgments in this case. Those judgments make it clear that the basis for the various interventions is more than that the intervenors simply find the issues interesting. Further submissions have been received from the intervenors about their role in the upcoming trial, however the

particulars of each intervention will have to be decided as the evidence develops at trial.

[30] Procedurally, as it stands now, the intervenors are entitled to discovery (on application), they can call evidence (although the scope of that evidence is a developing issue) including some expert evidence, and they can make legal argument (although it may be problematic if it is "repetition or modest expansion of the submissions made by the parties" (*Schooff* at para. 207)).

[31] I return to the specific point for consideration here: whether an intervenor can challenge the standing of a party with the effect, if successful, that the party would be unable to participate in the litigation. The Corporate Plaintiffs, being the object of the challenge by the Coalition Intervenors, understandably oppose the intervenors' application.

[32] The courts have provided further direction on the role of intervenors vis-à-vis parties (*Kitkatla Band v. British Columbia (Ministry of Small Business, Tourism and Culture) et al*, 1999 BCCA 435 at para. 2):

> I should simply observe however, for the benefit of both intervenors, that the action remains one between the parties. The relief sought and the defenses mounted in effect are those of the lis between the parties, and it is both inappropriate and undesirable that the issues be changed or broadened as a result of interventions. What is sought here is that the perspectives of those intervenors be placed before the court, but I do not see the interventions as changing the dimensions of the litigation.

[33] As well, the parties to the litigation should be allowed to define the issues, the scope for interventions is very limited, intervenors must not expand the litigation by raising matters not already part of it, and submissions of intervenors should not widen the litigation between the parties (*J.P. v. British Columbia (Children and Family Development)*, 2016 BCCA 124 at paras. 3-6; *Ahousaht Indian Band and Nation v. Canada (Attorney General)*, 2012 BCCA 330 at para. 5). These and other authorities arise in the context of intervenors wanting to expand the issues in the respective law suits and it is clear that an intervenor is required to work within the issues as plead by the parties. An intervenor cannot "high jack" the litigation by introducing issues not raised by the parties.

[34] It is also clear that the *lis* between the parties is to be determined by the parties and a party has the right to challenge the standing of another party. Here the other parties, the defendants and the Attorney General of Canada, do not take a position on the Coalition Intervenors' challenge. That is, they at least acquiesce in the participation of the Corporate Plaintiffs as parties.

[35] In the current application the Coalition Intervenors seek to remove a party. In my view, for an intervenor to challenge the standing of a party is at least as significant as an intervenor wanting to expand or change the issues between parties. Certainly the consequences are more severe since a successful challenge to standing would remove the object of the challenge and it would destroy the *lis* between the removed party and the other parties.

[36] I accept the submission of the Coalition Intervenors that they were granted intervenor status on the basis of their strong interest in the litigation. As well I can agree that the role of an intervenor when that status is granted at trial is different from the role when it is granted at an appeal level. In this particular case, for example, intervenors will be able to call evidence at trial. However, I am not persuaded that either of these points means that an intervenor can affect the *lis* between the parties to the extent of removing a party.

[37] The Coalition Intervenors also say the individual plaintiffs are directly interested in this litigation and they are capable of carrying it on if the Corporate Plaintiffs are removed as plaintiffs. Assuming that submission is correct, it does not address the issue of whether the Corporate Plaintiffs have a private or public interest in this litigation (discussed below) or whether an intervenor can apply to remove a party.

[38] In summary, in the circumstances of this case, I conclude that the Coalition Intervenors, being intervenors rather than parties, should not be permitted to challenge the party status of the Corporate Plaintiffs.

(b) Private or public interest party standing

[39] The above conclusion that the scope of an intervenor's participation in litigation does not extend to challenging the standing of a party is sufficient to dispose of the application by the Coalition Intervenors. However, this is the beginning of significant litigation and I conclude that it is appropriate to resolve any issues as to the standing of one of the parties.

[40] As above, the challenge here is by the Coalition Intervenors against the standing of Cambie. The other parties, the defendants and the Attorney General of Canada, take no position on the challenge by the Coalition Intervenors.

[41] Looking first at private interest standing, a party qualifies for that status when its legal interests are directly affected by the litigation (*Fédération des parents francophones de Columbie-Britannique v. British Columbia (Attorney General)*, 2012 BCCA 422 at para. 19).

[42] The Coalition Intervenors say that the Corporate Plaintiffs are not directly affected by the subject litigation and they rely on a series of cases from the Supreme Court of Canada with respect to the availability of rights under s. 7 of the *Charter* to corporations (the intervenors and parties have not addressed s. 15 of the *Charter* on this application). I am urged to find that those rights are available to individuals but they are not available to corporate entities such as the two Corporate Plaintiffs here. On this basis, the Corporate Plaintiffs should be denied standing, according to the Coalition Intervenors.

[43] In *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 the court considered whether federal legislation (*Lord's Day Act*, R.S.C. 1970, c. L-13) could be challenged by a corporation that was charged under that legislation. In its defence the corporation relied on, in part, s. 2(b) of the *Charter*, the freedom of conscience and religion provision. The Crown submitted that this freedom was not available to corporations. The court disagreed and concluded that "[a]ny accused, whether corporate or individual, may defend a criminal charge by arguing that the law under which the charge is brought is unconstitutionally invalid". Part of the reasoning in *Big*

M Drug Mart was that s. 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 sets out the fundamental principle that the constitution is supreme and no one is to be convicted by an offence under an unconstitutional law (at 313).

[44] In this case I note that s. 36 of the *MPA* sets out the authority for audits and inspection. The MSC may make orders under s. 37 which may be filed in court under s. 39. Section 46 includes as offences misrepresentation of the nature and extent of benefits by a practitioner (and beneficiary) and knowingly obtaining or attempting to obtain payment for which he or she is not entitled. As I read the *MPA* there are no penal consequences for the Corporate Plaintiffs from the subject litigation and, therefore, *Big M Drug Mart* has little application here. I add that no one is saying there are penal consequences.

[45] The Coalition Intervenors point to a later decision of the Supreme Court of Canada where a corporation was denied the right to rely on constitutional grounds. In *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 a corporation challenged provincial legislation that prohibited advertising aimed at children by relying, in part, on s. 7 of the *Charter*.

[46] The court concluded that a corporation could not avail itself of the protection offered by s. 7. That provision was intended to confer protection “on a singularly human level” and the court concluded that a common sense reading of the language of s. 7 of the *Charter* (“Everyone has the right to life, liberty and security of the person”) demonstrates that it “serves to underline the human element involved” (at 1004). With respect to *Big M Drug Mart* the court stated that it had no application in *Irwin Toy* because there were no penal proceedings involved. Other decisions have declined to allow corporations to invoke s. 7 rights in the absence of penal proceedings (see for example, *Dwyidag Systems International, Canada Ltd. v. Zutphen Brothers Construction Ltd.*, [1990] 1 S.C.R. 705).

[47] In another judgment the Supreme Court of Canada commented further on the availability of rights under s. 7 of the *Charter* to corporations. In *Canadian Egg*

Marketing Agency v. Richardson, [1998] 3 S.C.R. 157 an egg producer challenged federal legislation that regulated interprovincial trade in eggs (including quotas and licenses) using s. 7 of the *Charter*.

[48] The court concluded that the corporation advancing the challenge had private interest standing to do so. It was noted that, as a general rule, a provision of the *Charter* may be invoked only by those who enjoy its protection and, as decided in *Irwin Toy*, s. 7 extends protection only to natural persons (at para. 36). However, *Irwin Toy* "was not a case where the party seeking standing was brought involuntarily before the court. Rather the party seeking standing actively pursued standing". With respect to *Big M Drug Mart*, that decision granted standing as of right to an accused charged under legislation alleged to be unconstitutional (at para. 39).

[49] By way of a conclusion in *Canadian Egg Marketing Agency* the court said this (at para. 40):

> In our opinion, the logic of *Big M Drug Mart* extends to give standing as of right to the respondents. While they might seek public interest standing, we do not believe they need do so. They do not come before the court voluntarily. They had been put in jeopardy by a state organ bringing them before the court by an application for an injunction calling in aid a regulatory regime. Success of that application could result in enforcement by contempt proceedings. If the foundation for these remedies is an unconstitutional law, it appears extraordinary that a defendant cannot be heard to raise its unconstitutionality solely because the constitutional provision which renders it invalid does not apply to a corporation.

[50] Turning to the facts in the subject case, the history of this litigation is again of some significance.

[51] The Petition was commenced in December 2008 by the Patient Intervenors. These individuals became intervenors in the Constitutional Action in July 2010. The Petition sought the enforcement of the *MPA* to prevent extra-billing; it did not rely on the *Charter*. The Constitutional Action was commenced in January 2009 by Cambie and others; some of which later withdrew. SRC was subsequently added. A number of individual plaintiffs have also been added to the Constitutional Action.

[52] The Constitutional Action seeks remedies under ss. 7 and 15 of the *Charter* including declarations that ss. 14, 17, 18, and 45 of the *MPA* are unconstitutional. Cambie has admitted they were in contravention of those provisions.

[53] In 2007, prior to the commencement of either the Petition or the Constitutional Action, the Chair of the MSC wrote to a number of clinics (including Cambie) to identify concerns with respect to extra billing by those clinics. This developed into attempts by the MSC to use its authority under the *MPA* to issue warrants and do an audit of, at least, Cambie. The defendants commenced a counterclaim (countering the Constitutional Action) seeking, among other things, a permanent injunction to restrain what were called the "unlawful billing practices" of Cambie and SRC. Ultimately this resulted in the stay by the Associate Chief Justice in November 2015 of the warrants and further audits.

[54] On first impression it can perhaps be said that the Constitutional Action was commenced voluntarily in 2009 by the plaintiffs and, therefore, the situation is analogous to *Irwin Toy* where it was held a corporation could not rely on s. 7 of the *Charter*. That is very much how the Coalition Intervenors characterize the situation. However, as can be seen above, the history of this litigation more complex.

[55] Specifically, it is clear that the Constitutional Action was commenced by the plaintiffs in 2009 in the context of the actions of the MSC. Associate Chief Justice Cullen describes the counterclaim commencing on February 20, 2009 and the Constitutional Action being filed by the plaintiffs before that date, on January 29, 2009, so it can perhaps be said in a strict, technical sense that the former was not a response to the latter. Nonetheless there is no dispute that the context for the commencement of the Constitutional Action was the activity of the MSC and, indeed, the Petition which had commenced in December 2008.

[56] In any event, the MSC commenced its counterclaim in February 2009 and it alleges that the Corporate Plaintiffs, among other things, misrepresented to beneficiaries that the services contracted for were not benefits under the *MPA*. The relief sought includes a declaration that documents between the Corporate Plaintiffs

and beneficiaries are void and unenforceable as being unconscionable, oppressive, unlawful, and inconsistent with public policy. In addition, a permanent injunction is sought to restrain the Corporate Plaintiffs from requiring beneficiaries to execute documentation. It is true that the Corporate Plaintiffs do not specifically challenge the enforcement provisions of the *MPA* in the Constitutional Action. However, in my view, there is a direct relationship between the impugned provisions, the enforcement of those provisions, and this action.

[57] The result is that the Constitutional Action can legitimately be characterized as a defence to the counterclaim by the defendants in the Petition. In addition and paraphrasing the reasoning in *Canadian Egg Marketing Agency,* the Corporate Plaintiffs do not come before the court voluntarily. They have been put in jeopardy by a state organ bringing them before the court by an application for statutory remedies under the *MPA* including audits, inspections, and injunctions in aid of a regulatory scheme. Success of that application could result in enforcement proceedings against the Corporate Plaintiffs.

[58] For these reasons I conclude that the Corporate Plaintiffs have private interest standing in this litigation.

[59] It is not necessary to decide whether the Corporate Plaintiffs have public interest standing. However, based on the three part test developed by the Supreme Court of Canada (*Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para. 37) I would conclude that the Corporate Plaintiffs have raised a serious justiciable issue by challenging certain provisions of the *MPA*, they have a real stake in this litigation by virtue of the counterclaim by the defendants (among other reasons), and the participation of the Corporate Plaintiffs is a reasonable and effective way to bring the issues before the court. I note that a purposive and flexible approach is required and the three factors should be seen as interrelated considerations rather than a checklist or technical requirements (at para. 36).

D. SUMMARY

[60] In the circumstances of this case, I conclude that the Coalition Intervenors, being intervenors rather than parties, should not be permitted to challenge the party status of the Corporate Plaintiffs. That is for another party to do and here the other parties do not take a position on the standing of the Corporate Plaintiffs.

[61] The Corporate Plaintiffs have a private and direct interest in this litigation. The defendant's counterclaim puts them in jeopardy by seeking statutory remedies in aid of a regulatory scheme under the *MPA*, including audits, inspections, injunctions, and enforcement.

[62] The application by the Coalition Intervenors to challenge the standing of the Corporate Plaintiffs is dismissed.

[63] The Corporate Plaintiffs also allege abuse of process by the Coalition Intervenors. However, I do not agree that there has been a wilful misuse or perversion of the court's processes for a purpose extraneous to that purpose (*Lower v. Stasiuk,* 2013 BCCA 389, at para. 55).

[64] The Corporate Plaintiffs also seek costs from the Coalition Intervenors. This is on the basis of raising the standing issue in June 2016 when intervenor status was granted to the Coalition Intervenors in 2009. Between 2009 and 2016 there have been a number of pre-trial applications as well as discoveries. The Corporate Plaintiffs have incurred considerable expense since 2009 and they object to the five year time period it has taken the Coalition Intervenors to challenge their standing.

[65] The delay in making the application is a fair point to make. However, I have not been provided with any authority supporting costs in the circumstances of this application. I conclude that any issues about costs in this application will be decided following trial and judgment.

Steeves J.