



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

NOTICE OF APPLICATION

[Re: Request to Appear-A/Chief Justice Cullen(Seized)-VA S-090663-Cambie Surgeries Corporation et al v. Medical Services Commission, et al - CONF#120141118070]

Names of applicants: The Defendants Medical Services Commission of British Columbia, Minister of Health of British Columbia, and Attorney General of British Columbia

TO: Dr. Arno Smit, Dr. Benjamin Tyrell, and Dr. Mary Weckworth.

ON NOTICE TO: The Plaintiffs, and their solicitors; the Intervenors, and their solicitors

TAKE NOTICE that an application will be made by the applicants to the Associate Chief Justice at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on Thursday, February 6, 2014 at 9:45a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. That Dr. Arno Smit, Dr. Benjamin Tyrell, and Dr. Mary Weckworth attend to be examined on oath on the matters in question in the action within 14 days of the hearing of this application.

Part 2: FACTUAL BASIS

1. In this action, the plaintiffs seek declarations that ss. 14, 17, 18, and 45 of the *Medicare Protection Act*, R.S.B.C. 1996, c. 248 (the "Act") infringe sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*; and an order pursuant to s. 52(1) of the *Constitution Act*, 1982, that ss. 14, 17, 18, and 45 of the Act are of no force or effect to the extent of the inconsistency.
2. Each of the individual patient plaintiffs – Chris Chiavatti, Mandy Martens, Krystiana Corrado, Erma Krahn, and Walid Khalfallah – allege that they experienced delays in treatment in the public health care system that are attributable to the impugned provisions of the Act.
3. Dr. Smit, Dr. Tyrell, and Dr. Weckworth provided care to two of the patient plaintiffs during the material time:
 - a. Dr. Tyrell is Erma Krahn's family doctor, and was her family doctor during part of the time material to Ms. Krahn's claim;
 - b. as set out in paragraphs 53-54 of the Further Amended Notice of Civil Claim, Ms. Krahn consulted Dr. Smit with respect to her injured knee; and
 - c. as set out in paragraph 42 of the Further Amended Notice of Civil Claim, Krystiana Corrado consulted Dr. Weckworth, her family doctor, with respect to her knee injury.
4. On 22 November 2013 counsel for the defendants wrote to Dr. Smit, Dr. Tyrell, and Dr. Weckworth regarding the material evidence it appears they have in their possession, and requested their response to certain questions that will help the defendants to understand all of

the facts relevant to the allegations made in the pleadings. Dr. Smit, Dr. Tyrell, and Dr. Weckworth did not respond.

5. Counsel for the defendants wrote to Dr. Smit, Dr. Tyrell, and Dr. Weckworth again on 10 January 2014 advising them that the defendants would be applying for an Order pursuant to Rule 7-5 if they did not respond to the defendants' request.
6. As of today's date, neither Dr. Smit nor Dr. Weckworth has responded to the letter of 10 January.
7. Dr. Tyrell has, through counsel, indicated that he would like to review the defendants' request with Mrs. Krahn.

Part 3: LEGAL BASIS

1. Rule 7-5(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 allows the court to order that a person who is not a party of record to the action who may have material evidence be examined on oath on the matters in question in the action.
2. Each of the respondents provided treatment to one of the patient plaintiffs that is called into question by the plaintiffs' claim; as such, their knowledge of the circumstances is highly material to the issues central to this litigation.
3. Each of the respondents has failed to respond to repeated requests to answer questions relating to their knowledge of these issues.
4. As such, the applicants are entitled to an order requiring each of the respondents to attend to be examined under oath on the matters in question.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #3 of Carol Brossard, sworn 24 January 2014.

The applicant estimates that the application will take 30 minutes.

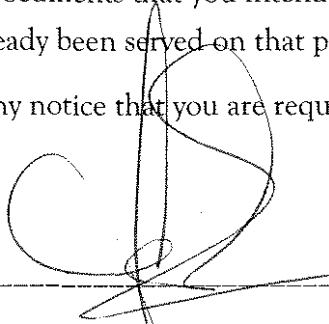
This matter is within the jurisdiction of a master.

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) (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).

Date: 24 January 2014



Signature of
 applicant lawyer for applicant(s)
Jonathan Penner

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:

.....
.....
.....

Date:[dd/mmm/yyyy].....

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:

[Check the box(es) below for the application type(s) included in this application.]

- 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

This **NOTICE OF APPLICATION** is prepared by **Jonathan Penner**, Barrister & Solicitor, of the Ministry of Justice, whose place of business and address for service is 6th Floor - 1001 Douglas Street, Victoria, British Columbia, V8W 9J7; Telephone: (250) 952-0122; Facsimile: (250) 356-9154; Email Address: jonathan.penner@gov.bc.ca.