

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cambie Surgeries Corporation v. British Columbia (Medical Services Commission)*,
2016 BCSC 1686

Date: 20160909
Docket: S090663
Registry: Vancouver

Between:

**Cambie Surgeries Corporation, Chris Chiavatti, Mandy Martens,
Krystiana Corrado, 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

And

The Attorney General of Canada

Pursuant to the *Constitutional Question Act*

Before: The Honourable Mr. Justice Steeves

Oral Reasons for Judgment

Counsel for Plaintiffs:

Peter W. Gall, QC
Robert W. Grant, QC

Counsel for Defendants:	Jonathan G. Penner
Counsel for The Attorney General of Canada:	Kenneth A. Manning
Counsel for Intervenors Drs. Etches, Woollard, Townson and McGregor, British Columbia Friends of Medicare Society, and Canadian Doctors for Medicare:	Joseph J.M. Arvay, QC
Counsel for Intervenors Schooff, Lang, Hamer and Allison:	Allison Tremblay
Dr. Roland Orfaly, Agent for Intervenor British Columbia Anesthesiologists' Society:	In Person
Dean Broughton, Representative of Applicant, Pacific Newspaper Group	In Person
Place and Date of Hearing:	Vancouver, B.C. September 9, 2016
Place and Date of Judgment:	Vancouver, B.C. September 9, 2016

[1] **THE COURT:** I am considering today an application filed by Pacific Newspaper Group on September 7, 2016. It seeks to set up a daily feed for the recording of all proceedings in this trial for the purposes of recording or broadcasting.

[2] The application is made under practice directive 48. My understanding is that this is the first application under that practice directive. There was a previous practice directive that required the consent of all parties before there could be a recording. The current directive does not have that requirement.

[3] There was a first application by Pacific Newspaper Group filed on August 19, 2016. It essentially sought the same daily feed as in the current second application. The position of the plaintiffs on that first application was that there should be recording of only openings and closings and any other recording would have to be by application. The defendant British Columbia and Canada were opposed to any recording.

[4] There were two problems with the first application. First, it was not filed to permit a hearing about the application not less than 14 days prior to the start of the trial on September 6, 2016. That is the requirement in section 6 of the practice directive. A second problem is that there was an inadvertent reference to only the position of one party in this trial, which raised an issue of objectivity. I commented that I could not and had no business interfering with the story line of the media, but that if someone was to be in the courtroom as a quasi officer of the court recording the proceedings, some measure of objectivity was required.

[5] In the result, I directed that the first application be amended to comply with the *Rules*, such as timelines, and to reflect an objective basis for the application.

[6] The current and second application filed on September 7, 2016 was made during the opening of the plaintiffs, and we are now nearing the completion of that opening. The defendants are to start their openings possibly next week. There are also still procedural problems with the current application. There is no reference to

when the application should be heard and, therefore, no idea when the 14-day notice period applies.

[7] The parties are agreed that there is a problem commencing any recording now, since the public would see and/or hear only the openings of the defendants, the plaintiffs' opening having ended. While agreement of the parties is not required under the current practice directive, I agree with the reasoning of the parties and there will be no recording of the remaining openings of the parties.

[8] For the purpose of any future application, there is also an issue as to the scope of any permitted recording. As above, the applicant seeks to record all proceedings; however, the parties take a different view, at least on the first application.

[9] In my view there are difficulties recording the entire proceedings here. I say this primarily because of the sensitive nature of much of the evidence in this case. It is apparent from the material presented to me so far that individuals are going to testify about very personal decisions they have made about their health. Some of those involve critical health issues for the patients as well as their families. Some of these same people and possibly others will have their medical history discussed in some depth by doctors, including issues of diagnosis and treatment.

[10] I conclude that the very personal matters in this case are not an appropriate topic for full recording and presentation to the public through the media. I acknowledge that some individuals may well, for reasons of their own, want to tell their story to the public. However, this hearing is to generate evidence related to the important constitutional questions here and this must have a higher priority than any need to speak to the public. As well, assuming some witnesses will not want to have their medical history on television, it would not create a balanced view of the proceedings if some witnesses were recorded and others were not.

[11] For these reasons, there will be no recording of the personal evidence of individual witnesses about their medical history.

[12] The applicant relies on a previous decision of this court, the so-called polygamy case, in which there were televised proceedings (*Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588). That was under the previous practice where consent was required and consent was not given. In any event, in that case the closing arguments were recorded, and the very personal evidence of witnesses was not.

[13] The evidence in this case will also include extensive expert testimony from doctors as well as other experts, such as historians and policy experts. I accept there may well be policy issues raised by the experts that the public would be interested in and that would be important for the public to know. However, some of this evidence will also include reference to individual names of patients and, again, their very personal medical care.

[14] I have considered whether certain expert evidence could be recorded because it does not appear now to involve individual medical histories; however, the presentation of evidence is a dynamic process, and, for example, cross-examination may well involve putting individual cases to experts.

[15] I conclude that expert evidence will also not be recorded. If there are other kinds of evidence that arise in this trial, they can be dealt with on a case-by-case basis.

[16] There remains the issue of the recording of the closing submissions of the parties. That will not be for a long period of time. I adjourn the application by the Pacific Newspaper Group to apply again for recording of closing submissions. Such application is to be made within the time limits in practice directive 48 and the *Court Rules*.

“The Honourable Mr. Justice Steeves”