



No. S-090663
Vancouver Registry

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:

ATTORNEY GENERAL OF BRITISH COLUMBIA

Defendant

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, and the BRITISH COLUMBIA ANESTHESIOLOGISTS' SOCIETY

Intervenors

And:

THE ATTORNEY GENERAL OF CANADA

Pursuant to the *Constitutional Question Act*

COUNTERCLAIM

Filed By: The Defendant Attorney General of British Columbia.

To: The Plaintiffs CAMBIE SURGERIES CORPORATION and SPECIALIST REFERRAL CLINIC (VANCOUVER) INC., and to their Solicitors;

This action has been brought by the plaintiffs against the defendant for the relief set out in the Fourth Amended Notice of Civil Claim filed in this action.

TAKE NOTICE that the defendant the Attorney General of British Columbia claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this counterclaim, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a response to counterclaim in Form 4 in the above-named registry of this court within the time for response to counterclaim described below and SERVE a copy of the filed response to counterclaim on the address for service of the defendant(s) bringing this counterclaim.

YOU OR YOUR LAWYER may file the response to counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to counterclaim within the time for response to counterclaim described below.

Time for response to counterclaim

A response to counterclaim must be filed and served on the defendant(s) bringing this counterclaim,

- (a) if you were served with the counterclaim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the counterclaim anywhere elsewhere, within 49 days after that service, or
- (d) if the time for response to counterclaim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

1. Except where expressly noted otherwise, terms and abbreviations defined in the Fourth Amended Notice of Civil Claim and the Response to the Fourth Amended Civil Claim have the same meanings in this Counterclaim.

2. The defendant Attorney General claims as Plaintiff by Counterclaim against Cambie and SRC.

3. The Attorney General repeats the facts contained in paragraphs 5-12, and 16-30 of Part 1 of the Response to the Fourth Amended Civil Claim.
4. Cambie carries on business as the Cambie Surgery Centre, operating at 2836 Ash Street, Vancouver, British Columbia.
5. Cambie provides surgeries to pre-screened patients. It advertises its specialties as:
 - (a) Orthopaedic surgery;
 - (b) Plastic and cosmetic surgery;
 - (c) Pediatric dental and oral surgery;
 - (d) General surgery;
 - (e) Laparoscopic surgery;
 - (f) Gynecology;
 - (g) Ophthalmology;
 - (h) Urology;
 - (i) Ear, nose and throat;
 - (j) Vascular surgery; and
 - (k) Neurosurgery.
6. SRC carries on business as the Specialist Referral Clinic, operating at #121-555 West 12th Avenue, Vancouver, British Columbia.
7. SRC's services mainly consist of medical consultations or evaluations of various types including "Independent Medical Assessments" ("IMAs"), "Independent Medical Examinations" ("IMEs"), and "Independent Medical Consultations" ("IMCs").
8. Both opted-in and opted-out medical practitioners provide medical consultations or evaluations at SRC to beneficiaries that are benefits under the Act.

9. No surgeries are performed at SRC.
10. Where medical consultations or evaluations performed at SRC involve consideration of medical treatment, the medical practitioner providing the consultation or evaluation may arrange for surgery at Cambie.
11. Both opted-in and opted-out medical practitioners provide surgeries at Cambie to beneficiaries that are benefits under the Act.

Fee Structure

12. Facility fees are fees charged in relation to a medical service, and may include fees for materials, consultations, procedures, use of offices, clinics or other places or for other matters that relate to the rendering of the medical service.
13. Where SRC provides a medical consultation or evaluation, SRC will usually levy and collect a fee from the patient, or from a person on behalf of the patient, that can be:
 - (a) a facility fee;
 - (b) a professional fee that is paid to the medical practitioner(s) that perform the medical consultation or evaluation; or
 - (c) partly a facility fee and partly a professional fee.
14. Where a SRC service results in an arrangement for surgery at Cambie, SRC will usually:
 - (a) levy and collect a surgery fee and an administration fee from the patient, or from a person on behalf of the patient;
 - (b) remit the amount of the surgery fee to Cambie; and
 - (c) retain the administration fee.

15. The surgery fee that SRC remits to Cambie can be:
- (a) a facility fee;
 - (b) a professional fee that is paid to the medical practitioner(s) that perform the surgery; or
 - (c) partly a facility fee and partly a professional fee.
16. The administration fee that SRC retains can be:
- (a) a facility fee;
 - (b) a professional fee that is paid to the medical practitioner(s) that perform the surgery; or
 - (c) partly a facility fee and partly a professional fee.
17. Where Cambie levies and collects a fee from the patient, or from a person on behalf of a patient, the fee can be:
- (a) a facility fee;
 - (b) a professional fee that is paid to the medical practitioner(s) that perform the surgery; or
 - (c) partly a facility fee and partly a professional fee.

Section 17(1)(a) Breaches

18. SRC charges beneficiaries, or other persons on behalf of beneficiaries, fees that include professional fees for medical consultations or evaluations that are rendered by opted-in medical practitioners and that are benefits under the Act.

19. Cambie and SRC charge beneficiaries, or other persons on behalf of beneficiaries, administration fees or surgery fees that include professional fees for surgeries that are rendered by opted-in medical practitioners and that are benefits under the Act.

Section 17(1)(b) Breaches

20. SRC charges beneficiaries, or other persons on behalf of beneficiaries, fees that include facility fees for medical consultations or evaluations that are rendered by opted-in medical practitioners and that are benefits under the Act.

21. Cambie and SRC charge beneficiaries, or other persons on behalf of beneficiaries, administration fees or surgery fees that include facility fees for surgeries that are rendered by opted-in medical practitioners and that are benefits under the Act.

Section 18(3) Breaches

22. SRC charges beneficiaries, or other persons on behalf of beneficiaries, professional or facility fees for medical consultations or evaluations that:

- (a) are rendered by opted-out medical practitioners;
- (b) are benefits under the Act; and
- (c) exceed the amount payable for the benefit, or in relation to the benefit, according to the Payment Schedule established by the Commission under s. 26 of the Act.

23. Cambie and SRC charge beneficiaries, or other persons on behalf of beneficiaries, professional or facility fees for surgeries that:

- (a) are rendered by opted-out medical practitioners;
- (b) are benefits under the Act; and

- (c) exceed the amount payable for the benefit, or in relation to the benefit, according to the Payment Schedule established by the Commission under s. 26 of the Act.

Part 2: RELIEF SOUGHT

1. A declaration that Cambie and SRC have contravened s. 17(1)(a) of the Act.
2. A declaration that Cambie and SRC have contravened s. 17(1)(b) of the Act.
3. A declaration that Cambie and SRC have contravened s. 18(3) of the Act.
4. Costs of this action.
5. Such further and other relief as to this Honourable Court may seem just and appropriate.

Part 3: LEGAL BASIS

1. Both Cambie and SRC have breached:
 - (a) s. 17(1)(a) of the Act, in that they have charged beneficiaries, or other persons on behalf of beneficiaries, for benefits rendered by opted-in medical practitioners;
 - (b) s. 17(1)(b) of the Act, in that they have charged beneficiaries, or other persons on behalf of beneficiaries, for materials, consultations, procedures, use of offices, clinics or other places or for other matters that relate to the rendering of benefits by opted-in medical practitioners; and
 - (c) s. 18(3) of the Act, in that they have charged beneficiaries, or other persons on behalf of beneficiaries, amounts that exceeded what would be payable according to

the Payment Schedule established by the Commission under s. 26 of the Act, for benefits, or in relation to benefits, rendered by opted-out medical practitioners.

2. Therefore, the Attorney General is entitled to a declaration that Cambie and SRC have breached ss. 17(1)(a), 17(1)(b), and 18(3).

3. The Attorney General pleads and relies on:

(a) *The Medicare Protection Act*, R.S.B.C. 1996, c. 286.

Address for Service of Claiming Party:

Ministry of Justice
Legal Services Branch
PO BOX 9280 STN PROV GOVT
1001 Douglas Street
Victoria, B.C. V8W 9J7

Fax number address for service (if any): Facsimile: (250) 356-9154

E-mail address for service (if any): Jonathan.Penner@gov.bc.ca

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street, Vancouver, B.C. V6Z 2E1

Date: 18 October 2016



Signature of Jonathan Penner
Solicitor for Defendant,
ATTORNEY GENERAL OF BRITISH COLUMBIA

filing party lawyer for filing party

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.