



No. S-090663  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

CANADIAN INDEPENDENT MEDICAL CLINICS ASSOCIATION,  
CAMBIE SURGERIES CORPORATION, DELBROOK SURGICAL CENTRE  
INC., FALSE CREEK SURGICAL CENTRE INC., OKANAGAN HEALTH  
SURGICAL CENTRE INC., and ULTIMA MEDICAL SERVICES INC.

PLAINTIFFS

AND:

MEDICAL SERVICES COMMISSION OF BRITISH COLUMBIA,  
MINISTER OF HEALTH SERVICES OF BRITISH COLUMBIA  
and ATTORNEY GENERAL OF BRITISH COLUMBIA

DEFENDANTS

AND:

SPECIALIST REFERRAL CLINIC (VANCOUVER) INC.

DEFENDANT BY COUNTERCLAIM

**REPLY OF THE MEDICAL SERVICES COMMISSION  
TO THE STATEMENT OF DEFENCE OF CAMBIE SURGERIES  
CORPORATION**

1. In reply to paragraph 11 of the Statement of Defence, the provisions of the *Medicare Protection Act* (the "Act") that Cambie is challenging are the law, and acting in contravention of them is unlawful, unless and until a court of competent jurisdiction has held otherwise.

2. In reply to paragraph 12 of the Statement of Defence, the Commission is not, and cannot be, "aware" of what "the majority of the medical procedures

performed in the clinic are" unless and until it has performed the audit that the Act authorizes it to perform.

3. In further reply to paragraph 12 of the Statement of Defence, Cambie does not deny that at least *some* of the medical procedures performed at the Surgery Centre are benefits provided to beneficiaries. Under those circumstances, it is not open to Cambie to deny the Commission its right under the Act to audit Cambie's records to ascertain the extent to which benefits have been provided to beneficiaries in violation of the Act

4. In reply to paragraph 13 of the Statement of Defence, the *Personal Information Protection Act* permits the disclosure of information if such disclosure is required or authorized by law, and the Act requires such disclosure.

5. In reply to paragraph 14 of the Statement of Defence, Cambie is obliged to permit access to the information in issue by s. 36 of the Act.

6. In further reply to paragraph 14 of the Statement of Defence, section 49 of the Act specifically protects the confidentiality of records to which the Commission or its staff or agents are given access under the Act. In addition, the employees of the Ministry engaged in the audit process have sworn an oath to safeguard confidential information, not divulging it unless either authorized or required to do so by law.

7. In further reply to paragraph 14 of the Statement of Defence, section 36(3) of the Act provides that medical records may only be requested and inspected by an inspector who is a medical practitioner. Such an inspector, in addition to being subject to section 49 of the Act, has both a professional obligation and a contractual obligation to keep confidential any patient information reviewed during the audit process.

8. In reply to paragraph 15 of the Statement of Defence, a judge of the Supreme Court is given statutory authority under section 36 by section 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 and section 30 of the *Provincial Court Act*, R.S.B.C. 1996, c. 379, and the Commission pleads and relies on the *Interpretation Act* and the *Provincial Court Act*.

DATED at Victoria, BC, this 6th day of April 2009.



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GEORGE H. COPLEY, Q.C.

Counsel for the Defendants the Medical Services Commission, the Minister of Health Services of British Columbia and the Attorney General of British Columbia