



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

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 defendants for the relief set out in the further 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 Further Amended Notice of Civil Claim and the Response to the Further 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, 7-30, and 34-46 of Part 1 of the Response to the Further Amended Civil Claim.

The Unlawful Billing Practices

4. Cambie and SRC (jointly, the “Unlawful Billing Clinics”), and each of them, have at all material times required beneficiaries who received medically required services from them to sign “Acknowledgement Forms”, which

- (a) misrepresented to beneficiaries that the services contracted for were not benefits under the Act, when in fact and in law they were;
- (b) purport to evidence the beneficiaries’ acknowledgement that the services being provided to them were not benefits under the *Medicare Protection Act*, R.S.B.C. 1996, c. 286 (the “Act”);
- (c) required undertakings from beneficiaries that they would not seek reimbursement from the MSP or any other government agency and purported to document the beneficiary’s “waiver” of their entitlement in that respect;
- (d) purport to contractually bind a beneficiary to agree
 - i. not to make any claim to the MSP for any part of the costs of benefits provided to a beneficiary at the Unlawful Billing Clinics;
 - ii. not to file any complaint with any government body regarding the circumstances of the benefits provided to a beneficiary at the Unlawful Billing Clinics; and
 - iii. not to disclose any information to any government regarding the particulars of the beneficiary’s surgery, including the costs that the beneficiary incurred for the services received at an Unlawful Billing Clinic; and
- (e) purport to require beneficiaries to indemnify the Unlawful Billing Clinics for damages and costs arising from a beneficiary’s disclosure of any of the above information.

5. The full particulars and extent of the Unlawful Billing Clinics’ activities described in the foregoing paragraph are uniquely within the knowledge of the Unlawful Billing Clinics.

Part 2: RELIEF SOUGHT

1. A declaration that the Acknowledgement Forms are void and unenforceable as being unconscionable, oppressive, unlawful, and inconsistent with public policy.
2. A permanent injunction to restrain the Unlawful Billing Clinics from requiring beneficiaries to execute Acknowledgement Forms.
3. Costs of this action.
4. Such further and other relief as to this Honourable Court may seem just and appropriate.

Part 3: LEGAL BASIS

1. There is a strong public interest in maintaining a health care system that operates in a fair, efficient, and cost-effective manner, and in particular one that is, and is perceived to be, reasonably fair and equitable in the allocation of available medical resources throughout the population. The Unlawful Billing Clinics' violations of the law, specifically their practice of requiring beneficiaries to sign Acknowledgement Forms, undermine that public interest and threaten public confidence in the public health care system.
2. The Acknowledgement Forms that the Unlawful Billing Clinics have required beneficiaries to sign are unconscionable, oppressive, unlawful, and inconsistent with public policy, in that they purport to require the beneficiaries to waive their statutory entitlement under the Act to be provided with medically-required services without charge.
3. The Acknowledgement Forms are also unconscionable, oppressive, unlawful, and inconsistent with public policy in that they purport to prohibit the beneficiaries from exercising

their lawful rights to communicate the circumstances of the unlawful activities carried out by the Unlawful Billing Clinics to the public authorities responsible for administering the Act.

4. Further, the Acknowledgement Forms are unconscionable, oppressive, unlawful, and inconsistent with public policy in that they purport to require beneficiaries to indemnify the Unlawful Billing Clinics for damages and costs incurred as a result of the beneficiary's disclosure of their unlawful activities.

5. As such, the Acknowledgement Forms constitute a public nuisance, and the Attorney General is entitled to an injunction restraining the Unlawful Billing Clinics from continuing to require beneficiaries to sign such forms.

6. The Attorney General pleads and relies on:

- (a) *The Attorney General Act*, R.S.B.C. 1996, c. 22;
- (b) *The Canada Health Act*, R.S.C. 1985, c. C-6; and
- (c) *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

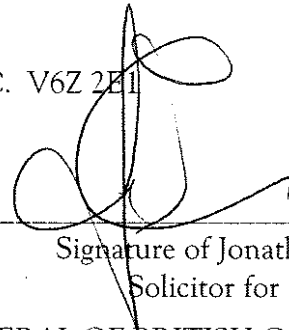
Fax number address for service (if any): Facsimile: (250) 356-9154

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: 10 January 2013



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.