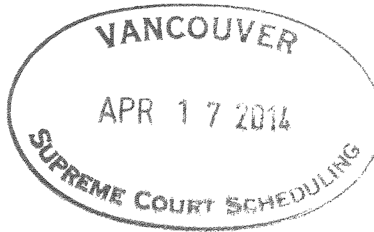

This is the 1st affidavit
of Adams Lynes-Ford in this case
and it was made on 1/Apr/2014

No. S090663
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, THE 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

AFFIDAVIT

I, ADAMS LYNES-FORD, of the Capital Regional District, in the Province of British Columbia SWEAR (OR AFFIRM) THAT:

1. I am the medicare campaigner of the British Columbia Friends of Medicare Society (also known as the British Columbia Health Coalition and referred to herein as the "BCHC")

and as such have personal knowledge of the facts deposed to herein except where those are stated to be based on information and belief, which facts I believe to be true.

2. On November 20, 2009, Madam Justice Smith ordered *inter alia* that:

> "Dr. Duncan Etches, Glyn Townson, Thomas McGregor, Dr. Woollard, the BCHC and the CDM [Canadian Doctors for Medicare] be and hereby are added as intervenors in these proceedings with directions that:
>
> a. their legal analysis must be different, or at least offer a different perspective, from the parties' submissions;
>
> b. the possibility of leading evidence will not be determined until the proceedings are further advanced and until it is known what evidence the parties themselves intend to bring forward;
>
> c. the application for a direction that the Intervenors be given rights of discovery is dismissed; and
>
> d. the issue of costs vis-a-vis the Intervenors is deferred until the conclusion of the trial."

3. Pursuant to orders subsequently made by the Court, Mariël Schooff, Daphne Lang, Joyce Hamer, Myrna Allison, Carol Welch, and the British Columbia Anesthesiologists' Society were also added as interveners to these proceedings.

4. On January 10, 2013 Chief Justice Bauman varied the previous orders made by the Court in respect of the various intervenors, namely Dr. Duncan Etches, Glyn Townson, Thomas McGregor, Dr. Woollard, the BCHC and Canadian Doctors for Medicare (the "Coalition Intervenors") Mariël Schooff, Daphne Lang, Joyce Hamer, Myrna Allison, Carol Welch (the "Patient Intervenors"), and The British Columbia Anesthesiologists' Society (the "BCAS"), referred to together as the "Intervenors" and ordered as follows:

> "The Intervenors:
>
> 1. a. will receive copies of all pleadings, submissions and lists of documents exchanged or produced by the parties;

b. may apply for access to specific documents from the list of documents exchanged or produced by the parties;

c. may apply to participate in any cross-examination on affidavits;

d. may submit evidence at the hearing of this Action in a form and with such limits as are determined by the Court;

e. may submit legal argument at the hearing of this Action in a form and with such limits as are determined by the Court

f. may apply to participate in examinations for discovery;

2. Any order as to costs shall be at the discretion of the trial judge."

5. In consequence of these orders, the Coalition Interveners struck the Research Committee, which I chair, and which is responsible for reviewing the evidence adduced by the parties and other research tasks needed to support the intervention of our group. It is comprised of individuals with considerable knowledge and expertise concerning the public health care system at the centre of this litigation.

6. On August 13, 2013 counsel for the Coalition Interveners wrote to the Parties to advise of their intention to bring an application for leave to introduce certain expert evidence. A copy of that letter is attached as Exhibit "A" to this affidavit.

7. Pursuant to a Case Plan Proposal filed with the Court by the Plaintiffs, the Plaintiffs served the expert reports they intend to rely on, on March 17, 2014. On the same day, the Defendants served their expert reports. The Coalition Intervenors revised its proposed list of expert witnesses to avoid any duplication of expert evidence with that presented by the Defendants.

8. The Coalition Interveners have retained six experts to prepare reports in this matter.

<u>Scott Sinclair</u>

9. Mr. Scott Sinclair is currently the Senior Research Fellow: Trade and Investment Research Project, with the Canadian Centre for Policy Alternatives, Ottawa, Canada, a position he has held since 1999. Prior to joining the Centre Mr. Scott served as a Senior

Policy Advisor, Trade Policy, International Branch, Ministry of Employment and Investment, Province of British Columbia from October 1994 to July 1998 and May 1999 to October 1999. From September 1998 to May 1999 he served as a policy consultant to the Special Committee on the Multilateral Agreement on Investment of the British Columbia Legislative Assembly.

10. Mr. Scott is presented as an expert in international trade law who has written extensively about the impact of Canada's international trade obligations on health care policy and law in Canada:

- Co-Editor, *Putting Health First: Canadian Health Care Reform in a Globalizing World, Collected research papers on globalization and health for the Commission on the Future of Health Care in Canada* (Romanow Commission). Ottawa, Canadian Centre for Policy Alternatives, 2004, with Mathew Sanger.

- *Bad Medicine: Trade Treaties, Privatization and Health Care Reform in Canada*, Ottawa, Canadian Centre for Policy Alternatives, 2004, with Jim Grieshaber-Otto.

- *Protecting Medicare from Foreign Commercial Interests,* in *Medicare: Facts, Myths, Problems and Promise.* Bruce Campbell and Greg Marchildon, eds., James Lorimer and Company, Toronto, 2007.

- *Trade Treaties, Privatization and Health Care Reform in Canada*, with Jim Grieshaber-Otto and Ricardo Grinspun. In *Whose Canada: Continental Integration, Fortress North America and the Corporate Agenda*, 2007, Ricardo Grinspun and Bruce Campbell, eds., McGill University Press.

- *The Proposed EU-Canada Trade Agreement Raises Health Concerns in Both Canada and European Union*, Canadian Centre for Policy Alternatives, July 2011, with Meri Koivusalo, and Ron Labonté.

- *Putting Health First: Canadian Health Care Reform, Trade Treaties and Foreign Policy*. Final report prepared by the CCPA consortium on globalization and health

for the Commission on the Future of Health Care in Canada (Romanow Commission), Oct. 2002, with Matthew Sanger.

11. Mr. Scott has been retained to prepare a report providing his opinion with respect to the potential consequences of health care privatization in light of Canada's international trade obligations.

12. The aforementioned reports by Mr. Scott describe the nature of international trade rules concerning the delivery of services and foreign investment in the health care sector. They describe the measures Canada has taken to exempt Canadian law, practices and programs for those international trade disciplines, and the limitations of the exemptions. His reports also describe the risks that are presented by amendments to Canadian law that might facilitate the privatization of health care services by allowing for greater private investment in the delivery of health care services, and/or private insurance for such services. These risks may include the effective constraint of policy, program and regulatory options available to the Government of British Columbia with respect to the regulation of privately funded health care services and insurance such as those being advocated for by the Plaintiffs.

13. To the best of my knowledge the issues Mr. Scott would address are not considered by the experts retained by the Defendants.

Marie-Claude Prémont

14. Marie-Claude Prémont is a Professor of Law, École Nationale d'Administration Publique. Prior to joining that faculty, Professor Prémont served on McGill University Faculty of Law for 12 years, including the last three years as Associate Dean of Graduate Studies. She teaches health and social services law and municipal law at ENAP. Professor Prémont is a member of the Ordre des Ingénieurs du Québec and the Barreau du Québec, holding a Doctorate in Law from Université Laval.

15. Professor Prémont is presented as an expert in health care policy and law, with particular knowledge of Quebec law and regulation as it applies to the delivery of physician and hospital services. She has written several articles on the *Chaoulli* case, and the steps the

Province of Quebec has taken in consequence of the decision rendered by the Supreme Court of Canada. She also wrote a discussion paper for the Romanow Commission that addressed, among other matters, the inherent risk of co-mingling insured and privately financed health care services in investor owned for-profit diagnostic and surgical clinics.

16. Professor Prémont's work includes the following reports and articles:

- *Clearing The Path For Private Health Markets In Post-Chaoulli Quebec* Marie-Claude Prémont, University of Alberta, Health Law Journal, Special Edition (2008).
- *Chaoulli Supreme Court Decision: Catalyst for Conservative Changes,* Health Law Journal Special Edition (2008).
- *Wait-Time Guarantees For Health Services: An Analysis Of Quebec's Reaction To The Chaoulli Supreme Court Decision,* University of Alberta, Health Law Journal, Volume 15 (2007)
- M. McGregor, M.-C. Prémont, J. Turgeon, *Emerging Private Investment Opportunities in Canadian Healthcare: Impact on Governance of Provincial Health Systems*, Public Esade e-newsletter, 15 June 2009, on line at: http://www.esade.edu/public/modules.php?name=news&idnew=504&idissue=45 &newlang=english.
- M-C Prémont, *Chaoulli c. Québec : une communauté académique sous le choc. Recension de Access to Care ? Access to Justice*, 2006 21 Canadian Journal of Law and Society / Revue canadienne droit et société, no. 1, p. 201-202.
- M.-C. Prémont, *Le régime général d'assurance médicaments du Québec : un exemple concret du partenariat public-privé dans le domaine de la santé,* Mémoire soumis à la Commission sur l'avenir des soins de santé au Canada (Commission Romanow), mars 2002.
- M.-C. Prémont, *La garantie d'accès aux soins de santé : à quel modèle se vouer ?*, mars 2006, 20 p., mémoire présenté devant la Commission des affaires sociales, Assemblée nationale du Québec, Salon du Conseil exécutif,. Journée d'ouverture de la consultation sur le livre blanc des suites à donner à la décision Chaoulli. Couverture médiatique : Robert Dutrisac, " Santé : une garantie de soins privés ? ", Le Devoir, 5 avril 2006.

- *Groupe de réflexion sur le système de santé (membre fondatrice), Accès aux soins de santé. Confirmer la solution publique pour le Québec*, Mémoire à la Commission des affaires sociales de l'Assemblée nationale, 31 mars 2006, 24 p. plus les annexes.
- *Discussion paper No. 4* by Marie-Claude Prémont McGill University The Canada Health Act and the Future of Health Care Systems in Canada.

17. She has been retained to describe and comment on the reforms implemented by the Province of Quebec following the decision of the Supreme Court Canada in *Chaoulli v. Quebec (Attorney General),* [2005] 1 S.C.R. 791, 2005 SCC 35. The decision of the Supreme Court of Canada concerned a challenge to provisions of Quebec health care law, including Quebec's ban on private insurance, which was similar to, but less extensive than the scope of the present challenge to the *Protection of Medicare Act*. I expect Professor Prémont to describe the extent to which these reforms affected the central essential features of a health care system that accords universal access to comprehensive physician and hospital services according to a patient's need, not her or his ability to pay.

18. The Defendants have submitted two affidavits by Damien Contandriopoulos who is an Associate Professor in the Faculty of Nursing at the Université de Montréal. One of these concerns a description of the impact of the Chaouli decision on questions of access and equity in regard to heatlh care services. I am advised by Ms. Premont, who was familiar with and has reviewed the analysis by Mr. Contandriopoulos, that the report she has agreed to produce for these proceedings will offer quite a different and more contextual perspective on post Chaoulli health care reform in Quebec. Accordingly, to the best of my knowledge these issues are not addressed by the experts the Defendants have retained.

<u>Dr. David Himmelstein</u>

19. Dr. David Himmelstein is a Professor in the CUNY School of Public Health at Hunter College, a visiting Professor of Medicine at Harvard Medical School, and has served as Chief of the division of Social and Community Medicine at Cambridge Hospital. Dr. Himmelstein received his medical degree from Columbia University and completed internal medicine training at Highland Hospital/University of California San Francisco

and a fellowship in general internal medicine at Harvard. Dr. Himmelstein is a co-founder of Physicians for a National Health Program, co-edits PNHP's newsletter and is a principal author of PNHP articles published in the JAMA and the New England Journal of Medicine in conjunction with Dr. Steffie Woolhandler.

20. Dr. Himmelstein's published and peer reviewed articles include the following:

- Woolhandler S, Himmelstein DU. Free care: *A quantitative analysis of the costs and benefits of a national health program for the United States*. Int J Health Services. 1988;18:393-9.
- Woolhandler S, Himmelstein DU. *The deteriorating administrative efficiency of U.S. health care*. N Engl J Med 1991; 324:1253-1258.
- Himmelstein DU, Woolhandler S, Wolfe SM. *The vanishing health care safety net: new data on uninsured Americans*. Int J Health Services 1992; 22:381-96.
- Woolhandler S, Himmelstein DU, Lewontin JP. *Administration costs in U.S. hospitals*. N Engl J Med 1993;329:400-3.
- Hellander I, Himmelstein DU, Woolhandler S, Wolfe S. *Health care paperchase, 1993: The cost to the nation, the states, and the District of Columbia*. Int J Health Services 1994; 24:1-9.
- Woolhandler S, Himmelstein DU. *Costs of care and administration at for-profit and other hospitals in the United States*. N Engl J Med 1997; 336:769-74.
- Himmelstein DU, Woolhandler S, Hellander I, Wolfe SM. *Quality of care in investor-owned vs not-for-profit HMOs*. JAMA 1999; 282:159-63.
- Woolhandler S, Himmelstein DU. *Paying for national health insurance - and not getting it: Taxes pay for a larger share of U.S. health care than most Americans think they do*. Health Aff 2002; 21 (4) 88-98.
- Woolhandler S, Campbell T, Himmelstein DU. *Health care administration costs in the U.S. and Canada*. N Engl J Med 2003; 349: 768-775.
- Woolhandler S, Campbell T, Himmelstein DU. *Health care administration in the United States and Canada: Micromanagement, macro costs*. Int J Health Serv 2004; 34:65-78.

- Lasser KE, Himmelstein DU, Woolhandler S. *Access to care, health status, and health disparities in the United States and Canada: Results of a cross-national population based survey.* Am J Public Health 2006. 96:1300-7.

21. In addition to these reports is a recent study, co-authored by Dr. Himmelstein, that is expected to be accepted for publication in the next few months, which provides a comparative analysis of hospital administrative costs in eight nations, including Canada, the United States and several other countries that are the subject of reports filed by the Plaintiffs or the Defendants in these proceedings.

22. Dr. Himmelstein has been retained, and should the Court permit, would prepare a report addressing the following issues:

    i) Given the proximity of the United States and Canada, and the integration of the North American economy, Dr. Himmelstein will describe the similarities and differences between the Canadian and American health care systems. In doing so, he will describe the role of Medicaid, Medicare and of private insurance in the U.S. system.

    ii) Dr. Himmelstein will also describe the potential impact of facilitating the type of privately funded and privately insured health care the Plaintiffs are advocating on: i) overall societal costs for health care in Canada, and on ii) health care system administrative costs for physicians, hospitals and other health care service providers including those providing long term care and home care.

23. My understanding is that Dr. Himmelstein will also describe the importance and influence of U.S. based health care insurance companies and service providers in an increasingly integrated North American economy in the event that greater opportunity for private investment in the Canadian health sector arises along the lines promoted by the Plaintiffs.

24. To the best of my knowledge the issues Dr. Himmelstein would address are not considered by the experts retained by the Defendants.

Jim Stanford, Ph.D.

25. Mr. Stanford is Economist and Director of Economic, Social and Sectoral Policy for Unifor (formerly the Canadian Auto Workers), the largest private-sector trade union in Canada. In that capacity he is responsible for macroeconomic, fiscal, and trade policy analysis; collective bargaining and corporate research; union strategy; and union education. Before joining Unifor in 1994 Mr. Stanford was a Research Fellow in the Economic Studies Program at the Brookings Institution in Washington DC. Mr. Stanford earned his Ph.D. in Economics at the New School for Social Research, New York (1990-95), and his M.Phil. in Economics from the University of Cambridge (1985-86). His graduate research focused on the relationship between social and labour institutions and international trade performance.

26. Among the many positions Mr. Stanford has held are the following:

- a Member, Ontario Jobs and Prosperity Council, 2012-2013
- a Member, Board of Directors, and Research Associate, Canadian Centre for Policy Alternatives, Ottawa, 1996-present
- Vice Chair, Ontario Manufacturing Council, 2007-present
- Member, Board of Directors Canadian Foundation for Economic Education, Toronto, 2003-present
- Member, Board of Directors Public Policy Forum, Ottawa, 2004-2010
- Economics Columnist, Globe and Mail Newspaper, 2003-present
- Alternate representative to the Canadian Automotive Partnership Council (CAPC), 2002-present
- Co-Chair, CAPC International Trade Committee, 2002-present

27. He was a visiting scholar at the School of Population Health at the University of Melbourne, Australia from 2006-2007, where he conducted research (among other topics) on the relationships between economic prosperity, inequality, and health.

28. Mr. Stanford also participated in preparing the CAW's submissions to the Commission on the Future of Health Care in Canada (Romanow Commission) in 2001.

29. Mr. Stanford has been retained by the Coalition Intervenors and, should the Court allow, he has agreed to prepare a report describing:

    i) the importance of Canada's 'single-payer' health care system to its industrial and manufacturing economy and to Canadian international competitiveness;

    ii) the role that negotiating health insurance plan benefits plays in the collective bargaining process, and the potential impact of expanding private insurance coverage for health care services on labour/management relations in Canada; and

    iii) the importance of Canada's publicly funded health care system to social and distributive equity.

30. To the best of my knowledge the evidence that Mr. Stanford would address is not considered by the experts retained by the Defendants.

<u>Dr. Robert Woollard</u>

31. Dr. Woollard is a Coalition Intervenor in these proceedings and filed an affidavit (sworn August 13, 2009) with this Court in support of his own application for public interest standing in these proceedings, as well as a similar application by Canadian Doctors for Medicare - Medecins canadiens pour le regime public (hereafter referred to as "CDM-MCRP") of which he was then Vice Chair.

32. Dr. Woollard is a member of the College of Physicians and Surgeons of BC, has practiced medicine in the province for over 35 years, and has been actively involved in teaching medicine since 1974. He is a full tenured professor on the faculty of the

University of British Columbia since 1995, and served as the Royal Canadian Legion Professor and Head of the Department of Family Practice there from 1998-2008.

33. In addition to being able explain the commitment of CDM-MCRP to the preservation of singled tiered health care, Dr. Woollard is also presented as an expert on the medical education system.

34. If this Court allows, Dr. Woollard's evidence will address the potential effect of increased privatization on the medical education system, and the values of the physicians who are being educated for future practice, including the following:[

i) physicians practicing in private clinics and charging patients directly may be less willing to serve as clinical instructors, and to provide in-situ training for medical students and residents, reducing our capacity to provide needed education and training opportunities;

ii) an increasing number of medical students and practicing physicians may be drawn to more affluent communities or specialties where an extra premium for care may be charged. This threatens to undo the progress that has been made by medical educators in meeting the profession's obligations to ensure that all communities, and particularly those in rural areas, are adequately served by qualified physicians;

iii) similarly, if specialists are able to earn even higher incomes by practicing privately, persuading medical students to become family doctors may become more difficult. Attracting new physicians to family practice has been a particular challenge for the past two decades; only through hard, concerted, national efforts have we seen these trends improve in recent years. Those gains could be seriously threatened as a result of increased privatization; and

iv) increased privatization, with its focus on financial gain, may erode the values of professionalism, including the priority of doing useful and needed work, that medical educators seek to instill in medical students. As a result, a potential consequence of increasing privatization of medical care will be to make it far

more difficult for those who teach in publicly funded medical schools to meet their mandate of equipping medical students with the values and skills needed to ensure that they attend to the medical service needs of all Canadians regardless of where they live, or their incomes.

35. To the best of my knowledge the issues that Dr. Woollard would address are not considered by the experts retained by the Defendants.

Dr. Duncan Etches

36. Dr. Etches is a named Intervenor and swore an affidavit on August 13, 2009 setting out his reasons for seeking public interest standing in these proceedings. As he explained, his participation arose from a concern that his ability to practice in the public system, and those of the large majority of physicians who are committed to the present system of publicly funded health care, would be compromised if the relief being sought by the Plaintiffs is granted.

37. Dr. Etches is a practicing physician, is a member of the College of Physicians and Surgeons of British Columbia since 1977, and has served on the Faculty in the Department of Family Medicine at the University of British Columbia since 1977 and has been Clinical Professor for 8 years. He also currently serves as the Director of the B.C. Women's Hospital Family Practice Centre. He also serves as the District 3 Representative to the Board of the British Columbia Medical Association.

38. As set out in his affidavit of August 13, 2009, Dr. Etches regards the prospective impact of privatization as falling into two categories. The first is the effect of privatization on access to health care services in Canada, particularly for the many residents of British Columbia who will be unable to afford or to qualify for private insurance coverage, and who, therefore, will have no other means for accessing services other than through a diminished public system with diminished access and resources.

39. The focus of his evidence, should this Court so allow, would be on the second category he has identified which relates to impacts that he regards as reasonable to expect privatization to cause should the impugned provisions *Medicare Protection Act* be struck

down by the Court. In this regard, Dr. Etches is presented as qualified to provide expert opinion evidence about the direct impact that privatization is likely to have on physicians who remain committed to the medicare model and who will continue to provide services to patients according to their needs, rather than their ability to pay.

40. These adverse impacts include the following:

i) Increasing the burden of financial administration and cost to conduct their medical practices as a result of having to manage a billing relationship with a number of health care insurance providers, and potentially uninsured patients. One of the essential efficiencies of the Canadian Medicare model is to obviate the need for physicians to submit reimbursement claims to more than one insurer. The onerous administrative burdens and costs associated with a multi-payer system, such as exists in the U.S., is a matter that Dr. Himmelstein intends to address. Dr. Etches would present the perspective of a Canadian physician who is likely to encounter this burden;

ii) making the challenges of arranging for timely referrals for patients who require certain surgical, diagnostic or other services more onerous for patients who cannot afford to pay for them. Physicians who wholly or partially opt to provide privately funded services will often create a gap that will not readily be filled. Separate and apart from the adverse effect on patients themselves, additional burdens will be imposed on physicians practices and staff to secure timely appointments; and

iii) making it more difficult for physicians who wish to remain in the publicly funded system to maintain a patient roster that is balanced in terms of the needs of patients. The practice known as "cream skimming" occurs when physicians providing privately funded or privately insured services concentrate on more routine, less complicated and more profitable cases, leaving the more difficult and time-consuming services to be provided by the public not-for-profit sector. Because fees under the Medical Services Plan reflect the average cost and time of providing the service, physicians who remain committed to working entirely within the publicly funded system may suffer an increased workload and,

paradoxically, a reduction in income. In other words, the financial advantages of "cream skimming" for physicians operating outside the public systems are likely to have an opposite adverse effect on those who remain in the publicly funded system.

41. To the best of my knowledge the evidence that Dr. Etches would address are not considered by the experts retained by the Defendants.

42. In retainer letters sent to aach of the Coalition Intervenors' proposed expert witnesses they have been advised and is aware of their duty under Rule 11-2 of the British Columbia Supreme Court Civil Rules to assist the Court and not assume the role of advocate for any party, and each would certify that their report is made in conformity with that duty, and that if called upon to give testimony, they will do so in conformity with that duty.

43. I make this affidavit for the purpose of supporting the Coalition Interveners' application for leave to introduce expert evidence in these proceedings and for no other purpose.

SWORN (OR AFFIRMED) before me at the City of Vancouver in the Province of British Columbia on April 1, 2014.

Commissioner for Taking Affidavits

ADAM LYNES-FORD

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