



Affidavit #1 Erma Krahn
Sworn September 24, 2012
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 and ERMA KRAHN**

PLAINTIFF

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

**DUNCAN ETCHES, GLYN TOWNSON, THOMAS MACGREGOR, THE BRITISH
COLUMBIA FRIENDS OF MEDICARE SOCIETY, CANADIAN DOCTORS FOR
MEDICARE, MARIËL SCHOOFF, DAPHNE LANG, JOYCE HAMER, MYRNA
ALLISON, and CAROL WELCH**

INTERVENERS

AFFIDAVIT #1 OF ERMA KRAHN

I, ERMA KRAHN, retired person, of South Surrey, British Columbia, MAKE OATH
AND SAY AS FOLLOWS THAT:

1. I am a plaintiff in this action and as such have personal knowledge of the facts deposed to herein except where those facts are stated to be based upon information and belief, which facts I believe to be true.

2. I am aware that the defendant, the Medical Services Commission (the “**Commission**”), has applied for an injunction against the Plaintiff Cambie Surgeries Corporation (“**CSC**”) and the Defendant by Counterclaim Specialist Referral Clinic (“**SRC**”) to prohibit the contravention of the *Medicare Protection Act* (the “*Act*”), specifically sections 17(1) and 18(3), which relate to billing practices for benefits under the *Act*. I understand that if the injunction is granted, it will prevent individuals like me from seeking treatment at CSC and SRC, even when faced with unreasonable wait times in the public health care system.
3. I believe that individuals in British Columbia should have the same access that I had to the timely medical services provided by the CSC and the SRC, where they are experiencing symptoms that have a serious negative impact on them, and they are faced with unreasonable wait times in the public health care system, and that the status quo should not be altered until it is determined whether this is a constitutional right for all citizens of British Columbia.
4. As I will explain below, I experienced severe pain in my left knee, beginning in September 2008. Unfortunately it took five months for me to obtain an appointment with a specialist. Once I met with the specialist, I was told I would require surgery, but that it would take years before I could have the surgery in the public health care system. At the time, I was 75 years old, retired, and living independently. The pain in my knee was so severe that I was prevented from doing the basic activities that I enjoy, like walking and golfing. My quality of life was particularly important to me as I had been diagnosed with lung cancer, and wanted to be able to enjoy the last years or months of my life. Ultimately, I had the required surgery at the Cambie Surgeries Clinic (operated by CSC), several months earlier than I could have in the public health care system. When I had the same problem with my right knee in April of 2012, I returned to the Cambie Surgeries Clinic.
5. I am presently 79 years of age. I live independently in an apartment. I am of limited financial means, and support myself predominantly from the monthly benefits I receive from the Canada Pension Plan and the Old Age Security Program of the federal government, and from my savings from previous part-time employment.

6. I received medical treatment at the Cambie Surgeries Clinic with respect to two separate knee injuries.
7. The first time I sought treatment at Cambie it was with respect to my left knee.
8. I started to have problems with my left knee on September 10th, 2008. I felt a popping sensation in my left knee, followed by extreme pain throughout the night. The next day, I went to a walk in clinic. The doctor at the clinic told me to go directly to the Emergency department at Peace Arch Hospital for X-rays. I followed the doctor's advice and went to the Peace Arch Hospital. I was advised by the physician at the Peace Arch Hospital that the X-rays did not show any damage to my left knee, and that the physician believed it was simply inflamed.
9. Unfortunately the pain in my knee continued. I had difficulty walking. I had an appointment with my family doctor on or about September 14, 2008, and asked him to refer me for an appointment with a specialist. My family doctor referred me to an orthopedic specialist named Dr. Smidt. When Dr. Schmidt's office contacted me, I was told that the next available appointment was in February 2009.
10. On February 2, 2009, I was examined by Dr. Smidt. I was advised by Dr. Smidt that obtaining an MRI would expedite the process of diagnosis. I understood that this was to my advantage, because once I had received a diagnosis, I could be put on a wait list for surgery, if required. In order to expedite the process, I scheduled and paid for an MRI which I obtained at a medical facility in Abbotsford.
11. On May 28th, 2009, I met again with Dr. Smidt. I was advised by Dr. Smidt that I had a torn meniscus and needed surgery. Dr. Smidt told me that I should expect to wait at least one year for the surgery, which would mean I would have surgery on my knee in or around May 2010.
12. When I was told to expect a wait time of one year for surgery, I was very upset. At that time, I continued to experience pain in my knee and my mobility was limited. I had

difficulty walking. I could not do the kinds of activities I enjoyed, like walking and golfing, without experiencing a lot of pain. When I was required to walk, in order to mitigate the pain in my left knee, I would favour my right knee. This, I believe, caused additional pain in my lower back. I consulted a physiotherapist about both my knee pain and resulting back pain as early as September 2008.

13. My quality of life was at that time, and continues to be, very important to me. This is in part because in May of 2008 I was diagnosed with lung cancer. As a result, in June 2008, I had surgery to remove the lower lobe of my right lung (I believe the procedure is referred to as a right lower lobectomy). I started chemotherapy in late August of 2008 at the Vancouver Cancer Clinic. While I was cautiously optimistic about my prospects for recovery at that time, I was advised by my treating physicians that lung cancer had the potential to reduce my life expectancy and my quality of life.
14. While I was very upset to hear that I should expect a wait time of one year, I did not think there existed any other alternatives.
15. On September 28th, 2009, I called the Dr. Smidt's office to inquire about scheduling my surgery. I was told that there was now a three year wait for surgery.
16. I was shocked by the news. The thought of enduring another three years of pain that would prevent me from doing the most basic things, such as walking, without significant pain, was very upsetting.
17. I then decided to inquire into possible alternatives. I had heard about people in British Columbia getting surgery at clinics like the Cambie Surgeries Clinic. I started reading about it on the internet, and decided to inquire. Ultimately I made an appointment at the Cambie Surgeries Clinic with Dr. Brian Day, who I understand is an orthopedic surgeon.
18. On October 20th, 2009, I met with Dr. Day at the Cambie Surgeries Clinic.

19. I was scheduled for a surgery a week later. On October 29, 2009, Dr. Day operated on my knee. I began to recover immediately, and was surprised and relieved to discover that I was able to walk without pain within two days. I was able to return to my routine of golfing once per week and attending a cardio exercise class once per week.
20. After the surgery, and for the next few years, I was able to enjoy my life without the problems caused by my knee pain. I believe that if I had waited for a surgery in the public system, I would have experienced significant pain and been largely incapacitated for the duration of the three year wait period.
21. While the problems with my left knee were resolved, unfortunately in April of 2012, I received very upsetting news regarding my health. On April 10, 2012, I had my semi-annual check-up at the Vancouver Cancer Clinic to check the status of my lung cancer. The check-up was with Dr. Barbara Melosky, the doctor I have seen at the Clinic since 2008. The check-up included having a CT scan taken. Following the CT scan, Dr. Melosky told me that the cancer had reoccurred, and diagnosed me with stage four lung cancer. Dr. Melosky suggested I pursue chemotherapy treatment. She advised me that chemotherapy would not cure the cancer, but would at least slow down its growth. When I asked about my prognosis, Dr. Melosky advised me that my life expectancy was between two months and two years. On April 24, 2012, I began chemotherapy treatment again at the B.C. Cancer Agency.
22. Shortly thereafter I began to experience knee problems again – this time in my right knee. On May 1, 2012, I awoke in the middle of the night with a terrible pain in my right knee. I could not even get out of bed because of the pain. I recall that day I had received my second chemotherapy treatment at the B.C. Cancer Agency. I believed that I had torn the meniscus in my right knee as the pain was similar to the pain I felt in my left knee in 2008.
23. In early to mid-June 2012, I had an appointment with a physiotherapist, and asked about the pain in my right knee. The physiotherapist suggested I have an MRI on my right knee. He suggested a clinic in Richmond named Specialty MRI Clinics.

24. On June 14, 2012, I attended Specialist MRI Clinics and paid for an MRI. Following the MRI, the radiologist at the clinic diagnosed a torn meniscus in my right knee.
25. Once I knew I had a torn meniscus, I decided to return to the Cambie Clinic for surgery. Again, I was concerned about the wait lists in the public system, and the fact that I would experience significant pain and mobility restrictions while I waited. In addition, having been diagnosed with terminal cancer and given a prognosis of as little as two months, it was even more important to me that I be able to enjoy my life to the fullest extent possible.
26. On July 25th, 2012 I attended a consultation at the Cambie Clinic with Dr. Day. I was scheduled for surgery on my right knee on August 16, 2012.
27. I believe the surgery was a success. Prior to the August 16, 2012 surgery I had experienced tremendous pain in my right knee, and was prevented from doing basic things, such as walking and driving, without significant pain. Shortly after the surgery, I had no pain in my right knee at all.
28. When I had my first surgery in October 2009, I paid approximately \$900.00 to Cambie Surgeries Clinic, which was less than what I had expected to pay. For my surgery in 2012, I was only required to pay for the anesthetist's fee, which was \$300.00. I believe this was a very small price to pay for relief from the constant pain I was in.

29. I make this Affidavit in support of the CSC's and SRC's response to the Commission's application for an injunction against the CSC and SRC.

SWORN BEFORE ME in the City of)
Vancouver, in the Province of British)
Columbia, on this 24 day of September,)
2012)

Kolodziej)
A Commissioner for taking affidavits in)
the Province of British Columbia)

Ania Kolodziej
Exp August 31, 2014

E Krahn
ERMA KRAHN