Affidavit #1 of Dr. Ross Davidson
Sworn October 2nd, 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.

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.

DEFENDANTS BY COUNTERCLAIM

DR. DUNCAN ETCHES, DR. ROBERT WOOLARD, DR. GLYN TOWNSON, THOMAS MCGREGOR, THE BRITISH COLUMBIA FRIENDS OF MEDICARE SOCIETY, CANADIAN DOCTORS FOR MEDICARE, MARIËL SCHOOFF, DAPHNE LANG, JOYCE HAMER, MYRNA ALLISON, and CAROL WELCH

INTERVENORS

AFFIDAVIT #1 OF DR. ROSS DAVIDSON

I, Dr. Ross George Davidson, orthopedic surgeon, of 55 Cliff Road, St. Heliers, Auckland, New Zealand, MAKE OATH AND SOLEMNLY AFFIRM THAT:

1. I am a doctor who has worked both within public hospitals in British Columbia and at the Cambie Surgeries Corporation (herein referred to as "**CSC**"). As such, I have direct knowledge of the information stated herein, except where stated to be on information and belief.

2. I make this affidavit in support of CSC's opposition to the injunction sought by the Medical Services Commission to prohibit CSC from continuing to provide medical services in contravention of certain provisions of the *Medicare Protection Act* (the *"Act"*) (specifically sections 17(1) and 18(3), which relate to billing practices for benefits under the *Act*) prior to a ruling on the constitutionality of these provisions.

3. As I explain below, I believe that if the citizens of British Columbia are not able to pay a facilities fee for surgeries at CSC, just as citizens, for example, of Alberta can lawfully do at CSC, it will have a negative impact on the ability of the citizens of British Columbia to access timely health care.

My Professional Qualifications

4. I am a physician specializing in orthopedic surgery.

5. I completed my medical degree at Otago University in Dunedin, New Zealand in 1969, and a residency in orthopaedic surgery at the University of British Columbia in 1976. Following this, in 1977, I completed a fellowship in Eugene, Oregon in Sports Orthopaedic Surgery. In 1979, I passed the American Boards in Orthopaedic Surgery, to become Board Certified and hence making me fully licensed to practice as an orthopaedic surgeon in Canada and the United States.

My work as a surgeon in public hospitals in British Columbia

6. From 1977 to 1980, I worked as an orthopaedic surgeon at the Royal Columbian Hospital, in New Westminster, British Columbia.

7. In 1981, I obtained a joint appointment as an orthopaedic surgeon at the University of British Columbia Hospital ("**UBCH**") and St. Paul's Hospital.

8. Starting in 1982, I worked solely at the University of British Columbia Hospital until I left the Canadian medical system in July 2000 and began working as an orthopedic surgeon in New Zealand.

9. Throughout my career as an orthopedic surgeon in British Columbia's public health care system, I experienced severe rationing of my operating time. As a result, my surgical skills and time were not utilized to their full capacity. These restrictions progressively worsened and prevented me from providing timely care to many of my patients.

10. When I held a joint appointment at UBCH and St. Paul's Hospital, in the early 1980's, I was allocated 1.5 days per week of operating room ("**OR**") time between the two hospitals. After I began working solely at UBCH in 1982, I remained limited to 1.5 days of OR time per week, which was allocated as a half-day on Monday and a full day on Wednesday.

11. In 1988, when an additional orthopedic surgeon, Dr. William Regan, joined the orthopaedic surgery staff at UBCH, I was allocated even less OR time. I was required to give up my Monday morning OR time to provide time to Dr. Regan. From 1988 to 1995, I continued working at UBCH with only one full day of OR time per week, from 8:00am to 5:00pm.

12. Later, in 1995, in order to accommodate nursing staff shift changes, my weekly OR time was further reduced by an hour and a half. As a result, I was limited to booking patients for surgical procedures between 8:00am and 3:30pm, one day per week.

13. During my time at UBCH, all of the UBCH orthopaedic surgeons attempted to increase their OR time, in order to reduce wait lists and provide timely care. However, there was only one operating room for orthopaedic surgery at UBCH each day and this had to be shared between the five orthopedic surgeons.

14. During my time at UBCH as a surgeon in the public system, I saw approximately 25 new patients per week for surgical consultations. However, I was able only able to perform about 6-7 surgical procedures a week, depending on the length or complexity of procedures.

15. During my time at UBCH the wait time for a consultation in the public system varied. I treated players on the Vancouver Canucks Hockey Team for 22 years under a personal services contract and these patients would receive a consultation within 24 hours. In contrast, the average patient could wait up to four or five months for a consultation, particularly if they had chronic conditions that were not the result of an acute injury. I had to ration my own time, and triage patients to the best of my ability to attempt to govern wait times based on urgency or other circumstances.

16. The wait times for procedures in the public system also depended on the urgency of the patient's circumstances. For the average patient, wait times for a procedure could range between four to five months. For example, if one of my patients tore a ligament four months prior to diagnosis, they would need to wait approximately another four months for a surgical procedure after diagnosis.

17. It is my belief that acute injuries should be treated at a maximum of 2-3 weeks following injury and diagnosis in order to avoid deterioration of the patient's condition, restricted mobility and pain.

18. In emergency situations, I would try to find the extra time OR time where I could. In the event of an emergency surgery, orthopaedic surgeons at UBCH were required to place their patients on an emergency list. Emergency surgeries had to be conducted after hours, and surgeons would need to prioritize their patients and bump other patients off the list as needed. It was impossible to plan or guarantee a space or time for patients. This situation worsened every year.

19. Often emergency patients would be prepared for surgery and would wait all night at the hospital for a space on the list to open up. Often it would become evident by 9:00pm that their case could not be accommodated that night. These patients would have essentially

starved themselves all day in preparation for the surgery, only to be turned away, and be told to wait again the next day.

20. If an emergency fell on a Wednesday, I would reschedule a patient on my OR list for that day to accommodate the emergency case.

My work as a surgeon at CSC

21. When CSC first opened in 1996, I performed surgeries there to meet the health needs of patients.

22. My work at CSC did not take away from my capacity to work in the public system. On the contrary, by performing the procedures at CSC, I was able to relieve some of the wait times for my patients in the public system by opening up much needed OR time to others on my wait list.

23. Working as an orthopedic surgeon in the public system in British Columbia was very frustrating for me. I felt like I was trying to practice medicine with one hand tied behind my back. I was severely limited in the number of patients I could treat based on the rationing of OR time. As a result patients were forced to wait unnecessarily long periods of time for surgical procedures. For example, I frequently saw elderly patients wait in the hospital, prepared for surgery, for days on end before they could receive a knee or hip procedure. Having patients wait unnecessarily like this is poor medical service.

24. My patients were adversely affected by the lengthy delays in the public system. While waiting for their procedures, my patients experienced unnecessary physical, emotional and psychological suffering. These patients experienced significant mobility and lifestyle challenges, and many were unable to work while they were waiting for treatment. Some of my patients experienced anxiety and depression while waiting. Others became addicted to painkillers or suffered from the side effects of taking painkillers for prolonged periods. Some conditions, such as arthritic joints, deteriorate while patients wait for surgical intervention. Other conditions can deteriorate to the point of irreversible harm while patients wait for treatment. For example, a knee with torn cartilage can deteriorate

to the point where it cannot be repaired by the time a patient is able to have a procedure performed.

25. In 1999 I took a sabbatical leave from my work at UBCH. When I returned in 2000, I decided that I no longer wanted to work in the public health system in British Columbia. I felt that the excessive wait times in British Columbia prevented me from providing my patients with the quality of care I wanted to provide - in particular, timely access to care that does not subject patients to unnecessary physical, emotional and psychological suffering as a result of wait times. I also did not feel that my time and abilities were being used to their full capacity because of the rationing of OR time.

26. After many years of frustration working in the public system in British Columbia, in 2000, I decided to move abroad where my skills and time could be utilized to their full capacity.

My experience in New Zealand's hybrid health care system

27. In October 2000, I immigrated to Auckland, New Zealand, and began working at the Unisports Sports Medicine Center as a full-time orthopaedic surgeon. New Zealand has a hybrid health care system, which allows patients to be seen in both the private and the public health care systems. In New Zealand, patients have timely access to care. This is possible because many of the smaller surgical procedures are performed in the private system. This shortens the wait times for larger procedures in the public system.

28. Working as an orthopedic surgeon in New Zealand, I no longer experience the frustrations that I had experienced while working in the public health care sector in British Columbia. In New Zealand, patients are able to readily access expedient health care. I am able to perform surgery in an appropriate period of time for my patients as needed. Unlike in the public system in British Columbia, I can schedule patients for MRIs on the same day they are requested and I am therefore able to perform any procedure for my patients within 48 hours. I am able to provide a higher quality of care for my patients in New Zealand's hybrid health care system than I was able to provide in the British Columbia public health care system.

29. I do not believe that the private component of the health care system in New Zealand causes harm to the public component. The physicians and surgeons who work in the private system also work in the public system. By being able to work in both systems, the surgeons can perform many more surgical procedures.

30. I believe that hybrid health systems are essential for providing high quality health care to patients in present day society. The relevant legislation in British Columbia is structured to provide health care to all British Columbians through the public system. However, medicine has changed drastically in the last few decades, and technologies have advanced significantly. In response, the cost of health care has escalated. I understand that "the public purse" is finite which is why rationing is necessary in the public system. In contrast, hybrid systems allow for more than one funding source to be involved in health care, which presents options, such as private insurance, to help offset the funding costs to the government.

31. I believe that if clinics such as CSC are not allowed to operate as they have been, for the past 16 years, other physicians and surgeons, like myself, will leave the British Columbian health care sector to seek work in other jurisdictions where their skills and time will be better utilized and their patients could be better served, which will be harmful to the health care needs of the citizens of British Columbia.

32. I understand that wait times in British Columbia have increased since I left Canada in 2000. I believe that if the injunction sought by the commission is issued it will only compound the escalating wait time issues in the public system in British Columbia, which will be harmful to the health of citizens of British Columbia.

SWORN BEFORE ME at the City of Auckland, in the ~~Territory~~ Country of New Zealand, this 2nd day of October 2012

A notary public with authority to act with the City of Auckland, in the ~~Territory of~~ _____, ~~in the~~ country of New Zealand

DR. ROSS GEORGE DAVIDSON

Anthony Ivanson
Notary Public
Auckland New Zealand