

This is the 1st affidavit of
The Honourable Gordon Campbell in this case
and was made on June 5, 2018

No. S090663
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**CAMBIE SURGERIES CORPORATION, CHRIS CHIAVATTI,
MANDY MARTENS, KRYSTIANA CORRADO, WALID
KHALFALLAH by his litigation guardian DEBBIE WAITKUS, and
SPECIALIST REFERRAL CLINIC (VANCOUVER) INC.**

PLAINTIFFS

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

DEFENDANT

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,
and the BRITISH COLUMBIA ANESTHESIOLOGISTS' SOCIETY**

INTERVENORS

AND:

THE ATTORNEY GENERAL OF CANADA

PURSUANT TO THE *CONSTITUTIONAL QUESTION ACT*

AFFIDAVIT #1 of the HONOURABLE GORDON CAMPBELL, OBC

I, Gordon Campbell, of 220 LAURIER ST, Ottawa, Ontario, SWEAR THAT:

1. I was the Premier of British Columbia from June 5, 2001 to March 14, 2011, and as such, I have personal knowledge of the facts and matters stated herein, except where stated to be made on information and belief, in which case I believe it to be true.
2. During my period as Premier, the public health care system was a major concern of the Government of British Columbia, and I personally spent considerable time dealing with this situation in collaboration with the Minister of Health and Cabinet.
3. When I first took office as Premier, I was aware that the *Medical Protection Act (the "MPA")* effectively prohibited enrolled specialists from providing medical services to patients in private clinics. There were, however, some exceptions (such as for workplace injuries and diseases) that enabled some British Columbians to lawfully obtain private health care services from enrolled surgeons.
4. However, I was also aware that the previous NDP government had permitted private surgical clinics in British Columbia to provide surgeries, using enrolled surgeons, to non-exempt British Columbians, in contravention of the *MPA*.
5. I was informed through many Government briefings, reports and communications, that the wait times for scheduled medically necessary surgeries continued to increase and that delays in receiving medically necessary surgeries caused suffering and could cause permanent harm to many British Columbians.
6. I no longer have access to the Government briefings, reports and communications that were provided to me at the time. They were all left in the possession of the civil service.
7. Because of the information we had about long wait times for surgeries in the public health care system and the increasing costs of the health care system, the Government decided to carry on the practice of allowing enrolled surgeons to provide some private surgical services to non-exempt British Columbians in private medical clinics in the Province to allow them to deal with their personal health care needs outside of the public system.

8. The Government had no credible evidence that permitting enrolled specialists to perform additional surgeries privately would harm the public system, or the delivery of medical service through the public system.
9. While the government considered formally eliminating the restrictions on access to private health care in the *MPA*, we did not take steps to do so because of the possible loss of health transfer payments from the Federal Government.
10. It was this same concern about the loss of health transfer payments that caused the Government to introduce amendments to the *MPA* in 2003. These amendments were subsequently enacted by the Legislature.
11. The amendments provided additional measures to enforce the prohibition in the *MPA* on enrolled physicians providing private medical services, including significant financial penalties for doctors and others who breached this prohibition.
12. Some of the amendments would also, for the first time, have prevented British Columbians from obtaining private diagnostic testing.
13. Following the enactment of the amendments, the government decided that, given the wait times in the public system, the amendments would be harmful to the health of British Columbians.
14. Therefore, the Government did not to proclaim the amendments, and took no further steps to enforce the restrictions on dual practice in the *Act*.
15. Because surgeons had limited operating room time in the public system, the Government concluded that surgeons had substantial capacity to perform additional surgeries in the private system, without reducing their work in the public system.
16. The Government's conclusions about access to private health care can be summarized as follows:
 - a) The large and consistent growth of provincial health care costs over the previous decade was unsustainable when taken in conjunction with other essential public

services financial requirements since there was no equivalent growth in the provincial economy and therefore provincial revenues.

- b) To contain costs, it would be necessary to continue to ration surgeries and diagnostic services in the public system.
 - c) Delays in receiving what had been considered medically necessary surgeries - and the inability for the province to meet the established wait time guidelines - caused suffering and the risk of permanent harm to many British Columbians. Many patients were already waiting too long for needed diagnostic services and surgeries.
 - d) The delays in the public system could not be shortened given the constraints on funding, even if additional efficiencies could be found.
 - e) Surgeons and other specialists had excess capacity due to the limited operating time and use of other facilities and equipment made available to them in the public system.
 - f) Allowing these specialists to use their excess capacity to provide private diagnostic services and surgeries would cause no harm to the public system. It would also result in more medical treatments being provided to British Columbians, benefiting the overall health and wellbeing of British Columbians, while conserving capital and operational costs in the public system. It would also increase patient choice.
 - g) Enforcing the prohibitions against private medical services would therefore only harm and not benefit British Columbia's patients.
17. The government concluded that the provision of private diagnostic services and surgeries benefitted the public health care system by relieving the public system of both capital and operational costs and providing patients with access to more timely care. We also concluded that the addition of private financing for facilities, equipment, and operating costs that enabled the provision of medical treatment was a benefit to patients, to the public health care system and to British Columbians generally.


18. After the *Chaoulli* decision, I stated publicly that the Government did not want a two-tier health care system in Canada - one in Quebec after *Chaoulli* and a second, lower tier in the rest of Canada, including British Columbia. British Columbians should have the same right as the residents of Quebec to access private health care to avoid lengthy waits in the public system, and patients, not the Government, should be free to make that choice for themselves.
19. The Government also was of the view, as publicly expressed by Health Minister Colin Hansen, that if British Columbians wanted to obtain medical treatment more quickly in a private clinic than they could obtain in the public system, we should consider the treatment not to be “medically necessary” for the purposes of the *MPA*, and thus not a breach of the *MPA*.
20. The Government continued to be pressured by the Federal Government to make changes or lose health transfer payments.
21. In 2006, in an effort to satisfy the concerns of the Federal Government, even though the concerns were not supported by credible evidence or arguments, the Government proclaimed certain of the amendments. In particular, it proclaimed amendments which empowered the MSC to audit private clinics and to obtain an injunction. The amendments proclaimed in 2006 did not include the financial penalties or the new prohibition on private diagnostic testing, because the Government was of the view that those amendments would have prevented British Columbians from accessing these private medical services to protect their personal health care.
22. During my time as Premier, provincial health care costs increased significantly. That is why the Government proposed amending the *MPA* to add sustainability as a governing principle. This amendment was subsequently adopted by the Legislature.
23. The Government wanted to make it clear that the Province was unable to fund unlimited public health care demands and that some rationing of health care services was necessary. The Government wanted to minimize the negative effect on BC patients of the rationing of health care services by allowing them to make their own choices about how and where to obtain needed medical services.

24. To learn from other globally recognized public health systems, I led a fact finding visit to Sweden, Norway, France and the United Kingdom in 2006. I learned from this visit that all of these countries had hybrid health care systems that incorporated elements of private care and funding, and delivered better public health care at a lower cost than British Columbia and the rest of Canada.

25. The information gathered from this tour confirmed that a hybrid health care system would cause no harm to the public health care system in British Columbia, while providing benefits to many British Columbians by allowing them to take care of their own medical needs outside of the public health care system. I no longer have access to the information gathered from this tour which made it clear that public health systems could thrive when complemented by supplementary private service. Indeed, the complementary system appeared to contribute to a better overall universal public health care system.

26. In summary, because of the lengthy wait times in the public health care system and the financial constraints on that system, the Government continued the previously established practice in British Columbia of allowing the provision of private diagnostic and some surgical services to non-exempt British Columbians by private medical clinics through the use of enrolled doctors.

SWORN BEFORE ME at the City of)
 Ottawa, in the Province of Ontario,)
 this 5 day of June, 2018.)


 A Commissioner for taking affidavits)
 for Ontario)
 LS04546750)


 GORDON CAMPBELL)