



Court File No. **VLC-S-S-111412**

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DR. RENATE MATTHIAS

PLAINTIFF

AND:

BRITISH COLUMBIA MEDICAL ASSOCIATION
(CANADIAN MEDICAL ASSOCIATION – B.C. DIVISION)

DEFENDANT

Brought Pursuant the *Class Proceedings Act* R.S.B.C. 1996, c.50, as amended

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The plaintiff is a medical doctor and a physician who has since 1977 been qualified and licensed to practice medicine in the province of British Columbia, with an address for service at 700 - 1006 Beach Ave., Vancouver, B.C. V6E 1T7.
2. The defendant (“BCMA”) is a society incorporated pursuant to the laws of the province of British Columbia in 1936, with its registered office located at 115-1665 West Broadway, Vancouver, British Columbia, V6J 5A4.
3. The plaintiff has commenced this action with the intention of seeking to have the matter certified as a class proceeding pursuant to the *Class Proceedings Act* R.S.B.C. 1996, c.50, as amended.
4. Her Majesty the Queen in right of the Province of British Columbia, (“BC Government”) has for many years enacted legislation with the intention and effect of

establishing a government funded system for the provision of basic medical services to eligible persons. At the present time, the legislation includes the *Medicare Protection Act* [RSBC 1996] c. 286 and regulations made pursuant thereto.

5. Pursuant to the *Medicare Protection Act* [RSBC 1996] c. 286 and related statutes and regulations, the BC Government has established the Medical Services Plan (“MSP”).
6. The BC Government, by its associated agencies, under the Medical Services Plan provides certain services (the “MSP Services”) to eligible persons including:
 - a. medically required services provided by a physician enrolled with MSP;
 - b. maternity care provided by a physician or a midwife (see the BC Midwifery Program);
 - c. medically required eye examinations provided by an ophthalmologist or optometrist;
 - d. diagnostic services, including x-rays and laboratory services, provided at approved diagnostic facilities, when ordered by a registered physician, midwife, podiatrist, dental surgeon or oral surgeon;
 - e. dental and oral surgery, when medically required to be performed in hospital;
 - f. orthodontic services related to severe congenital facial abnormalities.
7. The BC Government via the Medical Services Plan and related legislation and regulations has established a system by which physicians in the province of British Columbia will provide the MSP Services without charging the recipients of said services, but rather will be compensated for their work from public funds.
8. The system established by the BC Government to incent physicians to provide MSP Services includes a pay component and a benefits component. In particular:

- a. physicians who provide MSP Services are entitled to be paid by the BC Government for their work either on a salary basis or on a fee for service basis, both according to schedules set by the BC Government with the agreement of the BCMA from time to time;
 - b. physicians who provide MSP Services are entitled to certain benefits which are established by the BC Government with the agreement of the BCMA from time to time (“Physician Benefits”);
9. When the BC Government establishes amounts of pay and benefits to be provided to physicians the amounts of said pay and benefits are communicated to all eligible physicians so that when physicians provide MSP Services they do so in the legitimate expectation that they will be provided with the appropriate compensation including pay and benefits.
10. It is not a requirement of any statute or contract that a physician must be a member of the BCMA. Individual physicians have a right of freedom of association to join or not to join the BCMA, pursuant to the *Charter of Rights and Freedoms of Canada*.
11. At any particular time, a number of physicians who are qualified to practice medicine in the province of British Columbia, and who receive funding from the BC Government by reason of the provision of MSP Services are not members of the BCMA (referred to hereinafter as “Non-members”). There are at present about 1,000 Non-members.
12. The plaintiff is a Non-member since she is a physician practicing in British Columbia and receiving funding from the BC Government, while not a member of the BCMA.
13. The BC Government establishes pay and Physician Benefits for Non-members via periodic negotiation with the BCMA, even though the BCMA has no authority to negotiate anything on behalf of the Non-members.

14. The plaintiff, together with all Non-members, has for at least the last 10 years been entitled to apply for and to receive, upon fixed criteria, benefits under benefit plans established by the BC Government.

15. The Physician Benefits established by the BC Government are the same for Non-members as for physicians who are BCMA members.

16. The BC Government has agreed to make the Physician Benefits available to all qualified BC physicians via certain contractual relations with the BCMA.

17. For at least the past 10 years the BC Government has periodically entered into contracts with the BCMA for the purpose of setting out mutual obligations concerning, among other things, the amounts of pay and benefits that would be paid and provided by the BC Government for physicians providing MSP Services.

18. At present, the contracts between the BC Government and the BCMA respecting physician pay and benefits include:

- a. Physician Master Agreement - November 1, 2007, and subsequent amendments;
- b. General Practitioner's Subsidiary Agreement – November 1, 2007;
- c. Specialists Subsidiary Agreement – November 1, 2007;
- d. Rural Practice Subsidiary Agreement – November 1, 2007;
- e. Alternative Payments Subsidiary Agreement – November 1, 2007;
- f. Benefits Subsidiary Agreement – November 1, 2007, and subsequent amendments; and
- g. Benefits Administration Agreement – June 12, 2008.

19. At Paragraph 3.2 (a) of the Physician Master Agreement the BC Government granted to the BCMA the sole and exclusive right, and the BCMA undertook the obligation to represent the collective and individual interests of all physicians receiving payments funded by the Government, including physicians who were Non-members of the BCMA.

20. According to the Physician Master Agreement, the Benefits Subsidiary Agreement, and the Benefits Administration Agreement, the BC Government undertook an obligation to provide all qualified BC physicians providing MSP Services, including BCMA members and Non-members alike, certain benefits, as defined in associated benefit plans. The said benefits consisted of:

- a. Physician Disability Insurance Program (“PDI Program”);
- b. Continuing Medical Education Fund (“CME Fund”);
- c. Canadian Medical Protective Association Rebate Program (“CMPA Rebate Program”);
- d. Contributory Professional Retirement Savings Plan (“CPRSP Plan”)
- e. Parental Leave Program
- f. Pregnancy Leave Program; and
- g. Physician Health Program.

21. Each of the benefit plans had particular qualifying criteria which were the same for all qualifying physicians whether BCMA members or Non-members.

22. In order for the BC Government to make the agreed benefits available to qualifying physicians, it was necessary to establish and fund a suitable administrative system whereby physicians could apply for benefits, applications could be evaluated, and benefits provided where appropriate.

23. The BC Government could have itself undertaken the administrative work to provide the benefits, or it could have gone to public tender for a professional benefit administrator, but instead of doing so, it chose to provide the promised benefits owing to BC physicians by contracting with the BCMA under the Benefits Subsidiary Agreement (the “BSA”) and the Benefits Administration Agreement (the “BAA”).

24. By those agreements, amongst other things, it was agreed as follows:

- a. the BC Government would advance monies to the BCMA in respect of each benefit plan; (BSA)
- b. the monies advanced by the BC Government to the BCMA were to be used solely to provide benefits and to fund the cost of administering such benefits; (BSA, clause 7.1 (a))
- c. the funds advanced included sufficient amounts to compensate the BCMA for the costs of administering the plans; (BAA, clause 3.3)
- d. the BCMA was to administer the benefits with the same degree of care, skill and efficiency as would be employed by a prudent and reasonable benefits administrator performing the same services; (BAA, clause 2.3)
- e. the BCMA was entitled to reimbursement for its costs of administering the benefit plans from the BC Government, but only such costs as were reasonable and reasonably comparable to the costs that would be charged by a prudent and reasonable professional benefits administrator performing the same services; (BAA, clause 3.1)
- f. the BCMA agreed to administer the benefit plans for Non-members with the same standard of administration as for BCMA members; (BSA, clause 7.1 (b))
- g. the BCMA was allowed to charge an administration fee to Non-members which would not be more than the equivalent of dues and levies charged to

BCMA members in the calendar year in which the Non-member applies for benefits. (BSA, clause 7.1(c))

- h. the BCMA was required to report annually to the Government on its expenditures related to the administration of the Benefit Plans to allow the BC Government to meet its statutory obligations to account for the use of public money; and
 - i. the BCMA benefits department was required to report the value of administration fees charged to Non-members for each Benefit plan on an annual basis.
25. The BCMA has failed or refused to comply with the reporting obligations set out at paragraphs 24 (h) and (i) above.
26. All of the money paid by the BC Government to the BCMA for benefits is provided to fund benefits and reasonable administration costs, and not to provide a funding source for the BCMA. There is a public policy reason for providing the benefits to physicians, which is to attract and retain competent physicians to care for British Columbians in need of health care.
27. The plaintiff is in a position of vulnerability and the BCMA is in a position of power due to the trust reposed in the BCMA to represent all physicians, including Non-members, and the power to unilaterally withhold benefits from and to charge excessive fees to Non-members.
28. Each time the plaintiff or any Non-member applies for and qualifies for any benefit provided in the Benefit Plans, the BCMA withholds arbitrary and excessive administration fees.
29. The BCMA's withholding of arbitrary and excessive administration fees is an abuse of its position of power and trust and conduct intended to punish her and other Non-member physicians for not joining the BCMA.

30. The BCMA is profiting from and abusing its position of power and trust as benefits administrator of all benefits for all physicians in British Columbia, including Non-members.

31. The BCMA has a practice and policy of charging Non-members an administrative fee, without any regard to the reasonable cost of administration of that certain benefit, such that usually a Non-member is charged the same amount as s/he would have paid in dues and levies to join the BCMA.

32. In many cases the administration fee charged exceeds 50% of the value of the given benefit.

33. The amounts charged to Non-members are not reasonable or reasonably comparable to the costs that would be incurred by a prudent and reasonable professional benefits administrator performing the same service.

34. The practice of taking excessive administration fees has continued for at least 10 years. Before November 1, 2007, benefit plans were similar to the current plans. During this entire period, the BC Government contracted with BCMA to provide the benefits to all qualifying BC physicians, including Non-members, and the BCMA charged excessive and arbitrary administration fees.

35. The plaintiff has for at least the past 10 years suffered loss and damage because BCMA has charged excessive administration fees. The result of this is that she has not received the benefits she was entitled to as compensation for her services, and her cost to obtain benefits were excessive.

36. Particulars of excessive administration fees charged to plaintiff recently are as follows:

a. **Continuing Medical Education Plan Benefit:**

- i. The plaintiff applied for CME benefits on January 20, 2009. Her application at that time was for reimbursement of qualifying medical education expenses incurred in the prior 4 years, from 2006 to 2009;
- ii. She applied for \$1,150 in respect of qualifying CME expenses in 2006, and BCMA charged an administration fee of \$603.75 (52.5%);
- iii. She applied for \$1,400 in respect of qualifying CME expenses in 2007, and BCMA charged an administration fee of \$603.75 (43.125%);
- iv. She applied for \$1,400 in respect of qualifying CME expenses in 2008, and BCMA charged an administration fee of \$735.00(43.125%);
- v. She applied for \$1,400 in respect of qualifying CME expenses in 2009, and BCMA charged an administration fee of \$349.65 (25%);
- vi. The overall percentage administrative fee charged to the plaintiff for the CME benefit during the period 2006 – 2009 was $(\$2,292/\$5,350)$ 42.84%.

b. **Contributory Professional Retirement Savings Plan Benefit:**

- i. For at least the past 10 years the BC Government has funded a benefit plan for BC physicians to allow them to accumulate retirement savings (“CPRSP”) via contributions to Registered Retirement Savings Plans (“RRSP’s”);
- ii. During that 10 year period the plaintiff has applied for and received RRSP benefits in accordance with eligibility requirements communicated to her from time to time;

- iii. Available CRRSP benefits for each eligible physician increases with the amount of monies each physician earns from providing MSP Services pursuant to the Medical Services Plan;
 - iv. CRRSP benefits consist of basic benefits and in addition, in the case of applicants who are long service physicians, certain length of service benefits;
 - v. Physicians must contribute their own funds to their RRSP savings accounts to receive matching CRRSP benefits, and monies paid into the said RRSP's are locked-in until the physician ceases practicing medicine in the province;
 - vi. Until the most recent claim period, the BCMA charged an administration fee to the plaintiff of approximately \$300 per year;
 - vii. In the most recent claim period, the BCMA charged an administration fee equal to 50% of each applicant's basic CRRSP benefit,
 - viii. In the current claim period the plaintiff was charged \$1,615 by way of an administration fee for her CRRSP benefit;
 - ix. Both the \$300 annual fee and the higher fee charged in the current year are unreasonable and excessive fees;
- c. **Physician Disability Insurance Program:**
- i. For years BC Government has funded a benefit plan for BC physicians to provide an insurance policy under which income continuation benefits would be available in the event of a disability ("PDI Program");

- ii. BC physicians who are members of the BCMA and Non-members are eligible for government funded PDI Program benefits;
- iii. The PDI Program is voluntary, in the sense that BC physicians must apply for and qualify for coverage based on medical evidence of good health;
- iv. Physicians who are BMCA members can in addition apply for and receive additional disability insurance coverage from a minimum of \$500 to a maximum of \$12,000 replacement earnings;
- v. The PDI Program is based on physician's prior calendar year eligible earnings and physician's type of practice. The maximum monthly income replacement benefit is \$6,100;
- vi. Coverage under the PDI Program is a taxable benefit to each BC physician who applies for and receives coverage, though physicians are not required to pay directly for coverage;
- vii. For at least the past 10 years the defendant has charged unreasonable and excessive fees in respect of the PDI Program and has failed to provide the plaintiff the full amount of the benefit to which she has been entitled;

d. Canadian Medical Protective Association Rebate Program ("CMPA Rebate Program"):

- i. For years the BC Government has funded a benefit program for BC physicians named the CMPA Rebate Program. Under that program qualifying BC physicians are reimbursed for a certain portion of the cost of membership in the Canadian Medical Protective Association ("CMPA");

- ii. The 2010 CMPA Rebate amount for BC physicians is equal to the increase of CMPA fees over fees incurred in 1985, the base year;
- iii. Physicians who are paid on a non-salaried basis and have qualifying income in the prior calendar year are eligible for a CMPA Rebate;
- iv. The reimbursement percentage to which a physician is entitled from the program is based on gross payments from the Ministry of Health or payment made under a service contract during the previous calendar year as follows:
 - 1. Gross Income over \$30,000 – 100%;
 - 2. Gross Income \$15,001 to \$30,000 – 75%;
 - 3. Gross Income \$10,001 to \$15,000 – 50%;
 - 4. Gross Income \$5,001 to \$10,000 – 25%;
 - 5. Gross Income less than \$5,000 - none
- v. For the entire period during which the CMPA Rebate Program has been in effect, the plaintiff has earned qualifying income sufficient to receive a 100% rebate;
- vi. For at least the past at least 10 years the defendant has charged unreasonable and excessive fees in respect of the CMPA Rebate Program and has failed to provide the plaintiff the full amount of the benefit to which she has been entitled.

Part 2: RELIEF SOUGHT

- 1. An accounting on an annual basis for each of the past ten years of:

- a. all monies paid by the BC Government to the BCMA in respect of the Benefit Plans;
 - b. all administrative costs actually incurred by the BCMA in respect of the Benefit Plans;
 - c. all administration fees charged to all Non-members for each benefit on an annual basis for the past ten years;
2. An accounting to determine whether there is or has been a surplus of funding for any of the Benefit Plans, and if so, the disposition of such surplus;
3. Restitution of all administration fees charged to all Non-members in respect of benefits;
4. Alternatively to 3, restitution of all fees charged to all Non-members in respect of benefits in excess of the reasonable administrative costs which would have been incurred by a prudent and reasonable benefits administrator for the same transaction;
5. An order that the defendant account on an ongoing basis for all administration fees for as long as the BCMA is the Administrator of the Benefit Plans for Non-members. Such accounting to include amounts received from the BC Government for benefits, actual administration costs incurred to administer the Benefit Plans, the amount received from the BC Government to compensate BCMA for such costs, and the amounts charged to Non-members to administer such benefits;
6. A permanent injunction prohibiting the BCMA from charging any, or in the alternative, any arbitrary and excessive administration fees to Non-members for participation in the Benefit Plans;

7. A mandatory injunction requiring the BCMA to comply with its reporting obligations set out in the BSA and referred to above in the Statement of Facts at paragraphs 24 (h) and (i);
8. Damages for breach of fiduciary duty;
9. Aggravated and punitive damages for malicious abuse of trust, abuse of power and breach of fiduciary duty;
10. Interest pursuant to the *Court Order Interest Act* [RSBC] 1996 Chapter 79;
11. Costs; and
12. Such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

1. Monies advanced by the BC Government to the BCMA in respect of benefits for Non-members were trust funds for the exclusive benefit of the Non-members;
2. BCMA breached the trust described in paragraph 1 when it misappropriated and converted the trust funds by charging administration fees to the Non-members, or in the alternative when it charged arbitrary and excessive administration fees;
3. The BCMA owes Non-members fiduciary duties in respect of the Benefit Plans. The BCMA is in a position of power and the Non-members are in a position of vulnerability in respect of the Benefit Plans.
4. The charging by the BCMA of administration fees, or alternatively arbitrary and excessive administration fees to Non-member physicians is in breach of its fiduciary duty, and amounts to the taking of an unlawful profit by the BCMA.
5. The charging by the BCMA of arbitrary and excessive administration fees to Non-member physicians deprives the public of the intended benefit of the Benefit Plans in a government funded medicine scheme, by the BCMA's taking of the funds

intended by the public for the continuing education and social welfare of all BC physicians which would attract and retain excellent physicians in British Columbia for the greater public good.

6. Section 24 (1) of the *Constitution Act*, 1982 provides:

Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

7. The charging by the BCMA of arbitrary and excessive administration fees to Non-member physicians is unlawful, contrary to public policy, and in particular is contrary to the freedom of association protected Section 2 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982.

8. The plaintiff says that the receipt of administration fees and in the alternative any arbitrary and excessive administrative fees by the BCMA from Non-member is an unjust enrichment of the BCMA and a deprivation of the Non-members without juristic reason.

9. Aggravated and punitive damages should be awarded in view of the following:

- a. The BCMA is knowingly in a conflict of interest;
- b. the policy and practice of the BCMA regarding administration fees for Non-members is for an improper purpose, to wit, to punish physicians who choose not to become members of the BCMA, and thus is legally malicious; and
- c. By maliciously abusing its trust and power through the charging of administration fees to Non-members, the BCMA is depriving the public of the value of funding the Benefit Plans, while at the same time profiting by taking the money intended to fund benefits for BC physicians.

Plaintiff's address for service:

Attention: Murray Tevlin
c/o TevlinGleadle Employment Law Strategies
700 - 1006 Beach Avenue
Vancouver, BC, V6E 1T7
E-mail address for service: mtevlin@tevlingleadle.com

The address of the registry is:

The Law Courts
800 Smithe Street
Vancouver, BC, V6Z 2E1

Place of trial: Vancouver, BC

Date: March 4, 2011



TevlinGleadle Employment Law Strategies

Per: Murray Tevlin, Lawyer for the Plaintiff

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.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Class action for breach of trust, conversion, breach of fiduciary duty, unjust enrichment and breach of Canadian Charter of Rights and Freedoms by the taking by the defendant of excessive administration fees from monies funding benefits for BC physicians.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investments losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know