

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Halvorson v. Medical Services
Commission of British Columbia*,
2012 BCSC 1110

Date: 20120712
Docket: C985385
Registry: Vancouver

Between:

James Peter Halvorson, as representative plaintiff

Plaintiff

And:

**Medical Services Commission of British Columbia
and Her Majesty the Queen in Right of British Columbia
and the Minister of Health, represented by
the Attorney General of British Columbia**

Defendants

Before: The Honourable Madam Justice Adair

Oral Reasons for Judgment

In Chambers
July 12, 2012

Counsel for Plaintiff

A.M. Grant
S.J. Kovacs

Counsel for Defendants

T.H. MacLachlan, Q.C.
T.S. Saunders
C. Drake

Place and Date of Hearing:

Vancouver, B.C.
July 9-11, 2012

Place and Date of Judgment:

Vancouver, B.C.
July 12, 2012

[1] **THE COURT:** This is a proposed class proceeding. A description of the claims that are being advanced and procedural background is set out at length in reasons of the B.C. Court of Appeal, *Halvorson v. British Columbia (Medical Services Commission)*, 2003 BCCA 264 (per K. Mackenzie J.A.) and *Halvorson v. British Columbia Medical Services Commission*, 2010 BCCA 267 (per K. Smith J.A.).

[2] I have mentioned those two judgments because both Mr. Justice Mackenzie and Mr. Justice Smith summarize and identify the broad issues raised in this action. The claims are summarized by Mr. Justice Mackenzie at paras. 5 and 7 of his reasons for judgment, and by Mr. Justice Smith at para. 28 of his reasons for judgment.

[3] Mr. Justice Mackenzie determined that a class proceeding would be the preferable procedure for the fair and efficient resolution of common issues in this action, and so he determined the requirement under s. 4(1)(d) of the **Class Proceedings Act**, R.S.B.C. 1996, c. 50: see 2003 BCCA 264, at para. 35.

[4] In a ruling I gave on September 14, 2011, when I granted the plaintiff leave to amend his notice of civil claim, I also made a determination for the purposes of s. 4(1)(a) of the **Class Proceedings Act** that the pleadings disclosed a cause of action.

[5] Following my ruling on September 14, 2011, that left the requirements under subsections 4(1)(b), (c) and (e) of the **Class Proceedings Act** to be determined, namely: whether there was an identifiable class of two or more persons (subsection (b)); whether the claims of the class members raise common issues (subsection (c)); and whether there is an appropriate representative plaintiff (subsection (e)).

[6] Submissions on those issues began earlier this week (July 9). Yesterday morning, Wednesday morning, the hearing was stood down so that counsel could discuss the terms of a proposed consent certification order.

[7] When we reconvened this morning, I am pleased to say that counsel had been able to reach agreement on terms on a proposed consent order. Mr. Grant has reviewed those terms with me this morning.¹ I am satisfied, on the basis of the terms of the proposed consent certification order, that the requirements for certification under s. 4(1) of the ***Class Proceedings Act*** have been met. I have pronounced the terms of the certification order in the form of the draft consent order that has been presented this morning and signed by counsel on behalf of the plaintiff and on behalf of the defendants.

[8] There has been one modification made to the terms of the consent certification order. That is an addition to deal with the litigation plan. We have added a term of the order that an amended litigation plan in a form acceptable or agreeable to all parties is to be filed by July 31, 2012, and in the event that the parties are unable to agree on a revised form of litigation plan, they have liberty to apply to the court for directions concerning the form of the litigation plan.

[9] We have also discussed this morning setting a date for the next case planning conference in this action. We had had some discussion about my rota beginning in September. I am going to leave counsel, in the circumstances, to make inquiries through trial scheduling about available dates. It may be that I am in a position to free up a date the week of September 3rd or the week of October 1st, but that is a little uncertain at this time. So rather than trying to fix something today, I will simply leave that for counsel.

[10] Is there anything further we need to deal with this morning?

[11] MR. GRANT: The only thing I just wanted to confirm, My Lady, is that we can amend the form of notice to strike the word “solicitors” on page 6 to become the word “lawyers.”

¹ I have set out the class description (para. 2 of the consent order) and common issues (para. 4 of the consent order) in Appendix “A” to these reasons. The consent order provides that “the parties be at liberty to apply to the Court for an order certifying further issues as common issues.” The plaintiff, Dr. Halvorson, is appointed the representative plaintiff for both resident and non-resident class members.

[12] THE COURT: Yes. There is a draft form of notice that is attached as Schedule A to the draft consent order, and on the second page of the form of notice in the first paragraph under the heading “Participation in and Exclusion from the Class,” in the last line of the first paragraph in that section, the word “solicitors” should be replaced by the word “lawyers.”

[13] MR. GRANT: My Lady, I don’t think it’s an issue because it’s not a case planning conference, but I just wanted to make sure we would have leave to get your reasons transcribed and have them available to us for future direction if necessary.

[14] THE COURT: Yes. Since this is not a case planning conference, of course either side can request the brief reasons that I have given today to be transcribed.

[15] MR. GRANT: I have had difficulty with that in the past even though it was an application, so that is why I raised it.

[16] THE COURT: Just in conclusion today, I commend counsel for obviously working hard and being able to reach agreement on the form of consent order in these proceedings.

[17] MR. MACLACHLAN: Thank you, My Lady.

[18] MR. GRANT: Thank you, My Lady.

[19] THE COURT: I have of course the six volume application record that was prepared for the hearing. I do not think I have marked up anything to any degree. I think I may have put tab numbers on the opposite side of the tabs, but I think that was the only thing that I did. I would be grateful for some guidance from counsel. Is this something that I should be keeping, in which case of course I will keep it?

[20] MR. MACLACHLAN: As I understand it, under the chamber rule I believe actually the moving party is supposed to assume custody of it in the absence of an order to the contrary, so it can go to my friend Mr. Grant.

[21] MR. GRANT: I would be happy to do so, My Lady. I think I will have to get some more boxes, but yes. I hadn't thought of that.

[22] THE COURT: The application record then can be returned to Mr. Grant. In looking at volume 6, it says "return to Adair J.," and I have written just for my own convenience the tabs numbers and what volume it is. But there is nothing critical that I have written on any of these.

[23] MR. GRANT: We'll probably have to go and get some more boxes, but we'll remove that burden from you.

[24] THE COURT: Thank you, counsel. We are adjourned.

"Adair J."

Appendix “A”

The class description is:

[T]he class be described as all medical practitioners who were enrolled under the *Medical and Health Care Services Act*, S.B.C. 1992, c. 76, as amended, at any time during the period July 23, 1992 to April 30, 1996, excluding those medical practitioners who were members of the Medical Services Commission at any time during that time period.

The common issues are:

[T]he following questions be certified as common issues in the class proceedings:

Did the Medical Services Commission have the legal authority during the period July 23, 1992 to April 30, 1996 to de-enrol beneficiaries who were British Columbia residents for non-payment of Medical Services Plan premiums

- a. under the *Medical and Health Care Services Act*, S.B.C. 1992, c. 76, as amended (the “Act”), and/or;
- b. under section 8.02 of the *Medical Services Act Regulations*, B.C. Reg. 144.68, as amended?