

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Casses v. Canadian Broadcasting Corporation*,
2015 BCSC 2150

Date: 20151124
Docket: S115272
Registry: Vancouver

Between:

Fernando Casses and Dr. Fernando Casses Inc.

Plaintiffs

And

**Canadian Broadcasting Corporation,
Kathy Tomlinson, Enza Uda, Chris Doe, Wayne Williams, Chris Poe,
Brett Hyde, Charlie Cho and Kim Loe**

Defendants

- and -

Docket: S098449
Registry: Vancouver

Between:

Fernando Casses and Dr. Fernando Casses Inc.

Plaintiffs

And

**Douglas Backer, Caroline Mitchell
and Elizabeth Watkins**

Defendants

And

**Kathy Tomlinson and
The Canadian Broadcasting Corporation**

Third Parties

- and -

Docket: S098738
Registry: Vancouver

Between:

Fernando Casses and Dr. Fernando Casses Inc.

Plaintiffs

And

Krystal Lee Cook

Defendant

And

**Kathy Tomlinson and
The Canadian Broadcasting Corporation**

Third Parties

- and -

Docket: S099002
Registry: Vancouver

Between:

Fernando Casses and Dr. Fernando Casses Inc.

Plaintiffs

And

Robin Lee Patricia Odiorne

Defendant

And

**Kathy Tomlinson and
The Canadian Broadcasting Corporation**

Third Parties

Before: The Honourable Madam Justice Adair

Reasons for Judgment

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Place and Date of Trial:

Vancouver, B.C.
October 27-31, 2014
November 3-7, 17-21, 24-28, 2014
December 1-5, 8-10, 2014
February 2-6, 2015

Place and Date of Judgment:

Vancouver, B.C.
November 24, 2015

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1. Introduction

[1] The plaintiff Dr. Fernando Casses trained in Colombia as a medical doctor. In the mid-1980s, Dr. Casses came to Canada and completed a five year residency at the University of Toronto to qualify as a general surgeon. Dr. Casses then worked for a number of years in the United States. He moved to B.C. from Arizona in the fall of 2000. Initially, he carried on a surgical practice in Port Alberni. He later moved to Creston, where he practiced briefly in 2001. Then, in 2002, Dr. Casses moved his surgical practice to Quesnel, where he had privileges at G.R. Baker Memorial Hospital. Dr. Casses remained in Quesnel until 2012.

[2] The defendant Kathy Tomlinson is an investigative journalist and (as of trial) employed by the defendant Canadian Broadcasting Corporation. The CBC hired Ms. Tomlinson in 2007 to launch a television news segment called “Go Public.” As described by Ms. Tomlinson, Go Public has always been heavily invested in public-interest stories, and virtually all of the story ideas come from members of the public.

[3] On September 8, 2009, CBC Vancouver broadcast the first of three Go Public segments in which Dr. Casses was discussed. A segment was also broadcast on “The “National,” CBC’s major, national evening newscast. I will refer to the Go Public segment on each of these broadcasts as a “TV Report.” Ms. Tomlinson also wrote a related article (the “Web Story”), which was published on the CBC’s website on September 8, 2009. The Web Story remained available as of the trial.

[4] A number of former patients of Dr. Casses (and their family members) were interviewed for the TV Reports and the Web Story. Those interviewed included the defendants Krystal Lee Cook and Robin Odiorne (both of whom were Dr. Casses’ patients), and Douglas Backer and Elizabeth Watkins (whose mother, Edith Backer, was one of Dr. Casses’ patients).

[5] Within a few months of publication of the TV Reports and the Web Story, Dr. Casses filed three separate legal proceedings, against Ms. Cook, against Ms. Odiorne, and against Mr. Backer and Ms. Watkins. I will refer to these proceedings

as the “Individual Actions,” and the defendants in these actions as the “Individual Defendants.” Dr. Casses asserted each Individual Defendant made statements about him (including statements in the TV Reports and the Web Story) that were defamatory. In due course, the Individual Defendants issued third party proceedings against the CBC and Ms. Tomlinson.

[6] Then, in August 2011, Dr. Casses and the other plaintiff, Dr. Fernando Casses Inc. (“Casses Inc.”), Dr. Casses’ professional corporation, sued the CBC, Ms. Tomlinson and other CBC employees (the “CBC Defendants”). Dr. Casses and Casses Inc. asserted that the TV Reports and Web Story were defamatory of them. At the same time, the pleadings in the Individual Actions were amended to add Casses Inc. as a plaintiff.

[7] Dr. Casses says that the “cruel, incendiary and egregious serial libels” contained in the TV Reports and the Web Story caused him “immediate and devastating injury,” which can never be adequately redressed by financial compensation – no matter how significant – nor by any judgment of the court in his favour. Dr. Casses says that the TV Reports “may represent the most savage attack on the reputation of a professional person by the news media of this province in living memory.” He says that the defamatory impact is more severe than that of a well-known case against the CBC, **Leenen v. Canadian Broadcasting Corp.** (2000), 48 O.R. (3d) 656 (S.C.J.), aff’d (2001), 54 O.R. (3d) 612 (C.A.), in which the plaintiff was awarded \$950,000 in damages, and of the companion case, **Myers v. Canadian Broadcasting Corp.** (1999), 47 C.C.L.T. (2d) 272 (Ont. S.C.J.), aff’d (2001), 54 O.R. (3d) 626 (C.A.), in which \$350,000 in damages were awarded. Dr. Casses says that the defamatory imputations of the TV Reports and the Web Story are more serious than the defamatory expressions for which the Church of Scientology was held accountable in the leading case of **Hill v. Church of Scientology of Toronto**, [1995] 2 S.C.R. 1130. There, \$1.6 million in damages (including \$800,000 in punitive damages and \$500,000 in aggravated damages) were awarded.

[8] All defendants in all of the actions say the claims should be dismissed.

[9] All defendants say the plaintiffs have failed to show that any of the TV Reports or the Web Story were “of and concerning” Casses Inc. All defendants say that, on that basic point, the claims of Casses Inc. must fail.

[10] None of the defendants accepts that the TV Reports and the Web Story bear the defamatory meanings pleaded by the plaintiffs, which the defendants say are extreme and exaggerated. The CBC Defendants (in the CBC Action and in their responses to civil claim filed in the Individual Actions) have specifically pleaded alternative defamatory meanings, and say that these alternative meanings fairly summarize what a reasonable person would understand from the TV Reports and the Web Story.

[11] The CBC Defendants say that they should succeed on all pleaded defences: justification, fair comment and responsible communication. With respect to justification, they say that the facts regarding the medical cases have been proven to be at least as bad as what was reported by the CBC, and that, on the fullness of the evidence, the truth regarding Dr. Casses’ handling of many of the cases is actually worse. On fair comment, the CBC Defendants say that the statements constituting opinions, inferences, deductions and conclusions were plainly views that a person could honestly hold on the facts, and the evidence showed how genuine those opinions were. Finally, with respect to the defence of responsible communication, the CBC Defendants say the evidence demonstrates that the CBC faithfully reported what it had learned from many reliable sources, and gave Dr. Casses every opportunity to tell his side of the story.

[12] The CBC Defendants say that these cases illustrate the vital role of journalists in shining a light on issues that are important to citizens and that were previously unknown, and of the role citizens can play in informing each other and sharing views. The CBC Defendants say that the subject matter of the TV Reports and the Web Story was not only about Dr. Casses, but also about the oversight by the B.C.

College of Physicians and Surgeons (the “College”) and the processes by which the quality of patient care in B.C. is or should be safeguarded.

[13] At the close of submissions, I dismissed the plaintiffs’ claims against three of the CBC Defendants: Ms. Enza Uda, Mr. Brett Hyde and Mr. Charlie Cho. (The claims against Caroline Mitchell were discontinued prior to trial.)

[14] The Individual Defendants say that their statements cannot and do not bear the defamatory meanings alleged by the plaintiffs, and that they can have no liability for any republication by the CBC. In the event I find that any of the Individual Defendants are liable for defaming the plaintiffs, the defences of fair comment, justification and responsible communication have all been pleaded in the Individual Actions. The Individual Defendants (other than Ms. Watkins) also say that if any of them are found liable to the plaintiffs, they should succeed in their third party claims against the CBC and Ms. Tomlinson.

[15] These actions present two diametrically opposed perspectives. From the plaintiffs’ viewpoint, the defendants have engaged in cruel, incendiary and egregious libels, and perhaps the most savage attack on the reputation of a professional person by the B.C. news media in living memory. The defendants’ perspective is that a group of citizens in a smaller B.C. community make public their honest concerns and unhappiness with the medical care available to them, their families and community, and their frustration with the College.

2. Background Facts

[16] In this section, I am going to set out background facts and review some of the evidence. I will also make findings that are relevant to the Discussion section that follows.

[17] I am going to begin with Dr. Casses.

[18] Dr. Casses’ credibility is an important feature of these actions. Several of the “stings” alleged, both by the plaintiffs and by the CBC Defendants (in their alternative

defamatory meanings), are to the effect that Dr. Casses concealed relevant information from his patients and family members and failed to acknowledge or treat complications. Thus, how Dr. Casses deals with complications and how he responds to uncomfortable facts are relevant issues in these cases. Patients complained that he was not honest and forthright with them, so his credibility about his interactions with patients is pitted against his patients' credibility.

[19] I have concluded that I need to be cautious about accepting Dr. Casses' uncorroborated evidence, and where his evidence conflicts with that of his patients, I generally will prefer the patient's evidence. However, I will give considerable weight to admissions or concessions made by Dr. Casses.

[20] In my opinion, the evidence discloses that Dr. Casses often failed to disclose or acknowledge, or minimized, facts and circumstances that could reflect poorly on him as a surgeon, and he was dismissive of patients' legitimate concerns. The evidence discloses that a number of his patients felt that this was how he treated them, and they were unhappy and concerned about it. This was part of the story they communicated to Ms. Tomlinson, and that she subsequently reported.

(a) Dr. Casses

(i) Training in Canada and work in Arizona

[21] Dr. Casses completed his five-year surgical residency training at the University of Toronto Department of Surgery in the early 1990s. While in Toronto, Dr. Casses lived with Annie Irwin and her husband. Dr. Casses described Mrs. Irwin as like a "second mother," and they had a very close and warm relationship. The Irwins moved to Victoria, B.C., and, according to Dr. Casses, their presence in B.C. was one of the reasons why, some years later, he decided to move here.

[22] In November 1992, Dr. Casses received a specialist's certificate in general surgery from the Royal College of Physicians and Surgeons of Canada, and in January 1993, he was designated by the Royal College as a "Fellow" in the division of surgery.

[23] In the mid-1990s, Dr. Casses moved to Arizona, where he was quickly hired to work with the Arizona Heart Institute. As Dr. Casses recalled, he was looking after cardiac and vascular surgery patients in a 25-bed intensive care unit. He left that position after being offered a much better position with another group of surgeons, practicing in Phoenix. As Dr. Casses described it, in this position, he was on standby 24 hours a day, 7 days a week for three cardiac surgeons, and in return, he did all of the general surgery work. According to Dr. Casses, he stayed in that practice until about 1998 or 1999. He then practiced in partnership with another general surgeon until late 1999. According to Dr. Casses, he was on staff at seven hospitals in the Phoenix area (including Walter O. Boswell Memorial Hospital (“Boswell Memorial”)) and on call 21 days a month. In addition to changes in his work situation, late 1999 was also a somewhat turbulent time for Dr. Casses personally, as he was involved in divorce proceedings after a brief marriage.

[24] Dr. Casses described how, over dinner on Valentine’s Day 2000, he discussed with his now-wife, Eda (“Sam”) Schoenauer, that he was thinking of leaving Arizona and moving to B.C. Around the same time, there had been an issue with one of the surgeries done by Dr. Casses at Boswell Memorial on a patient, Frances Martinez. In February 2002, Dr. Casses was sued for medical negligence in relation to the case. The litigation was ultimately settled.

(ii) Dr. Casses’ application to the College and problems in Arizona

[25] In the summer of 2000, Dr. Casses completed an application form (the “B.C. Application”) for registration with the College. The B.C. Application is dated July 15, 2000. Dr. Casses testified that, despite the date written on the B.C. Application, he did not send it to the College until (he thought) late August 2000. He explained that, earlier in the summer, he was attending to some personal matters, including looking after his mother.

[26] Dr. Casses acknowledged that the questions in the B.C. Application were one way in which the College carried out its due diligence to protect members of the public. He acknowledged “absolutely” that this was not something to be taken

lightly, and that it was a very serious mandate for the health, life and death of people in B.C. An applicant was required to certify that the information provided in the application was true.

[27] The B.C. Application required Dr. Casses to respond to the following questions:

6. Have you ever had your licence to practise medicine in any jurisdiction revoked, suspended, or restricted in any way?
7. Are you presently, or have you ever been, the subject of a complaint which has resulted in a formal investigation or a disciplinary proceeding by a medical licensing authority?
8. Have you ever had your hospital privileges revoked, suspended, or restricted in any way?
- ...
11. Are you aware of any inquiry likely to be made by any authority, licensing or otherwise, with respect to your conduct, personal behaviour, or competence?

Dr. Casses responded “No” to each of these questions.

[28] However, on August 18, 2000, Dr. Casses performed surgery on a patient, Mrs. Beverly North, at Boswell Memorial. There was a problem with the surgery. Dr. Casses had punctured the patient’s right iliac vein. Several hours later, Mrs. North’s condition deteriorated severely. She suffered acute respiratory distress syndrome, cardiac failure and renal failure. She died a month later.

[29] Boswell Memorial then initiated a review. Dr. Casses testified that he did not learn of the review until September 20, 2000. In a somewhat remarkable coincidence, this was two days after his interview (on September 18, 2000) with Dr. D. H. Blackman, the registrar of the College, in connection with Dr. Casses’ application for admission for registration in B.C. The committee conducting the review at Boswell Memorial asked Dr. Casses for a written explanation in relation to 17 cases going back over five years. Beverly North’s and Frances Martinez’s surgeries were among the 17 cases. Dr. Casses did not inform Dr. Blackman of any of this.

[30] Dr. Casses then went on a planned vacation to Europe. When he returned in October, Dr. Casses was asked to appear before the Boswell Memorial review committee, which he did on October 18, 2000.

[31] Dr. Casses wrote to Dr. Blackman at the College on October 11, 2000, advising him that he had accepted a position as a locum in general surgery at the West Coast General Hospital in Port Alberni. He informed Dr. Blackman that the position ran from October 22, 2000 to November 6, 2000. Dr. Casses did not say anything in this letter about the review that was taking place in Arizona. At trial, Dr. Casses testified that he was not obliged to provide that information for Dr. Blackman, and therefore he did not. Dr. Casses was issued a temporary licence by the College for the purposes of the position in Port Alberni.

[32] Following the review by the committee at Boswell Memorial, a report dated November 8, 2000 was then sent to Dr. Casses, advising him that there was to be an interim suspension of his hospital privileges. Dr. Casses testified that, because he was working in Port Alberni, he did not see the November 8 report until early December. However, based on what Dr. Casses had told Dr. Blackman in his October 11, 2000 letter, the Port Alberni position finished on November 6, and it appears that Dr. Casses had returned to Arizona by November 23. I therefore have significant doubt about the accuracy of Dr. Casses' memory that he did not see the review committee's report until early December.

[33] The suspension of Dr. Casses' privileges at Boswell Memorial automatically triggered a notice to the Arizona Board of Medical Examiners (the "Arizona Bomex"), which was then required to carry out an investigation.

[34] On November 23, 2000, Dr. Casses again wrote to Dr. Blackman. The letter is on the letterhead of Dr. Casses' office in Phoenix, and the content of Dr. Casses' letter implies he was writing the letter from Arizona, not Port Alberni. Again, in my view, this casts doubt on Dr. Casses' evidence that he did not see the November 8 report from the Boswell Memorial review committee until early December. Dr. Casses advised Dr. Blackman that he had accepted a permanent position at the

West Coast General Hospital in Port Alberni beginning January 1, 2001. He advised further that he would be relocating to B.C. by mid-December and required an unrestricted permanent medical licence to be issued to him by that date. Again, Dr. Casses did not mention anything concerning events in Arizona. At trial, he testified that he was not required to.

[35] Since, as of November 23, 2000, Dr. Casses had had his hospital privileges at Boswell Memorial suspended, which in turn triggered an investigation by the Arizona Bomex, his responses to questions 7, 8 and 11 in the B.C. Application were no longer true. However, Dr. Casses' position was that he had no obligation to inform the College of that fact, and therefore he did not.

[36] As he requested, Dr. Casses received a letter from Dr. Blackman dated December 8, 2000, advising him that his name had been entered on the full medical register for B.C., effective December 8, 2000. Again, Dr. Casses did not mention anything about what was taking place in Arizona. I find that, certainly by December 8, 2000 (and probably by November 23, 2000), Dr. Casses had received the November 8, 2000 report of the Boswell Memorial review committee, advising him of an interim suspension of his hospital privileges. However, Dr. Casses did not communicate any of this to Dr. Blackman. At trial, Dr. Casses testified that he was not required to do so. His position was that, if he was not asked to disclose something, he had no obligation to disclose it.

[37] However, Dr. Casses must have appreciated that his licence to practice medicine in B.C. was based (at least in part) on the answers he had given to the questions in the B.C. Application. I find that, as of December 8, 2000, Dr. Casses knew that his answers to questions 7, 8 and 11 were no longer true, but he concealed the facts from Dr. Blackman and the College.

(iii) The Arizona Bomex meeting in January 2001 and the Consent Agreement

[38] Dr. Tim Hunter, who was the Vice Chairman of the Arizona Bomex in 2000 and 2001, testified concerning the Bomex investigation process. The Arizona

Bomex would subpoena records involved in the physician's practice. Those records would then be reviewed by a medical consultant employed by the Bomex, and the consultant would then provide a report to the Arizona Bomex members. According to Dr. Hunter, in Dr. Casses' case, the Arizona Bomex members (including Dr. Hunter) received a lengthy report.

[39] On January 19, 2001, a meeting of the Arizona Bomex, open to members of the public, was held. At that meeting, a consent agreement, whereby Dr. Casses (who gave his address as Port Alberni, B.C.) would voluntarily surrender his Arizona medical licence, was presented to the Arizona Bomex, for acceptance by the Bomex. The voluntary surrender would then terminate any further investigatory proceedings involving Dr. Casses. However, the agreement had not been signed by Dr. Casses. This was a matter of concern for Dr. Hunter.

[40] The Arizona Bomex meeting minutes record that Dr. Hunter made the following motion:

Dr. Hunter moved to summarily suspend the doctor's [Dr. Casses'] license if the Board does not receive the signed consent agreement for surrender of license within 30 days and that the case be referred to formal hearing. However, if the signed consent agreement for surrender of license is received within 30 days, it is accepted and the case will be closed.

[41] The minutes record that the motion was passed, with one abstention.

[42] The minutes also record that: "Dr. Hunter would like to see a paper trail preventing the doctor from practicing in Canada." This was not part of the motion. Dr. Hunter explained that this was something he said on discussion of the motion at the public meeting. Dr. Hunter also recalled saying at the meeting that there were multiple cases of what he felt were egregious medical practice on the part of Dr. Casses.

[43] Dr. Casses signed the document titled "Consent Agreement for Surrender of Active License" (the "Consent Agreement") on January 20, 2001. One of the terms

was that Dr. Casses agreed not to reapply for a licence for five years from the date of surrender. The Consent Agreement also provided that:

5. All admissions made by Dr. Casses are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Dr. Casses. Therefore, said admissions by Dr. Casses are not intended or made for any other use

. . .

7. Dr. Casses further understands that this Consent Agreement and Order, once approved and signed, shall constitute a public record document which may be publicly disseminated as a formal action of the Board.

[44] On cross-examination, Dr. Casses acknowledged that he knew the Consent Agreement was going to be a public document, and he knew that, as of the trial, a copy of the Consent Agreement was available on the Internet.

[45] Under “Findings of Fact,” the Consent Agreement stated:

3. At the time of cancelation of Dr. Casses’ license, Dr. Casses’ staff privileges at Walter O. Boswell and Del E. Webb Memorial hospitals had been summarily suspended based upon quality assurance concerns.

4. Dr. Casses admits that in connection with a surgery, he believes that he fell below the standard of care which might have been harmful to the health of a patient.

The patient referred to in para. 4 was Mrs. Beverly North.

[46] On cross-examination, Dr. Casses acknowledged that he admitted the conduct and circumstances described in paras. 3 and 4 of the Findings of Fact in the Consent Agreement constituted unprofessional conduct, in the sense of any conduct or practice which is or might be harmful or dangerous to the health of the patient or the public.

[47] The Consent Agreement was signed and accepted on behalf of the Arizona Bomex on February 9, 2001.

[48] As of September 2014, the MD profile page for Dr. Casses on the Arizona Bomex website shows as “Board Actions” on February 9, 2001: “Surrender –

Surrender of License – Unprofessional conduct (any conduct which is or might be harmful to the health of a patient or the public).” Dr. Casses acknowledged on cross-examination, and I find, that anyone doing a Google search for him could bring up his Arizona Bomex MD profile, and that it was available publically.

(iv) Dr. Casses’ response to the inquiry from the College about Arizona

[49] Dr. Blackman wrote a letter to Dr. Casses dated February 23, 2001. Dr. Blackman’s letter is not in evidence, although Dr. Casses’ response to it, a letter dated March 9, 2001, was marked as Ex. 68. Based on Dr. Casses’ letter, I find that Dr. Blackman must have asked Dr. Casses to provide an explanation about events in Arizona. There is no admissible evidence about what prompted Dr. Blackman’s letter. However, based on Dr. Casses’ evidence, until he was asked directly by Dr. Blackman, he communicated nothing to the College about events in Arizona. His position was that he had no obligation to do so.

[50] Accordingly, I find that, as of February 2001, Dr. Casses had not communicated anything to Dr. Blackman about either the suspension of his hospital privileges in Arizona or the investigation by the Arizona Bomex that resulted from the suspension, or about the existence and content of (and the background to) the Consent Agreement. It was only when Dr. Casses had no other choice that he provided Dr. Blackman (and the College) with any information.

[51] Dr. Casses’ letter begins:

I am writing in reply to your letter dated February 23, 2001 wherein you request information in response to a number of specific questions. Rather than specifically answering those questions, I thought it would be helpful if I would give you a bit of background concerning my practice history and my decision to move to British Columbia.

At the outset, I would like to acknowledge that there has been a preliminary review of my practice by Boswell Memorial Hospital in Arizona.

[52] In fact, as Dr. Casses well knew, things had gone far – very far – beyond the “preliminary review” stage in Arizona. His hospital privileges had been suspended in

November, triggering an investigation by the Arizona Bomex. As of January 20, 2001, he had agreed with the Arizona Bomex to surrender his medical licence and admitted to unprofessional conduct. However, although in his letter Dr. Casses describes a number of events, attempts to explain (and justify) his actions and expresses pain and regret at having to write to Dr. Blackman, his letter does not mention the existence of the Consent Agreement at all. He was not candid with Dr. Blackman about what had happened in Arizona. In my opinion, this reflects a pattern: Dr. Casses, when he could, concealed bad or uncomfortable (for him) facts, unless there was no other alternative. In my opinion, the evidence discloses that this was how Dr. Casses (perhaps despite his best intentions) dealt with a number of his patients.

[53] I do not know the details of how matters were eventually resolved between Dr. Casses and the College. However, there is no dispute that matters were in fact resolved. In his evidence, Dr. Casses confirmed that sometime in 2001 (he was unable to recall the month), he was again permitted by the College to practice surgery. As far as he was able to recall, Dr. Casses was not placed under the supervision of another doctor when his medical licence was reinstated.

(v) In 2001, Dr. Casses moved from Port Alberni to Creston and in 2002 moved to Quesnel

[54] Sometime in 2001, Dr. Casses left Port Alberni and moved his practice to Creston, B.C. He was subsequently sued by one of his patients there.

[55] By early 2002, Dr. Casses had moved his practice to Quesnel, where he had privileges (through the Northern Health Authority of B.C.) at G.R. Baker Memorial Hospital (“Baker Hospital”).

(vi) Dr. Casses’ College questionnaires

[56] In Dr. Casses’ College questionnaire for 2002, dated February 7, 2002, he answered “no” to the following question:

Have you entered into an agreement with, made a promise or given an undertaking to a licensing authority in the face of potential disciplinary action by that authority (other than the College of Physicians and Surgeons of British Columbia).

[57] Of course, given the Consent Agreement and the circumstances in which Dr. Casses signed it, the true answer to this question was “yes.” When it was put to Dr. Casses on cross-examination that he had given a false answer on the questionnaire, Dr. Casses justified answering “no” on the basis that the College already knew about the Consent Agreement. Indeed, in each subsequent year up to and including 2009, Dr. Casses always answered this question “no.”

(vii) The Arizona jury verdict against Dr. Casses

[58] In 2002, while Dr. Casses was practicing in Quesnel, he was named as a defendant in litigation filed in Arizona by Beverly North’s children (including Ms. Sandra Hix), arising out of Mrs. North’s death. Prior to trial, Dr. Casses’ liability insurer paid \$1 million to settle the claim against him, and so Dr. Casses did not participate in the 2005 trial. In June 2005, the Arizona jury found in favour of the plaintiffs and awarded damages of \$1 million. According to the jury verdict, the jury found the relative degrees of fault to be Boswell Memorial 10% and Dr. Casses 90%.

[59] Dr. Casses did not dispute that he was partially at fault in relation to Mrs. North’s surgery, although he disagreed that he was 90% at fault.

(viii) There are troubling questions about how Dr. Casses became licensed in B.C. and about the oversight of the College

[60] This background raises troubling questions about Dr. Casses’ history in Arizona and the circumstances in which he became licensed in B.C. In my opinion, Dr. Casses shows a strong tendency to minimize, excuse and justify his conduct. I find that, until confronted, Dr. Casses concealed information about events in Arizona, including the suspension of his hospital privileges and the existence of the Consent Agreement, from the College. Although Dr. Casses provided an excuse, he continues to give false answers on the College’s annual questionnaires, implying

that this is acceptable to the College. In my opinion, this also raises troubling questions about the College's oversight.

(b) Dr. Casses' Quesnel patients

[61] All of the surgeries performed by Dr. Casses while in Quesnel were carried out at Baker Hospital, where he was one of two general surgeons. As might be expected, Baker Hospital is much smaller and has fewer resources (both in terms of staff and equipment) than the regional hospital in Prince George. Moreover, the resources available at a large metropolitan hospital such as Vancouver General Hospital ("VGH") go far beyond what Baker Hospital can offer.

[62] Apart from Edith Backer, Mr. Field and Mr. Caskey, Ms. Tomlinson interviewed all of the individuals mentioned below, as part of her research for the Web Story and the TV Reports. She communicated with Ms. Watkins and Caroline Mitchell, Edith Backer's daughters, about their mother's surgeries, and reviewed the correspondence Ms. Watkins exchanged with the Northern Health Authority and the College. Ms. Tomlinson was contacted by Mr. Caskey after the TV Reports were broadcast on September 8.

[63] The evidence at trial was somewhat different than what Ms. Tomlinson had been told. In some areas, the stories were more complete; in others, they were less so. This is not surprising. However, in essentials, the stories the patients and family members told to Ms. Tomlinson and that were reported in the TV Reports and the Web Story were consistent with the stories that came out during the trial.

[64] Dr. Casses did not hesitate to acknowledge that it is a profoundly serious matter to perform surgery on an individual. He accepted as fundamental principles of surgical practice that: there should be informed consent; the surgeon takes care to avoid complications but, when they do occur, the surgeon treats them promptly and fully, and investigates for any signs of complications; and, when there are complications that have to be dealt with, it is very important to be completely up front

and forthright with the patient about those complications, including in the medical record.

(A) Joe Giesbrecht

[65] In September 2003, Dr. Casses performed gall bladder surgery on Mr. Joe Giesbrecht. According to Dr. Casses, when Mr. Giesbrecht was admitted, he was very ill. Originally, Dr. Casses had planned to do a laparoscopic cholecystectomy, in other words, removal of Mr. Giesbrecht's gall bladder (the cholecystectomy) using laparoscopic techniques. He began that procedure. However, the cannula turned out to be too short and, while looking for another larger size, Dr. Casses made a small puncture in Mr. Giesbrecht's small bowel when placing clamps. According to Dr. Casses' operative report, although he recognized the injury, he did not repair it at that stage of the surgery. According to Dr. Casses' operative report, on further investigation, he anticipated performing a laparoscopic cholecystectomy on Mr. Giesbrecht would be extremely difficult and unsafe. He therefore aborted the procedure and proceeded with an open cholecystectomy. According to Dr. Casses' operative report, there were no complications in Mr. Giesbrecht's surgery, apart from the minor puncture of the bowel, which (according to Dr. Casses) was recognized and fixed immediately.

[66] Mr. Giesbrecht remained in hospital in Quesnel for about two weeks, before being discharged. Unfortunately, while in hospital, Mr. Giesbrecht developed a wound infection, which continued to require treatment and attention after Mr. Giesbrecht was discharged.

[67] In January 2005, Mr. Giesbrecht sent a complaint letter to the College in relation to his treatment by Dr. Casses. Mr. Giesbrecht wrote that "my complaint is not so much about the fact that Dr. Casses lacerated my bowel but it is mostly about his actions, or lack of action, after the laceration and completion of the surgery." He stated that, after the surgery, neither he nor his wife (who was employed as a nurse at Baker Hospital) was informed about the laceration of his bowel. He wrote that "My wife had to actually confront Dr. Casses the next morning to find out what had

taken place during my surgery and that he had lacerated my bowel.” Mr. Giesbrecht repeated this version of events in his evidence at trial.

[68] When this version of events was put to Dr. Casses during cross-examination, he categorically denied it. He acknowledged that he did not inform Mr. Giesbrecht what had taken place during the surgery, but explained that Mr. Giesbrecht was in no condition to have such a communication after his surgery, since he was almost comatose. However, according to Dr. Casses, while he was making rounds, he spoke to Mr. Giesbrecht’s wife and gave her a very detailed explanation of what had happened. As far as Dr. Casses could recall, this discussion occurred the same day as Mr. Giesbrecht’s surgery.

[69] Mrs. Giesbrecht was not called as a witness.

[70] The College responded in writing to Mr. Giesbrecht’s complaint. It quoted from a written response from Dr. Casses. There, Dr. Casses described Mrs. Giesbrecht as “an OR nurse [who] understands medical terminology,” and “a very experienced OR nurse who works directly with me.” Mr. Giesbrecht testified that, at the time of his surgery in September 2003, his wife was not working as an OR nurse at Baker Hospital and was not qualified to do so. When this was put to Dr. Casses on cross-examination, he conceded Mrs. Giesbrecht was probably not working as an OR nurse at the time of Mr. Giesbrecht’s surgery.

[71] The College acknowledged to Mr. Giesbrecht that he had had an accidental perforation of his bowel (something Dr. Casses does not dispute). However, the College wrote that “the management of all of the complications appears to be reasonable and appropriate. The perforation appears to have been accidental, and the College would not be specifically critical of Dr. Casses for having the complication or the subsequent treatment of the wound infection.”

[72] Mr. Giesbrecht was not mentioned by name in the Web Story or any of the TV Reports. His case was one of the cases where the patient complained to the College and the College was not critical of Dr. Casses. However, one of Mr.

Giesbrecht's complaints was that he had not been told about what had happened to him during the surgery – that his bowel had been lacerated. There are no medical records in evidence to confirm whether the “very detailed explanation” described by Dr. Casses took place, and Dr. Casses' statement to the College that Mrs. Giesbrecht was an OR nurse at the time of the surgery was misleading.

(B) Robin Odiorne

[73] Ms. Odiorne is in her early 50s. She has lived in Quesnel for over 40 years, and has friends and family there. She has worked for about 30 years as a hairstylist.

[74] On February 11, 2004, Dr. Casses performed surgery on Ms. Odiorne. Two procedures were scheduled: a laparoscopic cholecystectomy and a hysterectomy. According to Dr. Casses' operative report, the laparoscopic cholecystectomy was to be done first, and the hysterectomy would follow, but only if the laparoscopic cholecystectomy was “flawless.”

[75] On the evidence, the laparoscopic cholecystectomy was “flawless,” and Dr. Casses then proceeded with the hysterectomy. During that procedure, Ms. Odiorne's bladder was cut. Dr. Casses' operative report says: “When transecting the vaginal cuff with the Metzenbaum scissors, I made an iatrogenic injury in the posterior fundus of the urinary bladder That injury was promptly recognized, and then I proceeded in repairing the injury”

[76] Dr. Casses' operative report then describes how another surgeon, Dr. Geoff Thomas, became involved. Dr. Casses writes: “Because of the concern with this iatrogenic injury of the urinary bladder, I requested the assistance of Dr. Thomas.”

[77] Dr. Thomas, a urologist, prepared his own operative report. Based on his description, the repair that Dr. Casses had done was not satisfactory. Sutures placed by Dr. Casses were removed and the “bladder defect” was reopened. Dr. Thomas described how, eventually, a deep suture on the right side of the wound was identified. Dr. Casses confirmed in his evidence that he had placed this suture

in an attempt to repair the cut in the bladder. Based on Dr. Thomas' report, once this suture was removed, the repair proceeded uneventfully.

[78] Dr. Casses' evidence concerning what he told Ms. Odiorne after the surgeries was equivocal. At one point, he testified that he could not recall what conversation he had with Ms. Odiorne. It would not be surprising that, 10 years after the fact (and with no contemporaneous notes), Dr. Casses was unable to remember what he talked about with Ms. Odiorne. However, at another point in his evidence, Dr. Casses testified that he had a detailed conversation with Ms. Odiorne, to the effect that the surgery went well, and, although there was a tear in her bladder, this was fixed and she would recover very well.

[79] On cross-examination, Dr. Casses acknowledged that an operative report is an important part of a patient's medical history, and that it is important to complete it shortly after the operation, since the surgeon is relying on his memory. However, his report was dictated February 22, 11 days after the surgery, in contrast to Dr. Thomas' report, which was dictated the day of the surgery. Dr. Casses described his report on Ms. Odiorne's surgeries as a "very good" report, and testified that, since there had been a surgical complication, he took extra time to make sure that everything was correct.

[80] Despite that, at trial, Dr. Casses attempted to distance himself from his operative report. Although he wrote in his report, "I made an . . . injury . . . in the bladder," Dr. Casses testified that in fact he was not responsible for the injury, which he acknowledged was a complication. Rather, according to Dr. Casses, it was his surgical assistant who had cut Ms. Odiorne's bladder. Dr. Casses explained that he nevertheless accepted responsibility – and used the word "I" in his operative report – because he was the "captain of the ship." Dr. Casses testified that his operative report was not wrong, but when it said "I," that was not him but his assistant.

[81] In her evidence, Ms. Odiorne described meeting with Dr. Casses, prior to the day of her surgeries, to discuss the proposed surgeries with him. (Dr. Casses was unable to recall details of this meeting, which is unremarkable given the passage of

time.) Ms. Odiorne recalled that she asked Dr. Casses whether anyone had died when he performed this surgery, and he told her no, that he was good at it. Ms. Odiorne explained that she was scared and nervous, and wanted to know something about Dr. Casses' history.

[82] Ms. Odiorne could not recall whether she saw Dr. Casses prior to her surgery on February 11. After surgery, she recalled waking up in Baker Hospital's intensive care unit, with people around her. She recalled being in considerable pain (akin to labour pains) in the area of her bladder. Ms. Odiorne recalled that Dr. Casses came to see her, and told her that her bladder had been accidentally "nicked," but it had been repaired and everything looked fine. According to Ms. Odiorne, Dr. Casses used the word "nicked." Ms. Odiorne remembered thinking that a "nick" was small and minor.

[83] Dr. Casses took great offence at the proposition put to him on cross-examination that he had "nicked" Ms. Odiorne's bladder. He placed a somewhat bizarre interpretation on the word "nick," describing it as "something really grotesque," and claimed he arrived at this understanding by looking up the meaning of the word in several dictionaries. I do not find his evidence believable, and I prefer Ms. Odiorne's evidence of her discussion with Dr. Casses to Dr. Casses' evidence.

[84] According to Ms. Odiorne, Dr. Thomas came to see her the morning after her surgery. (She explained that, since Quesnel was a small town, she knew who Dr. Thomas was.) As Ms. Odiorne recalled, Dr. Thomas asked her how she was doing, and she told him not good at all, and mentioned her bladder. According to Ms. Odiorne, Dr. Thomas told her that if he had not been in town, she might not have lived, and he described the problems with his repair of the laceration in her bladder. I find that Ms. Odiorne's evidence is consistent with Dr. Thomas' operative report, and that "a bloody mess" would be an apt description of what was facing Dr. Thomas and Dr. Casses until Dr. Thomas completed the repair. According to Ms. Odiorne, after she was discharged from hospital, she found her recovery very difficult. She

was in considerable pain and very anxious. As Ms. Odiorne recalled, as she was recovering, she dealt mostly with Dr. Thomas, rather than Dr. Casses.

[85] According to Ms. Odiorne, because of what she had been told by Dr. Thomas, she became concerned that Dr. Casses may not have told her the truth about what had happened during her surgery. Although Dr. Casses had described her bladder as being “nicked,” Dr. Thomas had told her it was a “bloody mess” and took almost an hour to repair.

[86] I find that Dr. Casses did not fully explain to Ms. Odiorne what had happened to her in surgery, and in particular, did not tell her about why Dr. Thomas had become involved. Rather, in describing what had happened as a nick or small cut, he left Ms. Odiorne with the impression that nothing of consequence had occurred. I find that Ms. Odiorne only learned why Dr. Thomas had become involved, and about the full extent of the complication, when she spoke to Dr. Thomas.

[87] Eventually, in May 2007, Ms. Odiorne wrote a letter to the College. At trial, she explained that she was motivated to write not only because of her own experience but also because of what she was hearing in the community and her concern for people in her community, especially seniors. Among other things, Ms. Odiorne wrote (concerning Dr. Casses): “This Dr needs to be reviewed! His history needs to be reviewed ASAP!!” She referred to herself as “A very concerned ex-patient.” Ms. Odiorne sent a second letter to the College in June 2007, where she wrote (among other things): “I am afraid for myself and all who may go in blind like myself, and be sorry with the results! I do not want anymore innocent people to suffer needlessly.”

[88] As part of the College’s normal process in dealing with complaints, Dr. Casses was asked to provide a response and did so in November 2007. In describing what occurred when Ms. Odiorne’s bladder was cut, he wrote: “The iatrogenic injury was promptly recognized and immediately Dr. Geoff Thomas, a Urologist was requested in the OR and he very kindly repaired the urinary bladder injury.” However, Dr. Casses did not mention anything about his attempt to repair

the injury before calling for Dr. Thomas. He did not mention that Dr. Thomas had to dismantle Dr. Casses' attempt at repair, which included searching for and removing the "deep suture" that had been placed by Dr. Casses. Nevertheless, the College clearly was in possession of and reviewed both Dr. Casses' and Dr. Thomas' operative reports.

[89] The College responded to Ms. Odiorne's complaint by letter dated January 25, 2008. The College wrote in part:

The committee notes that inadvertent trauma to the bladder . . . are well recognized complications of an abdominal hysterectomy. In this case, the complication was promptly recognized and appropriately dealt with. The committee members felt that Dr. Casses had applied appropriate surgical skills and did not feel that Dr. Casses was negligent when accidentally cutting the bladder.

. . .

In the committee's review, some documentation concerns were uncovered regarding your bladder repair. The committee also is cognizant that your letter of concern advised the College that you had general concern that [sic] Dr. Casses' surgical skills. With regards to this the Quality of Medical Performance Committee has asked the Executive Committee to review your concerns.

With regards to the surgical complication that you sustained . . . the committee members sympathize with the fact that this must have been of significant emotional and physical discomfort to you, but could not conclude that this was occasioned by lack of skill or neglect.

[90] Also on January 25, 2008, the College wrote to Dr. Casses, enclosing a copy of its letter to Ms. Odiorne. The letter to Dr. Casses reads in part:

As you will note from the attached letter to Ms. Odiorne, the committee felt that [the bladder laceration] was an unfortunate surgical complication which was promptly recognized by yourself. For this reason the committee felt that Ms. Odiorne's complaint was not sustainable. However, in the process of reviewing your letter of response, records and your history of previous surgical complaints, the committee found as follows:

- Your bladder repair resulted in bilateral ureteric occlusion from mal-placed sutures.
- Your operative report did not disclose that this was the reason for summoning Dr. Thomas.
- Your response to the College should have addressed this complication.

- Committee members noted a large number of surgical complications over the last four years, particularly with regards to laparoscopic surgery.

In view of the above the committee felt that while the concern raised by Ms. Odiorne may not be sustainable, the number of previous surgical complications raised a concern that has been brought to the attention of the Executive Committee of the College for their review.

[91] On cross-examination, Dr. Casses testified that he accepted all of the bulleted criticisms, except for the last one.

[92] However, almost immediately, he qualified his answer, demonstrating how sensitive he is to criticism, and also a very strong inclination to deflect or minimize it:

Q Okay. Well, we can get to that, but you -- despite what you have said a few minutes ago, you acknowledge that the bladder repair resulted in occlusion from malplaced sutures, that Dr. Thomas -- that your operative report and your letter to the College neglected to mention those important things?

A No, I don't -- I don't acknowledge that. I think that they -- my explanation has been given several times. I do the first repair. If I would have been satisfied with the repair I -- I didn't have a reason to call Dr. Thomas in. Because I was not one hundred percent satisfied with my repair of the urinary bladder, I called Dr. Thomas to check, double check, and confirm whether my repair is satisfactory or not. My repair is not satisfactory. We dismantle the repair. We do it again.

[93] The College wrote a second letter to Dr. Casses, dated January 29, 2008, informing him that it would be conducting a summary review of his practice.

[94] According to Ms. Odiorne, when she received the College's response to her complaint, she was so disgusted that she threw out the letter.

[95] In August 2009, Ms. Odiorne told Ms. Tomlinson her story, essentially as she testified at trial, including her discussion with Dr. Thomas, the College's response to her complaint (that it had been rejected) and what she had done with the College's letter. Ms. Tomlinson asked Ms. Odiorne to see if she could get another copy of the College's letter, but, as far as Ms. Tomlinson could recall, she did not see a copy until after the litigation had started -- long after publication of the Web Story and the TV Reports.

[96] I find that Dr. Casses was not candid with either Ms. Odiorne or with the College about what happened during Ms. Odiorne's surgery. He minimized the complication of the lacerated bladder and failed to mention his unsuccessful attempt to repair it. These events were not inconsequential for his patient, Ms. Odiorne. He failed to tell Ms. Odiorne the real reason for calling in Dr. Thomas, and left Ms. Odiorne to learn this from Dr. Thomas the next day. Dr. Casses' failure to mention in his operative report that it was his unsuccessful attempt to repair the laceration that resulted in Dr. Thomas being called in, was the subject of critical comment by the College (which Dr. Casses at first accepted, but then quickly rejected). Dr. Casses failed to acknowledge, either to Ms. Odiorne or to the College, what is disclosed by Dr. Thomas' operative report: that the repair (by Dr. Thomas) took significant time and effort, and was complicated by a misplaced suture inserted by Dr. Casses.

(C) Krystal Cook

[97] Ms. Cook is now married, and her surname is now Rawls. However, in these reasons, I will continue to use the surname "Cook."

[98] On February 18, 2004 (a Wednesday), Ms. Cook had surgery performed by Dr. Casses to address an ingrown toenail on the great toe of her left foot. Ms. Cook had just turned 19. In Dr. Casses' operative report, his clinical note stated: "This young female has developed a left ingrown toenail with persistent inflammation and even infection of the medial and lateral aspect of the left toe edges. For that reason, the patient was recommended surgical treatment."

[99] Based on the operative report, the surgery, done under a local anesthetic, was uneventful. In his oral evidence, Dr. Casses described the outcome as "perfect." Ms. Cook was discharged home that day. I do not know what post-operative instructions Dr. Casses gave to Ms. Cook, although he testified he gave her both oral and written instructions. If there was something in her clinical records about what she was told or given, nothing was entered into evidence at trial. Dr. Casses did not prescribe any antibiotics. He explained that prescribing antibiotics

was not in accordance with the guidelines from the Center for Disease Control in Atlanta. There may, in fact, have been an excellent medical explanation for why Dr. Casses did not prescribe antibiotics for Ms. Cook. However, I doubt that he provided any such explanation to Ms. Cook or to her parents.

[100] By Friday, Ms. Cook was in a great deal of pain. One of her parents took her to see her family doctor, Dr. Strovski. However, Dr. Strovski was unwilling to unwrap the surgical dressing that Dr. Casses had applied, and did not. According to Ms. Cook, he told her to rest and contact Dr. Casses on Monday. Ms. Cook accepted that advice and returned home.

[101] On February 23, 2004 (Monday), Ms. Cook returned to see Dr. Casses. She came in on crutches. She recalled him saying that she should “quit being a baby,” something Dr. Casses denied saying. Ms. Cook found Dr. Casses’ remarks hurtful. When Dr. Casses unwrapped the surgical dressing, he saw that Ms. Cook had a horrible infection at the site of the surgery. He made arrangements to have Ms. Cook admitted to hospital immediately. He wrote orders for IV antibiotics and painkillers.

[102] On February 24, 2004, under a general anesthetic, Dr. Casses examined Ms. Cook’s toe and did a surgical cleaning. According to his operative report, on examination, Dr. Casses found severe cellulitis around the skin and subcutaneous tissue of Ms. Cook’s left great toe, as well as around the bed of the toenail. Among other things, he removed the remainder of the toenail. I do not know whether Dr. Casses had a plan for treatment of Ms. Cook going forward, because, if there were some relevant medical records, nothing was entered into evidence. There is no evidence any x-rays were taken, for example. On February 26, 2004, Dr. Casses left on a pre-planned holiday, and Dr. Katalinic (the other general surgeon in Quesnel) took over Ms. Cook’s surgical care in hospital.

[103] Ms. Cook remained in hospital about a week, until March 4. Once she was discharged home, she had her dressing changed daily by a home-care nurse and she attended the hospital daily for IV antibiotics. However, her condition worsened

and, on the recommendation of the home-care nurse, she returned to hospital on March 14. X-rays showed that she had probably developed osteomyelitis. Ms. Cook saw Dr. Casses on March 15. Her father was with her, and both he and Ms. Cook recall that Mr. Cook was very upset and angry about his daughter's situation. As Mr. Cook recalled, he had an unpleasant exchange with Dr. Casses, and decided to take Ms. Cook to the much larger hospital in Prince George. Dr. Casses disputed Mr. Cook's version of events, and his evidence was to the effect that he was the one who arranged to have Ms. Cook transferred to Prince George. I find that Dr. Casses did arrange the transfer, but it was at Mr. Cook's request, indeed, his insistence. It was at Prince George that the decision was made to amputate Ms. Cook's left great toe in order to save her foot.

[104] In March 2004, Ms. Cook wrote two posts to the website "healthboards.com." The first, dated March 4, 2004, is quite a long post, in which Ms. Cook describes her experience from February 18 to March 4, 2004. At trial, Ms. Cook testified that what she wrote was true. She did not mention Dr. Casses (or any other physician) by name, although she did mention that on the Monday after the surgery, the surgeon who performed the operation told her "don't be a baby." She later shared this post with Sandra Hix (Beverly North's daughter) and with Enza Uda at CBC, during Ms. Uda's research for a possible story on Dr. Casses. The second posting, dated March 11, 2004, is much shorter. In it, Ms. Cook asked for some advice based on the current state of her wound.

[105] Ms. Cook described how the other surgeon in Quesnel who had been involved in her care apologized to her for what had gone on. At trial, Dr. Casses became quite agitated when asked if he had ever apologized to Ms. Cook. He said he did not have to apologize because he had done nothing wrong. Dr. Casses said that he did everything "by the book," and that what had happened was not his fault but the fault of the bacteria that caused the infection.

[106] Ms. Cook never complained to the College about Dr. Casses, although, she said that, after she was contacted by Ms. Hix in 2009, she regretted that she had not

done so. She explained that, at the time in 2004, she was just 19 and wanted to put things behind her and forget about them. However, she explained that later, when she realized that others had been affected, she was sorry that she had not spoken up at the time. Ms. Cook explained that she participated in the gathering on August 24, 2009 at Mr. Backer's house (described in more detail below) because she wanted to get the word out to people in her community that Dr. Casses was possibly not the best surgeon and that people had the right to choose and could go elsewhere, and also to tell her story.

[107] Ms. Cook came to Dr. Casses as a teenager with a real medical problem, requiring surgery. In the absence of some evidence that Dr. Casses' instructions to Ms. Cook included returning to see him immediately if her wound became very painful (and there is no such evidence), I do not think that Ms. Cook or her parents can be criticized for going to the family doctor on February 20, 2004 or following the doctor's advice. When Ms. Cook returned to see Dr. Casses on February 23, she had a very serious medical problem that required immediately hospitalization. Dr. Casses' admonishment – don't be a baby – was harsh, uncalled for, hurtful and disrespectful to his patient. The other Quesnel surgeon involved in her care apologized to her, but Dr. Casses clearly feels he has nothing whatsoever to apologize for. That Ms. Cook associates Dr. Casses with the loss of her toe is, in the circumstances, not surprising.

(D) Ronald Caskey

[108] On March 29, 2004, Mr. Caskey went into Baker Hospital for what he was expecting would be day surgery by Dr. Casses for a hernia. According to Mr. Caskey, that was the only procedure he had discussed with Dr. Casses. However, when Mr. Caskey was discharged home, he was concerned because he had bandages around his entire abdomen. Then, when the bandages were taken off, he was very surprised to see that he had stitches from his sternum to his navel.

[109] On the follow-up visit with Dr. Casses, Mr. Caskey asked Dr. Casses what had happened. As Mr. Caskey recalled, Dr. Casses told him that his abdominal

muscles were torn and had to be sewn up. However, according to Mr. Caskey, he had never had any issues with his abdominal muscles. Mr. Caskey testified that no one had talked to him about cutting him from sternum to navel, and that he certainly would have remembered such a discussion. According to Mr. Caskey, Dr. Casses never said anything about it to him.

[110] According to Mr. Caskey, he developed an infection at the top and bottom of the incision, and ended up in Baker Hospital Emergency. As he recalled, he saw Dr. Casses after his visit to the ER, and told him what had happened. According to Mr. Caskey, Dr. Casses told him there was no infection, and the redness was simply a normal part of healing. At that point, according to Mr. Caskey, he lost confidence in Dr. Casses and never went back to him.

[111] According to Dr. Casses, and contrary to Mr. Caskey's evidence, he discussed performing the additional procedure with Mr. Caskey in the operating room on March 29, 2004, and obtained his consent. However, Dr. Casses acknowledged that his operative report, dictated the same day as Mr. Caskey's surgery, made no mention at all of any such discussion. Dr. Casses described having a discussion with Mr. Caskey in the operating room as a "shortcoming," and not documenting it in writing as a second "shortcoming." Nevertheless, according to Dr. Casses, he had Mr. Caskey's verbal consent to perform the second procedure, although, as of trial, he was unable to recall exactly what Mr. Caskey said.

[112] There were no medical records in evidence that supported Dr. Casses' version of events.

[113] Mr. Caskey wrote to the College, complaining about his treatment by Dr. Casses. In accordance with the usual practice, Dr. Casses was asked by the College to respond. Dr. Casses did so by letter dated July 4, 2005, which reads in part:

On the operating room table on March 29, 2004, as is my routine before putting the patient under anesthesia, I asked the patient what procedure we are doing (double-checking) and simultaneously on the operating room table,

I asked him to raise his head, . . . At that point, as stated in my OR note, it was quite clear to see a bulging mass from the xyphoid down to the umbilicus. With that finding, . . . I pointed out to the patient that his hernia was larger than just a supra-umbilical hernia. On the OR table it was explained that it would be insufficient just to fix the supra-umbilical hernia without addressing the bulging mass. With no objection from Mr. Caskey we proceeded with midline ventral hernia repair.

[114] When it was put to Dr. Casses on cross-examination that he never had any conversation with Mr. Caskey in the operating room, but went ahead on his own to do the expanded procedure, Dr. Casses denied it. He also denied that he did not tell Mr. Caskey what had happened until Mr. Caskey came back to see him a few days after the surgery.

[115] By letter dated October 12, 2005, the College responded to Mr. Caskey's complaint, and said in part:

The issue of having consented to the repair of the diastasis recti is one which the reviewer could not come to a definitive conclusion. . . . Under the circumstances, the College would consider your complaint partially valid owing to the difficulty of trying to determine whether a proper consent was available. The College will share its criticisms of Dr. Casses' care with him.

[116] Mr. Caskey wrote again to the College on October 25, 2005, and said in part:

At no time did Dr. Casses discuss with me that I had a problem with my abdominal muscles. . . .

Yet Dr. Casses claims that I had a problem and that he discussed this with me and that I gave him oral permission to perform surgery. Not true!

[117] On January 4, 2006, the College responded by letter to Mr. Caskey's October 25, 2005 letter. In accordance with the general practice, Dr. Casses received a copy of the College's letter. The letter read in part:

In summary, the [Quality of Medical Performance] committee was critical of the care provided by Dr. Casses. The committee was critical of his decision to proceed with more extensive surgery at the time of the planned hernia repair, when the indication for the more extensive surgery was primarily cosmetic and not initiated by you. The committee also did not believe that Dr. Casses had obtained adequate informed consent before proceeding with this more complicated surgery. The committee considered it inappropriate to

proceed with more extensive surgery based on a brief preoperative discussion.

[118] In his testimony at trial, and to his credit, Dr. Casses acknowledged that he read this, “understood and – and humbly accept the criticism, because it is perfectly valid.”

[119] I find that Dr. Casses did not have any discussion with Mr. Caskey on March 29, 2004 about performing additional surgery and therefore did not have Mr. Caskey’s consent to perform such surgery. I prefer Mr. Caskey’s evidence, which is consistent with Dr. Casses’ operative report, to that of Dr. Casses. Dr. Casses’ conduct is a breach of what he agreed is one of the fundamental principles of surgical practice. I find further that Dr. Casses did not inform Mr. Caskey about what had happened in the operating room until Mr. Caskey asked him on the follow-up visit. In that respect, I find that Dr. Casses concealed relevant facts from his patient. In addition, I find that, in responding to the College in relation to Mr. Caskey’s complaint, Dr. Casses was not forthcoming about his failure to obtain Mr. Caskey’s consent to operate, and attempted to justify his conduct by misstating the facts.

[120] Ms. Tomlinson did not have any contact with Mr. Caskey prior to broadcast of the first TV Report on September 8, 2009. Mr. Caskey contacted her on September 9 and told her about his story, including about his complaint to the College, and sent her the associated documents. The information that he had made a complaint to the College, and the outcome, was incorporated into the September 9 and September 10 TV Reports and the Web Story.

(E) Tammy Mead

[121] On July 26, 2004, Ms. Mead underwent a laparoscopic cholecystectomy performed by Dr. Casses. According to Dr. Casses’ operative report dictated the same day, the surgery was uneventful and without complications. Ms. Mead went home later that day. Ms. Mead recalled that she was feeling nauseous and feverish. She was throwing up bile. She was feeling quite unwell when her husband took her

back to Baker Hospital on July 28. She was given a “pink lady,” some Graval and pain medication, and then sent home.

[122] Ms. Mead returned to see Dr. Casses on July 29, 2004. As she recalled, she told him that she was throwing up green bile and in pain. As she recalled, Dr. Casses looked at her and said: “You just had surgery. Go home and have a hot bath.”

[123] According to Ms. Mead, Dr. Casses did not conduct any examination of her, did not order any tests for her and did not prescribe any medications for her. As Ms. Mead recalled, Dr. Casses did not say anything to her about a follow-up visit. There are no medical records that contradict Ms. Mead’s evidence on these points.

[124] As Ms. Mead recalled, she returned home feeling sick and discouraged. She concluded that she was not going to get help locally in Quesnel. Her husband then took her to Prince George. By that time, she was vomiting and the pain was getting worse. Further surgery was required, which was carried out in Prince George.

[125] In October 2004, Ms. Mead made a complaint to the College concerning Dr. Casses.

[126] In accordance with the usual process, Dr. Casses was asked to provide the College with his response, and did so by letter dated November 6, 2004. Among other things, he said:

Obviously, if a surgical complication occurs in one of my patients, I am never pleased. Nonetheless, I immediately assess the situation and take corrective measures.

He also wrote that:

Before I begin my response to each one of Mrs. Mead’s accusations, I wish to first categorically deny all of them. Most importantly, as I will demonstrate with the clinical evidence contained herein, no surgical complication, no bowel perforation, no duodenal perforation, no “cut liver” occurred during the laparoscopic cholecystectomy which I performed on Mrs. Mead[.]

[127] Dr. Casses was very definite in his letter to the College that he had not perforated Ms. Mead’s bowel. He described his surgery on Ms. Mead as “meticulously performed.”

[128] However, in fact, as Dr. Casses acknowledged on cross-examination, Ms. Mead was suffering from two problems related to the surgery he performed. One was that Ms. Mead’s bowel had indeed been perforated during that surgery. The other was that she had a bile leak. Dr. Casses acknowledged that he had not detected either problem during surgery. He conceded that “eventually” he would have discovered them if he had taken Ms. Mead’s complaints on July 29 more seriously. His evidence on cross-examination contradicted a number of statements made in his November 6, 2004 letter to the College, including his assertion in the letter that the bowel perforation was the result of an endoscopic retrograde cholangiopancreatography (“ERCP”) performed in Prince George, rather than something that had occurred during his surgery in Quesnel.

[129] The College responded to Ms. Mead’s complaint by letter dated March 14, 2005, on which Dr. Casses was copied. The letter read in part:

In summary, the committee was of the opinion that you had a laparoscopic cholecystectomy and were unwell from the time of your surgery until a further operation in Prince George. The committee [w]as of the opinion that the laboratory work, clinical findings, and CT scan, which were carried out before the ERCP, would suggest that you had a significant complication prior to the ERCP.

The committee was of the opinion that the preponderance of evidence would therefore suggest that your problems were related to a complication arising from your original surgery. The committee agreed that this was a valid complaint brought to the committee by yourself. . . .

The committee directed that Dr. Casses be informed that the committee found this care concern to be valid with the suggestion that he consider the possibility of surgical complications in his patients who present with pain postoperatively and the advice to follow these patients closely so that his potential complication can be detected in a timely fashion.

[130] The College also wrote separately to Dr. Casses on March 14, 2005. That letter read in part:

The committee was of the opinion that the preponderance of evidence would suggest that Mrs. Mead's problems were related to a complication arising from her original surgery. The committee agreed that this was a valid complaint brought to the College by Mrs. Mead. The committee directed that you be informed that the committee found this care concern to be valid, with the suggestion that you consider the possibility of surgical complications in your patients who present with pain postoperatively and the advice to follow these patients closely so that this potential complication can be detected in a timely fashion.

[131] Dr. Casses confirmed on cross-examination that he understood that was the substance of the College's conclusion, and that what was described was indeed his shortcoming with respect to Ms. Mead, "absolutely."

[132] In August 2009, Ms. Mead provided Ms. Tomlinson with copies of the correspondence with the College relating to her complaint. Ms. Tomlinson also interviewed her.

[133] I find that Dr. Casses did not adequately admit to or treat the complications from the surgery he performed on Ms. Mead. In particular, prior to trial, he refused to acknowledge even the possibility that he had perforated Ms. Mead's bowel during surgery, which I find (based on Dr. Casses' evidence on cross-examination) that he in fact did. Rather, in communicating with the College in response to Ms. Mead's complaint, he attempted to build a case that other physicians were responsible.

[134] I find that, when Ms. Mead came to Dr. Casses for a follow-up appointment after the surgery, he failed to take her complaints seriously (even though she was quite unwell) or even investigate them, compounding the damage to his patient from the original complications from the surgery. I find that his approach to Ms. Mead was consistent with the views he expressed so strongly in his letter to the College – that his surgery was "meticulously performed" – and with his rejection of even the possibility that he might have made an error. I find that, unfortunately, Dr. Casses' approach was not at all compatible with the quality of patient care Ms. Mead was entitled to expect from her surgeon.

(F) Leigh Ann Monahan

[135] On September 2, 2004, Ms. Monahan had a laparoscopy and a laparoscopic tubal ligation performed by Dr. Casses. According to Dr. Casses' operative report dictated the same day:

The left fallopian tube was properly identified and then clipped with 4 surgical clips. One of the clips on the left, when applied, transected the left fallopian tube, and that appeared to be of no consequence[.]

[136] Based on the operative report, the surgery was without complications. In his evidence at trial, Dr. Casses was very firm that the transection of the fallopian tube, described in his operative report, was not a complication.

[137] However, later that day, one of the nurses reported to Dr. Casses that Ms. Monahan's blood pressure was low, and that she appeared sweaty, had a high heart rate and was pale. Dr. Casses suspected that Ms. Monahan may have been experiencing "some post-op intra-abdominal bleeding," and he determined that she needed to be returned immediately to the operating room, which she was. According to his operative report for the second surgery, Dr. Casses found about three units of "free blood" (fully half of the total blood in the human body) in Ms. Monahan's peritoneal cavity. This was completely abnormal. Dr. Casses' wrote in his operative report for the second surgery:

I started evacuating that free blood in the peritoneal cavity and gently removing the laparotomy pads in trying to identify the source of the bleeding.

In doing this maneuver, I just noticed that she was oozing from the broad ligament in close proximity to the laparoscopic clips placed in the left fallopian tube.

...

The bleeding point in the broad ligament was easily controlled with a couple of interrupted stitches

[138] According to Dr. Casses, the bleeding had not been coming from the area where one of the surgical clips had transected the left fallopian tube, although he acknowledged that the bleeding was "in close proximity."

[139] After the surgeries performed by Dr. Casses, Ms. Monahan experienced a number of problems, including quite severe abdominal pain. Eventually, in January 2005, she had further surgery performed in Williams Lake by Dr. Glenn Gill (a specialist in obstetrics and gynecology) and Dr. Brosseuk (a general surgeon). Adhesions were discovered in the area where Ms. Monahan was experiencing pain and these were addressed.

[140] According to Dr. Gill's January operative report, on this surgery, there was no sign of the clips that had been placed by Dr. Casses. As a result, and to be on the safe side, Dr. Gill applied "Filshie clips" to the mid-portion of each fallopian tube. Dr. Gill explained that a Filshie clip is a specially designed clip, specifically for performing tubal ligations. It is wider and longer than the regular surgical clip and also has a Teflon-type cushion on the interior aspect of the clip. The Filshie clip is designed to clamp over the entire width of the fallopian tube and occlude the tube without cutting through or transecting it.

[141] The January 2005 surgery appears to have resolved the main problems Ms. Monahan experienced after her September 2004 surgery.

[142] At trial, I had the benefit of three expert reports, two from Dr. Gill (tendered on behalf of the CBC Defendants) and one from Dr. Howard Pendleton (tendered on behalf of Dr. Casses). Like Dr. Gill, Dr. Pendleton is also a medical doctor specializing in obstetrics and gynecology. Both doctors provided opinions about Dr. Casses' surgery on Ms. Monahan, the cause of the post-operative bleeding, his use of surgical clips (as described in the operative report) rather than the Filshie clips ultimately used by Dr. Gill, and other matters.

[143] In Dr. Pendleton's opinion, the transection of the left fallopian tube was not the cause of the internal bleeding that created the very grave situation for Ms. Monahan and the need for the second surgery in September. However, the question on which Dr. Pendleton was asked to give his opinion was: "did the clip described as transecting the fallopian tube thereby immediately cause significant bleeding of the fallopian tube" [underlining added]. Moreover, Dr. Pendleton's

opinion depends to a large degree on the accuracy and reliability of Dr. Casses' operative report.

[144] In his November 5, 2014 report, Dr. Gill was asked: "What is the most reasonable explanation for bleeding that was discovered after the first surgery?" In Dr. Gill's opinion, from Dr. Casses' second operative report, it was clear that the bleeding that resulted in significant blood loss to Ms. Monahan occurred at the site where the tubal ligation was performed and where the surgical clips were placed on the left side. In his opinion, the most likely explanation was that the transected tube described in the first operative report did in fact subsequently bleed. Dr. Gill went on to explain that the fallopian tubes lie at the top-most aspect of the broad ligament, and are in fact the upper-most part of the broad ligament. In his opinion, the most likely cause of bleeding when the tube is transected in the area described as "close proximity to the broad ligament" would be the surgical clip transecting the tube.

[145] Dr. Gill explained that there is an aspect of laparoscopic surgery that can suppress or delay bleeding, so that acute bleeding can be missed at the time of the original surgery. I note that, at trial, Dr. Casses rejected this explanation.

[146] At trial, Ms. Monahan's memory of events at the time of her surgeries in September 2004 was quite poor. This is not surprising given the passage of time, and the fact that she was the patient.

[147] Ms. Monahan's mother, Wendy Monahan, also testified at trial. She was present at the Baker Hospital when Ms. Monahan had her surgery. I think it fair to say that Ms. Wendy Monahan recalled the circumstances that day as being quite traumatic and that she feared her daughter was going to bleed to death. This is essentially what she communicated to Ms. Tomlinson in August 2009.

[148] There was some confusion about whether Ms. Monahan had in fact complained to the College, and Ms. Wendy Monahan told Ms. Tomlinson such a complaint had been made. I find that Ms. Monahan did not make a complaint to the

College about Dr. Casses. However, Ms. Monahan did file a lawsuit alleging he was negligent. That action was settled.

[149] I prefer Dr. Gill's more complete discussion of the cause of the bleeding after Ms. Monahan's first surgery to that of Dr. Pendleton. I find that Dr. Casses' comment that the transection of the fallopian tube "appeared to be of no consequence," is consistent with an attempt on his part to minimize that his patient nearly bled to death from an event that occurred during his surgery. In fact, the transection of the fallopian tube was of great consequence to Ms. Monahan. Fortunately, the ultimate outcome for Ms. Monahan was a positive one.

(G) Stephanie Aaslie

[150] On April 18, 2005, Ms. Aaslie was admitted to Baker Hospital, suffering from acute gallbladder disease. Ms. Aaslie was then in her mid-20s. On April 20, 2005, she had surgery performed by Dr. Casses. Originally, Ms. Aaslie was to have had a laparoscopic cholecystectomy. However, after that surgery had begun, Dr. Casses noticed a small puncture site dripping bile, and not knowing the source of the bile, he made the medical decision to abandon that procedure. Instead, Ms. Aaslie had open surgery to remove her gall bladder. The surgery included exploration of her common bile duct and the insertion of a T-tube to drain bile. In the operative report, Dr. Casses states that there were no complications. Dr. Casses mentioned Ms. Aaslie's weight and body size as factors that contributed to a lengthy and challenging surgery. Ms. Aaslie was discharged from hospital on April 26, 2005.

[151] However, after she returned home, Ms. Aaslie continued to feel very unwell. She was unable to eat or drink and was vomiting. She went back to see Dr. Casses. At trial, he testified that he was unable to recall her complaints and could only rely on whatever was in the hospital records. In a consultation report dated May 2, 2005, Dr. Casses described his impression when he saw her that day. He said (among other things) that "she is still massively overweight" and she "doesn't really look sick." Dr. Casses described her main problem as of May 2 as dehydration. He readmitted her to hospital for fluid therapy (among other things), and he anticipated

that she would be ready for discharge in 48 hours. However, as Ms. Aaslie recalled, she became more ill. She had “horrible” vomiting and was in extreme pain. She continued to remain in hospital.

[152] I find that, in fact, in addition to being dehydrated, Ms. Aaslie was leaking bile from a misfit T-tube inserted during Dr. Casses’ surgery, and she was indeed quite unwell, as she described.

[153] On May 10, 2005, at the urging of Ms. Aaslie’s family, she was transferred by ambulance from Quesnel to Prince George, where Dr. Casses, at the request of the family, had arranged a referral to another physician.

[154] At trial, Ms. Aaslie’s memory of her time in Prince George was quite sketchy, although she recalled that she continued to feel very ill. In mid-May, she was transferred by air ambulance to VGH. Ms. Aaslie recalled being told that the bile duct had been cut and was leaking inside her. At VGH, she was seen by Dr. Charles Scudamore, a very senior surgeon there.

[155] Dr. Scudamore’s operative report was admitted into evidence as a business record, and he also testified at trial. Although the VGH transfer summary states Ms. Aaslie’s diagnosis on admission as “bile duct injury,” Dr. Scudamore’s pre-operative diagnosis of Ms. Aaslie (which I accept) was a bile duct leak. During Dr. Scudamore’s surgery, a bile leak was identified at the border of the T-tube that Dr. Casses had installed. This leak was then repaired using a stent. Dr. Scudamore testified that, contrary to the statements in the transfer summary, he did not see any sign of an injury to the bile duct. Ms. Aaslie returned to VGH in August 2005 for removal of the T-tube and stent.

[156] At trial, Ms. Aaslie’s recollection of her discussions with Ms. Tomlinson in August 2009 was quite poor. She recalled a couple of phone calls, but could not recall much about the content. She recalled that she and her husband met with Ms. Tomlinson in Quesnel. Ms. Aaslie recalled telling Ms. Tomlinson that she had had surgery and was very sick, but could not recall other details of their discussions.

[157] Ms. Tomlinson had a much more complete recollection of her discussions with Ms. Aaslie. She talked to Ms. Aaslie first by telephone earlier in August, and made notes of the initial discussion in the notebook Ms. Tomlinson kept for notes on the story about Dr. Casses. However, as Ms. Tomlinson recalled, the first discussion was upsetting for Ms. Aaslie and relatively brief. Ms. Tomlinson spoke to Ms. Aaslie again by phone. As Ms. Tomlinson recalled, on that occasion Ms. Aaslie spoke at length about her experience, the complications from her surgery, how ill she was, and how Dr. Casses would not listen to her, brushed her off and kept saying that her problems were part of the healing process. This was generally consistent with Ms. Aaslie's evidence at trial. As Ms. Tomlinson recalled (and according to her notes), Ms. Aaslie told her that it was at VGH that it was discovered her bile duct had been severed and her bowel had been cut. Based on Dr. Scudamore's evidence, this was not, in fact, correct. Rather, Ms. Aaslie's problems came from the misfit T-tube Dr. Casses has installed, and that was ultimately repaired by Dr. Scudamore in Vancouver.

[158] Ms. Aaslie and her husband met with Ms. Tomlinson on August 25, 2009, in Quesnel, and Mr. Hyde recorded the interview. Parts of the interview are shown in the TV Reports, and both Ms. Aaslie and Mr. Aaslie are quoted in the Web Story.

[159] Ms. Aaslie came to Dr. Casses with a serious medical problem, and, based on Dr. Casses' evidence, the surgery he performed on April 20, 2005 was challenging and difficult. After she was discharged home from this surgery, Ms. Aaslie in fact remained very unwell. When she was readmitted to Baker Hospital on May 2, 2005, she was suffering from much more than dehydration. I find that Ms. Aaslie's case is similar to Ms. Mead's, and one where Dr. Casses did not adequately admit or treat a complication from the surgery he performed, and, from his patient's perspective, dismissed her legitimate concerns. I find further that the referral to another physician in Prince George came as a result of a request from Ms. Aaslie's family, although it was arranged by Dr. Casses.

(H) William Field

[160] On April 25, 2006, Mr. Field had hernia surgery performed by Dr. Casses.

[161] Dr. Casses' operative report was dictated May 2, 2006, a week after the surgery. The operation performed is described as: "Left inguinal hernia with a polypropylene umbrella plug and mesh . . ." However, in the first paragraph of the "Procedure Description" section, Dr. Casses describes draping an area on the right side of the body, not the left, and in the second paragraph he describes making an incision above "the right inguinal ligament." There is no question that the surgery was performed on the left side of Mr. Field's body, and Dr. Casses' references to the right side are clear errors. Further in the operative report, Dr. Casses writes that "the defect in the internal inguinal ring was obliterated with a polypropylene umbrella plug which was anchored in place using four interrupted stiches . . ." In fact, rather than the single plug described in his operative report, Dr. Casses had found it necessary to use two plugs in Mr. Field's hernia surgery. Dr. Casses concludes his report by stating that, "In this particular operation, there were no complications."

[162] Unfortunately for Mr. Field, he did have complications as a result of his hernia surgery and required further surgery to address those complications.

[163] In August 2007, Mr. Field (through his lawyer, Mr. Hewitt) made a complaint to the College about the surgery performed by Dr. Casses. Mr. Field advanced his complaint on several grounds, including that Dr. Casses withheld information about problems during the surgery in the operative report. Mr. Hewitt enclosed three letters from Dr. William Simpson, a surgeon specializing in general and vascular surgery and practicing in Prince George, in support of Mr. Field's complaint. Those letters were admitted at trial as an expert report from Dr. Simpson.

[164] In his letter dated February 19, 2007, Dr. Simpson noted the discrepancies in Dr. Casses' operative report (mixing up left and right), and also noted that Dr. Casses did not describe the need for two mesh plugs, one of them being extra-large. In Dr. Simpson's view, omission of such details was most unusual. In Dr. Simpson's

opinion, it was likely that Dr. Casses had some difficulties in this hernia repair. He noted that the common operative time for an inguinal hernia repair such as described in Dr. Casses' operative report would be 30 minutes. Mr. Field's operation was much longer. Dr. Simpson noted that Dr. Casses "required not only the use of one large mesh plug but also the addition of an extra large secondary plug. This combination is a little unusual and probably reflects the difficulty that was experienced."

[165] In his letter dated March 5, 2007, Dr. Simpson wrote that:

The use of two plugs, one large and one extra large, indicates significant difference from the usual experience in a hernia repair as does the length of time taken for the surgery.

What initially started off as a planned routine hernia repair obviously became something out of the ordinary. The extensive time taken to do the surgery together with the use of an extra large plug as well as a large plug indicates that this surgery was anything but routine.

[166] In accordance with the College's usual practice, Dr. Casses was asked to provide a response to Mr. Field's complaint, and he did so by letter dated December 4, 2007. Dr. Casses addressed the use of two plugs and said:

As a note not mentioned in my original OR report was, the fact that I used two plugs instead of one. The reason for this was that the large plug alone was not big enough to 'obliterate' the internal inguinal ring. I placed the second one by its side to completely obliterate the internal inguinal ring.

[167] In his letter to the College, Dr. Casses repeated that 62 minutes to complete the surgery was an "average" and "standard" time, and there was nothing out of the ordinary for a hernia repair operation to last that long. Dr. Casses hypothesized that the surgeon (Dr. Sullivan) who performed the later surgery on Mr. Field may have inadvertently perforated Mr. Field's bowel, implying that this was the cause of Mr. Field's problems. With respect to the omission of mention of the use of two plugs in his operative report, he said "There is no requirement to note the amount of plugs any more than the need to count stitches during surgery." Of course, Dr. Casses had in fact counted "four interrupted stitches" in his operative report.

[168] On cross-examination, Dr. Casses said that an operative report is not an inventory.

[169] The College did not agree with the position taken by Dr. Casses in his response.

[170] In the College's letter dated April 14, 2008, the College first expressed the opinion that: "The length of the surgery being greater than one hour was probably a reflection of the degree of difficulty of this hernia repair, which could not be sealed with a single plug." On cross-examination, Dr. Casses said that he accepted that conclusion.

[171] The College then expressed the opinion that:

[t]he operative report, dictated a week after the surgery, was incomplete and inaccurate. The committee members noted that there was a left to right confusion, there was no mention of a second plug, and there was no mention of the difficulty that Dr. Casses experienced with his surgery that led him to have to use two plugs.

On cross-examination, Dr. Casses said that he accepted that those criticisms were "perfectly valid."

[172] The College's conclusions on these points are also consistent with Dr. Simpson's opinions.

[173] The College said further:

The subsequent pathology report revealed that the segment of bowel resected contained chronic inflammation and it would not support Dr. Casses' contention that Dr. Sullivan [who performed the later surgery on Mr. Field] perforated the bowel.

Although it was contrary to the hypothesis he advanced in his letter to the College, Dr. Casses said that he accepted that conclusion.

[174] The College also said:

The committee members opined that most likely the fact that Dr. Casses had used two plugs caused pressure necrosis of the colon and the consequent infection, colo-cultaneous fistula, and ultimate perforation. The committee members were of the opinion that this complaint was sustainable.

Dr. Casses said that he accepted those conclusions.

[175] However, the College also expressed the opinion that, “It is distinctly unusual to use two plugs and a mesh to seal a hernia.” Dr. Simpson had also commented on this. Dr. Casses said he only partly accepted the College’s conclusion on this point.

[176] As part of his case, Dr. Casses tendered expert opinion evidence from Dr. Allen Hayashi, a general surgeon practicing in Victoria. Like Dr. Simpson, Dr. Hayashi is very well-qualified to provide opinion evidence on matters relating to general surgery. Dr. Hayashi prepared an expert’s report at least in part to respond to the opinion evidence of Dr. Simpson, and Dr. Hayashi discussed the use of two plugs in a hernia repair. Dr. Hayashi writes (pp. 17-18 of his report):

The plug and patch technique has evolved over time beginning from around the 1970’s where surgeons would cut and fashion homemade plug devices by hand. By 1993 the CR Bard Company, a leader in hernia prosthetic reconstruction systems developed, manufactured and standardized these devices. The operative record . . . notes that Dr. Casses used two Bard PerFix Plugs for the procedure. . . .

Seeing that the Bard Company is the leader in the development and manufacturing of hernia plugs, their product information and instructions for use have been widely distributed to surgeons using these devices. Page two of their information document specifies that two plugs can be used for the purposes of repairing hernia defects. There are no specified contraindications for using more than one plug in their brochure.

Dr. Rutkow, a notable and well published expert in hernia care has suggested that two or more Bard PerFix plugs can be used to repair hernia defects. In my experience, many surgeons have used more than one mesh plug when needed to repair an inguinal hernia.

[177] However, on cross-examination, Dr. Hayashi acknowledged that he had no first-hand experience in the use of two plugs to repair a hernia. He did not know whether Dr. Rutkow had ever used two plugs. The information he had relied on about the use of two plugs came primarily from product representatives, and from the Bard Company, rather than surgeons themselves.

[178] In Dr. Hayashi's opinion, the most plausible cause of the fistula that Mr. Field developed was pressure necrosis from the mesh plug. This was consistent with the conclusion reached by the College, which Dr. Casses accepted.

[179] Mr. Field also commenced legal proceedings against Dr. Casses, alleging negligence, and alleging that Dr. Casses had failed to disclose to Mr. Field the complicated nature of the hernia surgery (such that two plugs were required) and had deliberately prepared a false operative report. The action was settled.

[180] In preparing the Go Public stories, Ms. Tomlinson reviewed the pleadings Mr. Field filed in his legal proceeding, including the allegations that Dr. Casses had filed a false post-operative report and that he had failed to disclose to Mr. Field the complicated nature of the surgery. Ms. Tomlinson did not have a copy of Mr. Field's complaint letter to the College, or the response from the College.

[181] I find, based on the opinion evidence, that the use of two plugs in hernia surgery was unusual. Based on Dr. Hayashi's evidence, pressure necrosis from the use of even one plug in hernia repair is recognized as a cause of colonic fistulas. However, in responding to the College, Dr. Casses developed a theory in which another surgeon (albeit inadvertently) was responsible for Mr. Field's difficulties, rather than acknowledge the likelihood that Mr. Field experienced a known complication from the surgery Dr. Casses had performed. In his correspondence with the College, Dr. Casses firmly rejected the idea that Mr. Field's surgery was longer than usual because it was more difficult than usual and required two plugs. It is puzzling why Dr. Casses would take this position, although one explanation is that he was attempting to minimize a complication suffered by his patient by insisting that the surgery was routine and uncomplicated. Ultimately, Dr. Casses accepted the conclusion reached by Dr. Simpson and the College on this point.

[182] I also find that Dr. Casses' operative report was incomplete and inaccurate, a criticism that, at trial, Dr. Casses accepted as valid.

(l) Edith Backer

[183] Mrs. Edith Backer had lived in Quesnel since the early 1960s. She and her husband had ten children, six sons and four daughters. One of her sons, the Individual Defendant Mr. Backer, has owned a business in Quesnel for a number of years. He has known Mr. Giesbrecht, and the husbands of Ms. Odiorne and Ms. Mead since they were all children.

[184] As of July 2008, Mrs. Backer was just short of her 80th birthday. Both her daughter Ms. Watkins and Mr. Backer described her as being in good health. Dr. Casses described her in a consultation report as looking “much younger” than her stated age.

[185] On July 16, 2008, Mrs. Backer became very unwell while undergoing routine dental surgery. She began to suffer from severe right upper abdominal pain. She was rushed to the Baker Hospital Emergency Department, where she was examined (not by Dr. Casses) and then sent home. However, she remained very unwell. Mrs. Backer returned to the Emergency Department in the early morning on July 17, 2008.

[186] Dr. Casses was asked to see Mrs. Backer later that morning, in surgical consultation. He examined her thoroughly. An ultrasound and other tests were done. The ultrasound showed a massively dilated gallbladder and a slightly enlarged common bile duct, and also showed a significant amount of what appeared to be free fluid around the liver and other nearby areas. Dr. Casses’ impression at the time was that Mrs. Backer was experiencing an acute cholecystitis with the possibility she was also experiencing obstructive jaundice. Dr. Casses then admitted her to hospital. His consultation report indicated that Mrs. Backer was most likely going to require a laparoscopic cholecystectomy, but that such surgery would not be done until she had been treated medically and conservatively for a few days.

[187] However, later on July 17, Mrs. Backer's condition deteriorated seriously and rapidly. Mrs. Backer had two seizures. Dr. Casses then ordered an emergency CT scan of Mrs. Backer's abdomen. The cause of at least some of Mrs. Backer's symptoms was then identified: there was a hemorrhage in the retroperitoneal area in the right upper quadrant of Mrs. Backer's abdomen, and the acute intra-abdominal bleeding was most likely coming from arterial branches supplying the posterior aspect of the head of the pancreas (which the surgery confirmed it was). In his evidence at trial, Dr. Casses described Mrs. Backer's condition as a ruptured pancreatic artery aneurysm.

[188] Dr. Casses then proceeded to perform life-saving emergency surgery on Mrs. Backer. Among other things, he found that Mrs. Backer had a "massively distended" gallbladder, although there was no evidence of either acute or chronic inflammation. This was very unusual. Dr. Casses also found a significant amount (Dr. Casses estimated 3 to 4 units) of free blood and clots in the peritoneal cavity. To save Mrs. Backer's life, Dr. Casses had to control the bleeding coming from the head of the pancreas.

[189] Despite the grave circumstances, Mrs. Backer survived the emergency surgery. She was able to be transferred to Baker Hospital's medical ward later that evening. Ms. Watkins had arrived from Kamloops. Dr. Casses recalled that over the next few days, Mrs. Backer did surprisingly well. Her children confirmed this in their evidence. However, Mrs. Backer was showing signs of obstructive jaundice (something Ms. Watkins recalled noticing before she returned to Kamloops on July 20), and on July 21, 2008, Dr. Casses noted that her bilirubin levels were starting to rise. He concluded that an ERCP needed to be done to clarify whether Mrs. Backer had a common bile duct obstruction (possibly as a result of placement of the stitches in the head of the pancreas during the emergency surgery) and, if so, what would be the best way to release that obstruction. Unfortunately, that procedure could not be done at Baker Hospital. On July 22, 2008, Dr. Casses contacted two surgeons (one in Burnaby and one in Prince George) concerning a transfer for Mrs. Backer. However, he was unable to arrange this. On July 23, 2008, as Mrs. Backer's

bilirubin levels continued to rise, Dr. Casses again contacted a surgeon in Prince George and also contacted Dr. Scudamore in Vancouver concerning a transfer for Mrs. Backer. Fortunately, Dr. Scudamore was in a position immediately to accept the transfer.

[190] In a summary letter that Dr. Casses prepared in anticipation of the transfer, he wrote:

Something that is not very clear to me is at the time of admission, why this patient had a massively dilated gallbladder without a clear underlying cause and why already her common bile duct was slightly enlarged. What is a fact is that this patient is behaving like an obstructive jaundice and I do not know if this obstructive jaundice was starting to happen before [we] operated on an emergency basis on this patient, or if at the time of surgery when placing stitches in the head of the pancreas to control the life threatening intraperitoneal retroperitoneal bleed, we may have caused a narrowing of the distal portion of the common bile duct before reaching the ampulla.

. . .

The family members have been notified of the need for a more advanced treatment, diagnosis and perhaps another operation.

[191] On July 24, 2008, Mrs. Backer was transferred by air ambulance from Quesnel to VGH. Ms. Watkins was there, waiting for her mother, and remained in Vancouver until her mother's death a few weeks later.

[192] After investigation at VGH, Dr. Scudamore re-operated on Mrs. Backer on an urgent basis. At the first surgery, Mrs. Backer was found to have a significant amount (about 1.5 litres) of blood mixed with bile in the peritoneal cavity. Dr. Scudamore determined that this was coming from the bile duct, but there was also a perforation of the duodenum. It appeared that there was a suture very close to the proximity of the bile duct. It was determined that this suture could not be safely removed, as it was through into the pancreas. According to Dr. Scudamore, there was no major arterial source of hemorrhage but there was significant bile peritonitis. A cholangiogram confirmed a bile duct stricture. According to Dr. Scudamore, Mrs. Backer did well for several days. However, she then became septic, and the decision was made to operate again. According to Dr. Scudamore, at the second operation, Mrs. Backer was found to have multiple holes in the gastro-intestinal tract,

specifically the duodenum. According to Dr. Scudamore, these were then oversewn, but it was clear that, despite Mrs. Backer being relatively stable, the blood supply to her proximal gastrointestinal tract seemed to be compromised and that she was developing ulcers of the duodenum. According to Dr. Scudamore, although all of the perforations were closed and Mrs. Backer was being treated aggressively, he spoke to her family, suggesting that her situation was actually grave and that, at 80, she would be unlikely to maintain her independence outside of hospital. According to Dr. Scudamore, it was then decided, after a family conference, that care should be withdrawn.

[193] Mrs. Backer died on August 12, 2008. Her 80th birthday had been three days before.

[194] Ms. Watkins had lived in Kamloops for many years and, since 1978, she had worked in administration at Royal Inland Hospital. Among other positions, she worked as a medical staff secretary, as an administrative assistant to the chief executive officer and as clerical supervisor for the diagnostic imaging department. Ms. Watkins had completed a 3-month-long medical terminology certificate course. She was therefore familiar with hospitals and with medical terminology.

[195] On August 27, 2008, Ms. Watkins sent a letter to Ms. Cathy Ulrich, president and CEO of the Northern Health Authority, concerning Mrs. Backer. Ms. Watkins explained that:

I am writing this letter in hopes that some investigation into the events that eventually led to the my mother's death will bring a change in procedure for the Quesnel Hospital Emergency Department.

[196] In her letter, Ms. Watkins posed a number of questions, beginning with questions about Mrs. Backer's treatment at Baker Hospital on July 16, 2008. Dr. Casses was not the sole focus of Ms. Watkins' letter. For example, Ms. Watkins is obviously critical of the treatment her mother received when she arrived at Baker Hospital Emergency on July 16, and there is at least mild criticism of the surgeons at VGH.

[197] On September 11, 2008, Ms. Watkins wrote to the College. She enclosed a copy of the letter she had sent to Ms. Ulrich, and said: “I would like to request that you further investigate the actions of Dr. Casses that eventually lead [sic] to the death of my mother.”

[198] Dr. David Butcher, the Vice-president, Medicine, for the Northern Health Authority, responded to Ms. Watkins’ letter by letter dated December 16, 2008. He expressed his condolences to Ms. Watkins and the other members of the Backer family. Among other things, in relation to the emergency surgery Dr. Casses performed on Mrs. Backer, he noted that “inadvertent ligation of the common [bile] duct is a recognized complication of this type of surgery.”

[199] With respect to Ms. Watkins’ complaint to the College, Dr. Casses provided his comments in a lengthy letter dated October 29, 2008. He said, in part:

Respectfully again, I am very sorry for the loss of Mrs. Watkin’s [sic] elderly mother. Unfortunately, her co-morbidities were complicated and beyond the capabilities of any human intervention. . . . The obstruction of the distal common bile duct was an unavoidable complication when putting stiches to control bleeding in an 80 year old pancreas with very poor tissue strength. The necrosis of the head of the pancreas and the perforations of the duodenum were the direct result of impaired blood supply caused by the rupturing of vital arterial blood vessels.

[200] The College essentially reached the same conclusions. The subsequent surgical complications, including the perforations, were a result of the ruptured pancreatic artery aneurysm, which impaired the blood supply to vital organs and tissues.

[201] The College responded to Ms. Watkins by letter dated March 5, 2009. The letter began by expressing the College’s condolences on the loss of Ms. Watkins’ mother. Although Ms. Watkins’ letter to the College specifically referred to Dr. Casses, since she had attached the letter to the Northern Health Authority, which criticized and questioned the conduct of other physicians, the College’s response addressed those aspects as well.

[202] After reviewing and quoting from comments from Dr. Casses and Dr. Scudamore, the College wrote:

To put these comments into perspective, if a patient has a compromised blood supply, the tissue that is supplied frequently dies. Also, the functions which the tissue performs do not occur. For example, if the arterial flow in the vessel supplying the small intestine are blocked by an embolus or clot, the tissue is not supplied because of bleeding or infection, and this will lead to damage to the areas being supplied. Under the circumstances, perforations of the small bowel would be expected. This does not mean that the surgeon has created the perforations, but that the lack of blood supply to the area causes a weakening in tissue causing the perforation. Similarly, attempting to perform surgery on damaged tissue is problematic. The tissue tears easily and frequently bleeds, sutures will not hold and attempting to ameliorate the situation is extremely difficult and sometimes impossible.

[203] Mrs. Backer's children, perhaps Ms. Watkins in particular, found the conclusions reached by the College and the Northern Health Authority very hard to accept. However, I find that the conclusions reached by the College in respect of Dr. Casses' management of Mrs. Backer's case are supportable based on the evidence before me.

[204] On the evidence, it is difficult to draw any firm conclusions concerning what Dr. Casses told the Backer family members about what had happened in Mrs. Backer's surgery, and whether he explained that, during the emergency surgery, a stitch was made in close proximity to the bile duct and through into the pancreas (a recognized complication from this type of surgery). It is also difficult to draw any firm conclusion about what Dr. Casses told the Backer family members about Mrs. Backer's developing jaundice. Ms. Watkins appeared to have some knowledge about the nature of the Dr. Casses' surgery, since (for example) she mentioned in her letter to Ms. Ulrich that "Dr. Scudamore and Dr. Schumacher performed the roux-en-y procedure to redirect the common bile duct that was accidentally sutured by Dr. Casses." I find that Mrs. Backer's case is one where her children believed that Dr. Casses was dismissive of their concerns. In addition, both Mr. Backer and Ms. Watkins were unhappy about the way the College dealt with Ms. Watkins' complaint.

(c) Ms. Tomlinson's background

[205] Ms. Tomlinson is now in her early 50s. After studying journalism at a community college in Edmonton, she began her career in radio in Edmonton in the late 1980s. She moved into television in about 1990. In 1992, she joined the CBC in Edmonton and for several years, until 1997, she worked in a unit that did investigative journalism. In 1997, and while still employed by the CBC, Ms. Tomlinson moved to B.C. and continued to do a significant amount of work as an investigative journalist, although she also worked as news reporter.

[206] Ms. Tomlinson described the difference between news and investigative journalism. News is responding to the news of the day. Reporting is done very quickly and, while facts are checked and verified, there is not much digging done. On the other hand, according to Ms. Tomlinson, investigative journalism is much more proactive. The reporter aims to expand significantly on a topic or a tip or a piece of information, and spends much more time and uses many more resources than would be the case with a news report.

[207] In 2001, Ms. Tomlinson left the CBC in Vancouver to become the national reporter for CTV in B.C. Between 2002 and 2005, Ms. Tomlinson was in Washington, D.C., as a reporter in CTV's Washington bureau. In 2005, Ms. Tomlinson returned to Canada, and began work as an investigative reporter for the CTV National News in Toronto in a segment called the "Whistleblower." She remained in that position for about two and a half years. In August 2007, she was hired by the CBC to return to Vancouver and launch and produce Go Public. Although Go Public began as a segment on the CBC in B.C., it was expanded to be broadcast nationally, on radio and on the Internet.

[208] In 2009, Ms. Tomlinson worked on Go Public with Ms. Uda, who (among other things) provided research support for possible stories. Ms. Uda had a graduate degree in journalism from the University of British Columbia and began working for the CBC in 2001. Between 2001 and about 2008, Ms. Uda worked as a researcher on several CBC programs, which she helped to produce. As she

recalled, she first became involved with Go Public in 2007. Ms. Uda worked with Ms. Tomlinson on the story concerning Dr. Casses from the end of May 2009 to the end of July 2009, which was her last involvement with the story. Ms. Uda was away on holidays in August, and when she returned she worked on other things.

[209] Ms. Tomlinson's boss was Mr. Wayne Williams, CBC Vancouver's News Director. Although Ms. Tomlinson appeared to have a considerable amount of autonomy in investigating and producing stories for broadcast on Go Public, there remained certain areas where Ms. Tomlinson either needed or asked for Mr. Williams' advice, direction and approval. That was the case with respect to the TV Reports and the Web Story.

[210] Ms. Tomlinson has won a number of journalism awards, including four Jack Webster Awards and two Canadian Association of Journalism awards. She has also won several awards from the Radio Television News Directors Association, including an award for the stories at issue in these actions.

[211] According to Ms. Tomlinson, virtually all of the stories that appeared in her Go Public segments originated from members of the public who contacted the CBC (usually by writing in) with something that they thought should be made public, but which had not been. Ms. Tomlinson explained that media outlets such as the CBC take on a significant commitment with respect to investigative journalism, because it must be accepted that most of the stories will never make it to air. According to Ms. Tomlinson, that was certainly the case with Go Public. She estimated that about 90% of the stories that are considered – whether just quickly or even in depth – never see the light of day because:

we want to make sure that we only bring forward the stories that are very much in the public interest, that of course, first and foremost, are true, fair, and accurate. You know, that -- that represent, you know, the interests of a wide cross-section of people, not necessarily a very narrow one.

And -- and where there's -- it's always very important to us that there's a -- an accountability factor. We say that we hold the powers that be accountable, and that means any organization or entity that holds the public trust or deals with the public in any way whatsoever, we feel that they should

be held accountable for whatever they -- they're doing that has any effect on the public. And we don't want to do that -- we don't do that lightly.

[212] According to Ms. Tomlinson, some Go Public stories have been “killed” very late in the process, after a great deal of resources have gone into them. She explained that stories have been killed the day before they were scheduled to air, which, after the effort that went into the story, is a tough decision to make. Ms. Tomlinson explained that usually the reason why a story is killed at a late stage is because of a significant piece of information that throws the whole story into doubt.

(d) “Go Public” and Dr. Casses

[213] According to Ms. Tomlinson, the stories about Dr. Casses originated with an e-mail from Sandra Hix, Beverly North’s daughter.

[214] As Ms. Tomlinson recalled, she was told by Ms. Hix that there was a doctor who had practiced in Arizona and surrendered his licence there, and was now working in B.C., and Ms. Hix thought that people in B.C. should know about him. The doctor was Dr. Casses. As Ms. Tomlinson recalled, she responded to Ms. Hix and (among other things) asked her if she was willing to go public with the story. When Ms. Hix said yes, work then began on a possible story.

[215] Ms. Tomlinson explained that Ms. Uda typically did the initial research on possible stories for Go Public, and that was true with respect to the story concerning Dr. Casses. Ms. Uda confirmed that one of the first communications she received was an e-mail exchange between Ms. Hix and Ms. Cook dated May 28, 2009, forwarded to her by Ms. Hix. The e-mail included a fairly lengthy message from Ms. Cook copied from her first healthboards posting in March 2004. Ms. Hix and Ms. Cook had become acquainted with one another as a result of a posting Ms. Cook had made about Dr. Casses on his profile on the website “RateMDs.com” (“RateMDs”), where individuals can rate and comment on physicians, and exchange private messages.

[216] Ms. Tomlinson explained that Go Public stories are not broadcast during the summer months. She was leaving for vacation in about mid-June. Ms. Uda had been gathering some information and, according to Ms. Tomlinson, before she left on vacation, a decision had been made that it would be worth Ms. Uda spending time gathering more information for a possible story on Dr. Casses. According to Ms. Tomlinson, she would talk regularly with Mr. Williams and let him know what was in the works for Go Public. This would have included the story about Dr. Casses, in addition to other stories. The story about Dr. Casses was identified as something possibly for broadcast in the fall.

[217] Before Ms. Uda left on vacation at the end of July, she continued to gather information for a possible story on Dr. Casses (as well as work on other possible Go Public stories). According to Ms. Uda, she spent a considerable amount of time confirming Dr. Casses' history in Arizona. The documents Ms. Uda collected included a copy of the Arizona jury verdict, a copy of the Consent Agreement, the letter from the College concerning Mrs. Backer and court documents relating to the lawsuits filed by Mr. Field and Ms. Monahan against Dr. Casses. She also spoke to several people, including Ms. Cook, Dr. Hunter and Ms. Watkins. Ms. Uda created a working chronology to keep track of information as it was gathered.

[218] Ms. Tomlinson then picked up matters when she returned from holidays at the beginning of August. She kept track of her notes (including notes of people she interviewed) in a ring-bound notebook. She reviewed the documents that Ms. Uda had gathered. Some, such as documents related to a police investigation in Maricopa County, Arizona, in connection with the death of Beverly North, she discounted almost immediately even though they were available as part of the public record. Ms. Tomlinson also paid no attention to statements that originated with Mr. Larry North (Ms. Hix's brother), since, from the outset of the communications with Ms. Hix in May, he was identified as an unreliable source of information concerning Dr. Casses.

[219] In August, Ms. Tomlinson travelled to Arizona and interviewed both Dr. Hunter and Ms. Hix. Audio-visual recordings were made of both interviews. According to Ms. Tomlinson, she and Dr. Hunter discussed what happened at the Arizona Bomex meeting on January 19, 2001. Before meeting with Dr. Hunter, Ms. Tomlinson had read a copy of the typed meeting minutes, and she recalled discussing the “paper-trail” comment in the minutes with Dr. Hunter. However, she could not recall whether she had a copy of the typed minutes with her in Arizona, and, as best she could recall, she did not review the typed document with Dr. Hunter when they met. At trial, Ms. Tomlinson accepted Dr. Hunter’s evidence that his statement concerning creating a paper trail was not in fact part of the resolution passed at the Arizona Bomex meeting, and she acknowledged that three of the TV Reports and the Web Story were not accurate in stating these comments were part of a resolution passed by the Arizona Bomex. However, according to Ms. Tomlinson, Dr. Hunter’s statement about the paper trail, recorded in the minutes, would still have been part of the stories.

[220] Ms. Tomlinson spoke to Michael Redhair, a lawyer in Arizona who had acted for Ms. Hix and the other plaintiffs in the litigation in Arizona against Dr. Casses and others arising out of the death of Beverly North. Ms. Tomlinson reviewed a copy of the Arizona jury verdict from the court file. According to Ms. Tomlinson, she had been told by Mr. Redhair that Dr. Casses was not represented at the trial because he had earlier settled with the plaintiffs (which Dr. Casses confirmed).

[221] On August 11, 2009, after Ms. Tomlinson returned from Arizona, she printed off a copy of Dr. Casses’ profile on RateMDs. Ms. Tomlinson explained she knew from Ms. Uda’s research that there had been some activity on the website related to Dr. Casses, and she looked up his profile. She explained that, as of mid-August, she was casting a wide net to try and find people in B.C. who had an experience with Dr. Casses. She believed that she probably messaged everyone who had posted on RateMDs – whether the comments about Dr. Casses were negative or positive – because she was trying to make connections with anyone who could provide information about Dr. Casses. She asked anyone who wished to contact her

to do so privately. One of the people she messaged turned out to be Ms. Schoenauer.

[222] Ms. Tomlinson communicated directly with a number of people in B.C. These included Ms. Odiorne, Ms. Mead, Ms. Cook, Ms. Watkins, Ms. Aaslie, Mr. Giesbrecht, Ms. Monahan and several other former patients of Dr. Casses. From Tammy Mead, Ms. Tomlinson received and reviewed copies of some medical records (including the operative report) and the letter from the College concerning Ms. Mead's complaint. Ms. Tomlinson reviewed the documents Ms. Uda had obtained from the B.C. court files where Dr. Casses had been sued. She received and reviewed the correspondence Ms. Watkins had sent to and received from the Northern Health Authority and the College, concerning the treatment of her mother.

[223] Ms. Tomlinson spoke to two physicians (Dr. Hutchinson and Dr. O'Dwyer) who had practiced on Vancouver Island and knew Dr. Casses from his time in Port Alberni. As Ms. Tomlinson recalled, Dr. Hutchinson told her that, around the time Dr. Casses was practicing in Port Alberni, he was contacted by Ms. Hix concerning Dr. Casses' history in Arizona, and he then made his own report to the College. Ms. Tomlinson spoke to Dr. Scudamore, who (according to Ms. Tomlinson) told her that he did not wish to talk about another doctor's cases.

[224] Ms. Tomlinson made arrangements to go to Quesnel with a camera person, Brett Hyde, to do on-camera interviews. Mr. Backer had agreed to host a gathering at his house of some former patients of Dr. Casses (and family members) with whom Ms. Tomlinson had spoken. The gathering was scheduled for August 24, 2009. The week prior to the Quesnel trip, Ms. Tomlinson left messages at Dr. Casses' office (without identifying herself as a journalist with CBC) asking that he contact her. The messages were not returned.

[225] Dr. Casses said that, as a result of Ms. Schoenauer posting on RateMDs, he became aware that the CBC was doing some research on him. Ms. Schoenauer testified that two days before what she described as the "ambush" of Dr. Casses on August 25, 2009, she happened to discover RateMDs because her brother was

looking for a physician, and she left a post under Dr. Casses' name. As she recalled, in her post, she made favourable comments about Dr. Casses, and she received a communication back from Ms. Tomlinson, asking that she contact her. However, Ms. Schoenauer did not.

[226] As Dr. Casses recalled, Ms. Schoenauer told him about the postings on RateMDs, and he thought she also told him Ms. Tomlinson had asked Ms. Schoenauer to contact her. However, despite that, Dr. Casses said it did not occur to him that Ms. Tomlinson was interested in talking to people who would defend him.

[227] On August 24, 2009, Ms. Tomlinson and Mr. Hyde arrived in Quesnel. Ms. Tomlinson recalled that she was trying more urgently to reach Dr. Casses. According to Ms. Tomlinson, she left voice-mail messages at Dr. Casses' office in which she identified who she was, what she was doing and why she wanted to speak to Dr. Casses. As she recalled, eventually, she spoke to Dr. Casses' secretary. However, she did not speak to Dr. Casses that day.

[228] The gathering at Mr. Backer's took place later that day. Ms. Cook and her father, Ms. Odiorne and her husband, Ms. Mead and her husband, Ms. Monahan, her mother and daughter, Caroline Mitchell and Mr. Backer were present, in addition to Ms. Tomlinson and Mr. Hyde. Mr. Hyde made an audio-visual record of the gathering. At trial, Ms. Odiorne (for example) described her reluctance and concerns about participating. According to Mr. Backer, his wife had suggested to him that he stay quiet (although he did not quite manage to follow this advice). Ms. Tomlinson asked Ms. Cook to bring photographs of her left foot, which she did. Several photos later appeared in the TV Reports. Everyone (except Mr. Hyde) sat around a table at Mr. Backer's. A copy of the College's response to Ms. Watkins' complaint about Dr. Casses was on the table, although no one read it. No one had brought medical records with them.

[229] Ms. Tomlinson described the gathering as people telling and sharing their stories. They expressed views and opinions about Dr. Casses and the College, based on their experiences. Mr. Backer, for example, described his objective as to

make people in the community aware of Dr. Casses' history, so that something could change, and to get Northern Health and the College to look at his record again.

[230] Ms. Tomlinson and Mr. Hyde stayed overnight in Quesnel.

[231] Dr. Casses and Ms. Tomlinson tell quite different versions of events the morning of August 25, at Dr. Casses' condominium complex. This is what Ms. Schoenauer described as the "ambush."

[232] According to Dr. Casses, he went to bed early the evening of August 24. He had no patients the next day and in fact was finished surgery for the week in Quesnel. His plan was to return to Vancouver (via Prince George) later in the afternoon on August 25. He had plans to go to Hawaii later that week.

[233] According to Dr. Casses, he was awakened about 5 a.m. on August 25 by three extremely loud bangs. He recalled that he looked out the windows of his townhouse, and also looked out the peephole in the front door, but he could not see anyone. He then phoned Ms. Schoenauer, who was at their home in West Vancouver. She had told him earlier to watch out for a reporter who wanted to write a story on him, and, as he recalled, he told her the reporter was there. As Dr. Casses recalled, he did not turn on the lights in his townhouse. However, he turned on his laptop and then made a series of phone calls to Ms. Schoenauer. According to Dr. Casses, while doing this, he was looking out the window on the second floor of his townhouse, scanning the area towards the garage. He kept waiting for activity.

[234] As Dr. Casses recalled, he and Ms. Schoenauer discussed the need for legal advice. As Dr. Casses recalled, he retained legal counsel, Mr. McConchie, at about 8 a.m. on August 25.

[235] Ms. Schoenauer's evidence is reasonably consistent with that of Dr. Casses.

[236] As Dr. Casses recalled, about 9 a.m., he noticed some activity. As he recalled, he saw two individuals – a blond woman and a cameraman – "hiding." As Dr. Casses recalled, he continued to monitor them for about 30 to 45 minutes, and

he saw them chatting and smoking. According to Dr. Casses, he left his townhouse about 10 or 10:15 a.m., using the back door. As he recalled, he saw the two people again, as soon as he opened the garage door, and the woman was running towards him. He said that he recognized Ms. Tomlinson. He described her as “charging” at him “like a bull,” and calling his name. He then backed his SUV out of the garage and drove away. As Dr. Casses recalled, he was suspicious the two people would follow him, so he stopped in a small wooded area where he made some more phone calls. He then drove to Williams Lake, where he took a flight to Vancouver.

[237] The implication of Dr. Casses’ and Ms. Schoenauer’s evidence is that Ms. Tomlinson and Mr. Hyde appeared at Dr. Casses’ townhouse, unannounced, at an unconscionably early hour of the morning on August 25, 2009. In short, it was an ambush, as Ms. Schoenauer described. This version of events is contained in a letter dated August 25, 2009 sent by Mr. McConchie to Mr. Dan Henry, in-house legal counsel for the CBC. Among other things, the letter describes Dr. Casses as being “the subject of an ‘ambush’ at his apartment,” and that he had actually seen “the same two individuals” standing outside his door when he looked through the peephole.

[238] At trial, before Dr. Casses testified in chief about events on August 25, he wanted some assistance from a document and, before giving his evidence, he was taken to Mr. McConchie’s letter. I found it curious that Dr. Casses felt the need to look at a document to remind himself of events.

[239] On cross-examination (and contrary to what is stated in the letter), Dr. Casses clarified that he first saw Ms. Tomlinson and Mr. Hyde around 9 a.m. when he looked out towards the garage and saw them in the parking lot. At best, he was unsure whether he saw either of them smoking. However, he would not agree that the statement in Mr. McConchie’s letter about seeing individuals when he looked through the peephole around 5 a.m. was false.

[240] According to Ms. Tomlinson, it was very important that she connected with Dr. Casses directly, which she had been unable to do as of August 24. After the

gathering at the Backers, she contacted Mr. Williams. Ms. Tomlinson explained that CBC policy and protocol was that, if someone was going to be approached without advance warning, especially with a camera, the reporter must discuss doing so with the reporter's supervisor first. According to Ms. Tomlinson, she explained the situation to Mr. Williams, and between the two of them, they made the decision that she would go to Dr. Casses' home in the morning and knock on the door before he went to work. They decided that approaching Dr. Casses at the hospital might be too uncomfortable. Mr. Williams essentially confirmed this discussion in his evidence.

[241] According to Ms. Tomlinson, she and Mr. Hyde went to Dr. Casses' townhouse about 8 a.m. on August 25. As she recalled, she went to the door by herself (something Mr. Hyde confirmed in his evidence), and either knocked or rang a doorbell, but there was no answer. According to Ms. Tomlinson, she and Mr. Hyde decided to wait to see if Dr. Casses would leave the townhouse, and they would try and connect with him. Ms. Tomlinson and Mr. Hyde testified that neither of them was smoking, and neither of them is a smoker.

[242] As Ms. Tomlinson recalled, they waited quite a while at Dr. Casses' townhouse. While they were waiting, Ms. Tomlinson received a phone call from Mr. McConchie on her cell phone. (She had left her cell number with Dr. Casses' secretary.) According to Ms. Tomlinson, Mr. McConchie introduced himself as Dr. Casses' lawyer, and then said "May I remind you about the Leenen case." Ms. Tomlinson testified:

But he was reminding me about this case and that it involved doctors and it was terrible treatment of these doctors by the CBC, and I needed to be mindful of that, and he wanted to make sure that I understood that, you know, he was quite aware of this case, and I--the message was I'd better watch out. But we hadn't had a conversation, which was what was so odd about it.

[243] As Ms. Tomlinson recalled, she told Mr. McConchie that she was trying to speak to his client. According to Ms. Tomlinson, Mr. McConchie then mentioned Larry North, and she told him that she had not been talking to Larry North.

According to Ms. Tomlinson, she told Mr. McConchie that she had interviewed people in B.C. and wanted to interview Dr. Casses. However, as Ms. Tomlinson recalled, Mr. McConchie told her that Dr. Casses would not be giving an interview and patient confidentiality was a problem. Nevertheless, as Ms. Tomlinson recalled, she asked that her request for an interview be passed along to Dr. Casses, and Mr. McConchie indicated he would do that.

[244] As Ms. Tomlinson recalled, after the call finished, she and Mr. Hyde continued to wait. She then recalled seeing Dr. Casses come out of the back of the residence. He was running. She called to him, stating who she was. However, he ran to the garage door. Ms. Tomlinson recalled that Dr. Casses shoved the door at her. She went back to where Mr. Hyde was waiting in the parking lot. Then, according to Ms. Tomlinson, Dr. Casses backed his SUV out of the garage very quickly and took off, as she called after him.

[245] I have concluded that Dr. Casses' version of events, to the extent it conflicts with Ms. Tomlinson's and Mr. Hyde's, is neither credible nor reliable. I find that, if there were three loud bangs at Dr. Casses' townhouse around 5 a.m. on August 25, none of them was made by either Ms. Tomlinson or Mr. Hyde. I find that neither of them was there. They did not arrive until sometime after 8 a.m. Neither of them was smoking. Dr. Casses, who knew that a CBC reporter wished to speak to him, jumped to the wrong conclusion when he was awakened early on August 25. Whatever woke him up, it was not Ms. Tomlinson. His imagination then took over and manufactured the worst, which in turn was reported in Mr. McConchie's August 25 letter.

[246] After leaving Dr. Casses' townhouse, Ms. Tomlinson and Mr. Hyde then went to an on-camera interview with Ms. Aaslie and her husband, before catching their flight back to Vancouver later that afternoon. Before leaving Quesnel, Mr. Hyde gave Ms. Tomlinson the cassettes of what he had recorded on August 24 and 25. That was his last involvement in the stories involving Dr. Casses. As of that point, Ms. Tomlinson had all of the raw footage shot in both Arizona and B.C. When she

returned to Vancouver, the contents of the tapes were “ingested” into the CBC’s server and converted to digital files. This is what Ms. Tomlinson then worked with in assembling the TV Reports and Web Story.

[247] On August 26, 2009, Ms. Tomlinson sent an e-mail message to Susan Prins, the Director of Communications with the College, following up on a voice-mail message. According to Ms. Tomlinson, the College was an important element in the Go Public stories. For example, she felt the College needed to be asked questions about how Dr. Casses came to be licensed in B.C. Ms. Tomlinson asked Ms. Prins whether it was correct that Dr. Casses had been granted a temporary licence in 2000 and then a permanent licence in 2003, and if so, why. She told Ms. Prins that she had been informed by Dr. Hutchinson that he had made a formal report to the College of Dr. Casses’ history in Arizona and that he had been led to believe the College was then going to investigate. Ms. Tomlinson asked whether an investigation was done, and if so, what was the result. She asked whether the College ever contacted the Arizona Bomex directly about Dr. Casses, and if so, what was the result of the inquiry. She asked whether Dr. Casses was under investigation by the College or facing disciplinary action for any reason, and also whether there had been any investigations or disciplinary action in the past.

[248] Ms. Prins responded promptly, on August 27, 2009. She began with a general comment:

Please be advised that irrespective of the information you have obtained on Dr. Casses, the College is not able to provide information about an individual registrant, including details of his/her application for licensure, complaints filed against him/her, or any subsequent investigation. If an investigation leads to formal disciplinary action, this information is published widely and remains on the public record. Full disclosure of disciplinary hearings and actions has been a legislated requirement for this College under our previous Act (the Medical Practitioners Act) and our current Act (the Health Professions Act), and has been a fully transparent, standard practice for many years.

[249] In response to Ms. Tomlinson’s question about Dr. Casses being on the College’s temporary and then full register, Ms. Prins said that “I cannot provide you

with specific details about why this physician transferred from one register to the other.” Ms. Prins did provide some examples of why a physician might be granted a temporary or provisional licence. However, when Ms. Tomlinson asked which of the examples applied to Dr. Casses, Ms. Prins responded that she was unable to answer. With respect to the question (based on Ms. Tomlinson’s discussion with Dr. Hutchinson) concerning whether any investigation of Dr. Casses was done, Ms. Prins said: “Again, we cannot disclose information about our investigative processes – unless the outcome results in formal discipline – in which case it would have been published.”

[250] Concerning contact with the Arizona Bomex, Ms. Prins explained that the College requires certificates of standing and conduct from all jurisdictions in which a physician has practiced. She said further that:

If we learn of an incident that causes us concern after the license has been granted, we would certainly make contact with the appropriate regulatory authority to gather more information for an investigation.

[251] With respect to Ms. Tomlinson’s questions about whether Dr. Casses was or had been under investigation or facing disciplinary action by the College, Ms. Prins stated: “Per statement above, I cannot provide specific details about this individual’s registration history with this College.”

(e) Pre-publication communications between Dr. Casses’ legal counsel and the CBC

[252] Just after 1 p.m. on August 25, 2009, Mr. McConchie, on behalf of Dr. Casses, sent the letter to Mr. Henry (CBC’s legal counsel), referred to above. In addition to the statement about Dr. Casses being the subject of an “ambush,” the letter states in part:

Dr. Casses has good reason to believe that CBC Vancouver has already decided to broadcast a news story based on the false information posted to the Internet by one Larry North. . . .

. . .

If the CBC has questions to direct to my client, please send them in writing to my attention.

. . .

My client will take all necessary steps to protect his reputation and to recover indemnification for any defamatory attacks on his good character and professional competence.

[253] Of course, Ms. Tomlinson had already told Mr. McConchie she had not been talking to Larry North. Ms. Tomlinson never spoke to Larry North at any time, and ignored whatever statements he had published about Dr. Casses. As of August 25, 2009, no final decision had been made whether to broadcast or publish any Go Public story or stories concerning Dr. Casses.

[254] On August 27, 2009, after discussing the matter with Mr. Williams, Ms. Tomlinson sent an e-mail message to Mr. McConchie, in response to the invitation to send questions the CBC wished to direct to Dr. Casses to Mr. McConchie in writing. The message reads in part:

[H]ere are the topic areas we would like to address:

- the nature of the cases that were submitted to the Arizona Medical Board for review by the hospital . . . , cases showing complications following his surgeries there
- claims from the following Quesnel patients and/or their families that they suffered serious, unexpected, long lasting and/or unnecessary complications, and poor follow up treatment, during and/or after surgeries performed by Dr. Casses: [Ms. Mead, Ms. Aaslie, Edith Backer, Mr. Giesbrecht, Ms. Odiorne, Ms. Cook and Ms. Monahan are named]
- the following similarities between most or all of these claims:
 - patients say they were led to believe surgery would be minor or routine and then suffered serious complications
 - patients or their families say they were told by Dr. Casses after surgery that they were fine and/or all went well when that was not the case
 - 6 of the patients report that Dr. Casses “nicked” other parts of their insides (bowels for example) during surgery – body parts that were not supposed to be included in the surgery. In some cases, they say the “nicks” were not immediately disclosed by Dr. Casses, and/or only discovered by other doctors
 - Dr. Casses did not follow up their complications with treatment to their satisfaction – and in several of the cases the patients say their

conditions worsened or did not improve until other physicians got involved

- the motion put forward by Dr. Tim Hunter during the [Arizona Bomex] hearing on January 19, 2001 to develop a paper trail to prevent Dr. Casses from practicing in Canada
- the extent of Dr. Casses' disclosure to health authorities and/or the [College] when he moved to B.C. in 2000 about losing his privileges at Boswell Hospital in Arizona, and facing summary suspension of his license in Arizona

...

Our planned broadcast date is Monday, August 31

At this stage, we would prefer to do the on-camera interview today or tomorrow, at [Dr. Casses'] convenience, to permit sufficient time prior to Monday to absorb and appropriately reflect his perspective in our broadcast and online coverage.

If Dr. Casses needs more time to prepare for an interview, please let us know as soon as possible and we will consider whether we can accommodate that.

In fact, to reassure him about any editing concerns he may have, we would be prepared to publish his entire interview online, concurrent with our broadcast of any shorter news items.

[255] Ms. Tomlinson testified on cross-examination that she had been told by the patients and family members listed that they "suffered serious, unexpected, long lasting and/or unnecessary complications, and poor follow up treatment." However, I cannot accept her evidence at face value. Rather, and based on the evidence I have heard from patients in this trial, I conclude that what Ms. Tomlinson wrote in her e-mail is her interpretation and summary of what she was being told by the people she was interviewing.

[256] Dr. Casses' response was communicated in a statement sent under cover of a letter dated August 28, 2009 from Mr. McConchie to Mr. Henry. The statement, which is also dated August 28, 2009, is addressed to Ms. Tomlinson and signed by Dr. Casses. It reads in part:

Doctor-patient confidentiality prevents me from speaking to the CBC about any of my patients here in Canada or in the United States. Those legal and ethical constraints are generally well-known

It is evident that CBC is planning a simplistic, sensationalistic story about the surgical complications of a general surgeon in a small community hospital.

...

I have performed over 5,000 (five thousand) surgical procedures in the span of 9 years

Any suggestion by the CBC in its proposed broadcast that complications following surgery should reflect negatively on my professional competence would be utterly reckless and absurd.

My surgical complication rate is approximately 0.3% (point three percent!) well below the average for a general surgeon.

Your interview request falsely insinuates that I do not disclose the risks and consequences of surgery to my patients.

Without breaching doctor-patient confidentiality, I tell you that it is my invariable practice to explain to each of my patients the fact that every surgical procedure has inherent risks and to describe those risks as they apply to their particular procedures.

Like many other surgeons, I ensure that my explanation to each patient and their consent to the procedure and the associated risks is documented in the patient file.

...

Following surgery, my invariable practice is to ensure that each patient is given a truthful and accurate explanation, in plain English, concerning his or her surgery and I appropriately follow them to the best of my ability in recovery. If a complication has occurred, they are given an explanation of the circumstances of that complication. I keep detailed patient records

I regret to tell you, however, that I am not prepared to submit to an on-camera interview with the CBC.

I am particularly troubled by the abuses suffered by medical doctors Leenen and Myers who consented to on-camera interviews with the CBC for a feature program known as "the fifth estate."

The abuses suffered by Dr. Leenen and Dr. Myers at the hands of the CBC are well-documented in the Ontario Superior Court and Ontario Court of Appeal decisions in favour of Drs. Leenen and Myers

...

If your proposed broadcast impugns my honesty, integrity or professional competence, or compromises the privacy of my practice and my patients, I will not hesitate to instruct my legal counsel to pursue all appropriate legal remedies to the full extent of the law against all persons responsible in law for such libels, including any person (CBC employee or interviewee or so-called 'witnesses') who chooses to make unsubstantiated claims against me on or off-camera.

[257] I note that Ms. Tomlinson asked a question premised on what is now known to be a misreading of the Arizona Bomex minutes and resolution. In their response to her question, neither Dr. Casses nor his counsel corrected her.

[258] Ms. Tomlinson shared the August 28 communications with Mr. Williams, and they discussed them. Both of them referred to Dr. Casses' statement as a "chill letter."

[259] Ms. Tomlinson acknowledged that she did not take any steps to inform any of Dr. Casses' patients who might appear or be quoted in any of the TV Reports or the Web Story about either the existence of Dr. Casses' statement or what it threatened in the final paragraph. Ms. Tomlinson's explanation for not doing so was essentially that it never occurred to her that Dr. Casses might in fact sue his former patients, and she had said as much to everyone at the gathering at the Backers on August 24. She took Dr. Casses' statement as a threat to sue the CBC. Ms. Tomlinson said that she was appalled when Dr. Casses sued his patients.

[260] After the August 28, 2009 communications, neither Dr. Casses nor legal counsel on his behalf communicated with any of the defendants in any of the actions, prior to the Individual Actions being filed.

(f) Publication of the Web Story and the TV Reports

[261] Although the original planned broadcast date of the first TV Report was August 31, 2009, Mr. Williams made the decision to delay the stories for another week. Ms. Tomlinson explained that she wanted some more time to pursue the issue of complication rates, which Dr. Casses had mentioned in his August 28 statement, and to put the stories together. As Ms. Tomlinson recalled, she was not under any time pressure to finish the stories about Dr. Casses.

[262] Ms. Tomlinson also spoke to Dr. David Butcher and Dr. Becky Temple, both of whom were with the Northern Health Authority. One of the points she was interested in discussing with them was a surgeon's complication rates. In a telephone interview with Dr. Temple, Ms. Tomlinson and Dr. Temple also discussed events in Arizona concerning Dr. Casses. Parts of Ms. Tomlinson's telephone interview are included in the September 10 TV Report.

[263] Although Mr. Williams reviewed the final product, Ms. Tomlinson alone was responsible for choosing the shots and images that appeared in the TV Reports and the Web Story and assembling them for publication. Apart from the words spoken by the anchors in the TV Reports, Ms. Tomlinson wrote all of the scripts and also wrote the Web Story.

[264] After the original broadcast, each of the TV Reports was available to be viewed on the CBC website, as part of the regular newscast.

(i) The Web Story

[265] The Web Story (including headlines and titles) was written by Ms. Tomlinson. She also chose the pictures. The Web Story was first posted on CBC's website on September 8, 2009. It can be, and has been, updated. A version with text only is attached as Appendix "A". A version with both text and pictures is attached as Appendix "B". The picture of Dr. Casses at the beginning of the Web Story was used several times in the TV Reports. Another picture shows the people around the dining room table at Mr. Backer's.

[266] The Web Story remained available on the Internet as of the trial. It was updated on December 15, 2014, to take into account Dr. Hunter's evidence at the trial concerning the scope of the Arizona Bomex resolution about Dr. Casses.

(ii) The September 8 Local TV Report

[267] The first of the TV Reports was broadcast on September 8, 2009, as part of the CBC 6 p.m. local Vancouver news program. It was just over 3 minutes long.

[268] The TV Report was introduced by the anchors as follows:

Gloria Macarenko: Good evening. We begin with a CBC investigation into a surgeon who surrendered his medical license in Arizona.

Ian Hanomansing: But who is now practicing here in British Columbia to the dismay of at least some of his patients. Our Go Public reporter Kathy Tomlinson has the exclusive story.

[269] Ms. Tomlinson then begins her report, speaking about Ms. Aaslie, who is shown on the screen. There is a short clip of Dr. Casses, dressed casually and walking in a parking lot, interspersed with a voice-over by Ms. Tomlinson, speaking about Ms. Aaslie and then images of Ms. Aaslie and her husband speaking about Ms. Aaslie's experience, with the occasional voice-over comment from Ms. Tomlinson. For example, Ms. Aaslie says: "When we got out of the, you know, got away from him and under his care, and then I started to get better." Ms. Tomlinson says: "When Dr. Fernando Casses took out her gall bladder she says he cut other parts of her digestive system. She understands surgical mistakes happen but" and then Ms. Aaslie says: "He never admitted to doing anything. The only thing he had said was that there was an infection inside of me that had pooled inside of me but he was just going to let it run its course." There are additional images of Dr. Casses and Baker Hospital.

[270] At about 1 minute 30 seconds, the scene changes to people seated around a table at Mr. Backer's home. There are images of photographs of Ms. Cook's infected toe, with a statement by Ms. Cook that "this is what my toe looked like." In one of the photographs, her toe appears to be very infected. In a voice-over, Ms. Tomlinson introduces the people at the table by saying: "These patients and their families think there is a pattern of Dr. Casses not admitting to or treating his surgical complications." The general mood at the table appears serious and somber. Individuals are identified as they speak. Ms. Cook says: "He told me that he was sympathetic but I was milking it, quit being a baby." Ms. Mead says: "He said to me, 'Lady you just had surgery, go home and have a hot bath.' After the third day, I knew there was something wrong because I was throwing up green bile." There is then a shot of a photograph of Edith Baker, and a voice-over by Ms. Tomlinson in which she says: "One death and four close calls are represented here. They feel their complaints to BC's College of Physicians and Surgeons weren't taken seriously enough." The scene returns to the group at the table. An image of a letter on the letterhead of the College is shown, after which Ms. Odiorne is identified as a former patient and says: "All of us have complained. What are they doing, what is anybody doing?"

[271] There is then another image of Dr. Casses walking outside in a parking lot and getting into an SUV. In a voice-over, Ms. Tomlinson says: “At least five complaints and three lawsuits have been filed against him. In most cases though, the College agreed with Dr. Casses that he acted responsibly and wasn’t to blame.” The scene returns to the table, and Ms. Mead is shown saying: “They need to investigate him fully.”

[272] The scene then changes again, to an image of the exterior of Boswell Memorial. In another voice-over, Ms. Tomlinson says: “His work has been investigated before. This Arizona hospital where he worked before coming to BC suspended his privileges over quality assurance concerns. He also surrendered his licence there.” There is another image of Dr. Casses driving away in the SUV. The scene returns to the people around the table, and Ms. Cook says: “I didn’t know he wasn’t allowed to practice in Arizona.” Her father, seated beside her, says: “You trust your doctor, right? He is your doctor.”

[273] Again the scene changes, this time to Dr. Casses driving away in an SUV from Ms. Tomlinson. Ms. Tomlinson calls after him: “How about the complaints that you’re getting?” Then, in a voice-over, Ms. Tomlinson says: “Dr. Casses refused to talk to the CBC about any of this, later citing patient confidentiality.”

[274] The scene then shows Ms. Tomlinson on the street outside the CBC Vancouver building. She has a document in her hand, and says:

Dr. Casses sent this letter through his lawyer pointing out that all surgery has risks including accidental perforations. He also claims his surgical complication rate is lower than average, a claim we couldn’t verify because the health authority doesn’t keep those records. Tomorrow we will tell you about how and why Dr. Casses left Arizona and how the Arizona medical board tried to make sure he would never practice in Canada.

(iii) The September 8 National TV Report

[275] The second TV Report was broadcast on September 8, 2009 as part of “The National.” It was about 2 minutes and 45 seconds long.

[276] Ms. Tomlinson described assembling the TV Report for the National as a “real distilling process.” She explained that she had two minutes and “we’ve got to hit only the most important or major points that we’re trying to make, and it’s a condensation of everything.”

[277] The Report was introduced by the anchor as follows:

Peter Mansbridge: Well, if the mere thought of going under the knife gives you the chills, this next story won’t help. This surgeon was under investigation in the U.S. He admitted he caused harm to a patient and surrendered his Arizona medical licence. Since then, he has been operating on patients in British Columbia. Now some of them are complaining too and asking how he could be allowed to practice here in the first place. Kathy Tomlinson reports.

While Mr. Mansbridge was introducing the story, a graphic of Dr. Casses, facing the camera and casually dressed, together with a gloved hand holding a scalpel, appear over Mr. Mansbridge’s left shoulder.

[278] The story then begins with the voice-over of Ms. Tomlinson speaking about Ms. Aaslie and a shot of Ms. Aaslie, as in the local TV Report. There is a short clip of Dr. Casses, casually dressed and walking in a parking lot, interspersed with a voice-over by Ms. Tomlinson, speaking about Ms. Aaslie, then images of Ms. Aaslie and her husband speaking about Ms. Aaslie’s experience, with the occasional voice-over comment from Ms. Tomlinson. Ms. Aaslie says: “I said I was sick so many times and there was something wrong and he just kept telling me it was part of the healing process.” Ms. Tomlinson says: “She became gravely ill. Her husband said the nurses urged him get a second opinion, get her to a hospital, get her to another doctor.” Mr. Aaslie says: “Yeah, because she is not getting any better, she is getting worse.” There are views of the exterior of Baker Hospital.

[279] Again, the scene changes to the people seated at the dining room table. Ms. Odiorne (unidentified) says: How many people are really out there like us.” Ms. Cook, who has photographs of her toe, holds up a photograph and says: “That was what my toe looked like.” In a voice-over, Ms. Tomlinson says: “Several former patients and their families say Dr. Casses didn’t admit to or fully treat serious

complications.” People are shown sitting around the table. As in the local TV Report, the mood appears somber and serious. Tammy Mead is identified and says: “He said to me, ‘Lady you just had surgery. Go home and have a hot bath’.” Ms. Tomlinson says in a voice-over: “At least five complaints and three lawsuits have been filed. In most cases though, BC’s College of Physicians and Surgeons agreed with Dr. Casses that he wasn’t at fault, except in Tammy Mead’s case.” During this voice-over, three documents are displayed, one showing the letterhead of the College, and Dr. Casses is shown walking near a car. Tammy Mead is then shown, saying: “They need to investigate him fully.”

[280] The scene changes to the exterior of Boswell Memorial and Ms. Tomlinson says in a voice-over: “He’s been investigated before. This Arizona hospital, where he was before BC, suspended his privileges nine years ago.” A man (in fact Dr. Hunter) – dressed as one would expect to see a physician dressed – is shown and says: “I was just horrified.” Ms. Tomlinson is then shown speaking to the man and says in a voice-over: “The medical board there told him, hand over his licence or it would be suspended. He did.” Interspersed is an image of Dr. Casses getting into an SUV. The man speaking to Ms. Tomlinson is identified as Dr. Tim Hunter, and he says: “There were a large number of very poor surgeries and a number of people harmed.” Dr. Casses is then shown in the SUV, apparently driving away. An image is shown labelled “Arizona Medical Board Resolution,” with the Arizona State seal and a quote is shown that says “a paper trail preventing Dr. Casses from ever practicing in Canada.” This has a voice-over from Ms. Tomlinson in which she says: “Because he had done his residency in Ontario, the board resolved to create a paper trail preventing Dr. Casses from ever practicing in Canada.”

[281] The scene changes back to a parking lot and Ms. Tomlinson calling after an SUV as it drives away: “How about the complaints that you’re getting.” In a voice-over, Ms. Tomlinson says: “Dr. Casses refused to talk to the CBC about any of this, later citing patient confidentiality.”

[282] The segment again ends with Ms. Tomlinson on the street in Vancouver. She says:

BC's College of Physicians and Surgeons also refused to be interviewed or explain how Dr. Casses got a permanent licence here given what happened in Arizona. Dr. Casses later sent a statement [Ms. Tomlinson holds up a document] through his lawyer saying his complication rate is much lower than average, a claim the health authority couldn't verify though, because it doesn't track that.

(iv) The September 9 TV Report

[283] The third TV report was broadcast on the 6 p.m. local Vancouver news on September 9. It was just under 3 minutes long.

[284] Mr. Hanomansing introduced the segment as follows:

More now on our CBC investigation into a surgeon in Quesnel. Last night we heard patients complaining the doctor denied or failed to treat serious complications following his surgeries. More patients have come forward today. And tonight, Go Public reporter Kathy Tomlinson takes us to Arizona, where the doctor surrendered his licence.

[285] The segment begins in Sun City, Arizona, with an image of Ms. Hix, who says: "My mom was extremely healthy." A photograph of Beverly North is shown. In a voice-over, Ms. Tomlinson says: "Beverly North was one of the last American patients operated on by Dr. Fernando Casses before he came to BC, right before his hospital privileges were pulled in Arizona." There is then an image of Dr. Casses, dressed casually, walking in a parking lot. The scene returns to Ms. Hix and Ms. Tomlinson. Ms. Hix appears to be weeping and quite emotional. They are looking at photographs of Beverly North. Ms. Tomlinson says in a voice-over: "He cut a major vein while trying to remove a blockage in her leg." There is a further exchange between Ms. Hix and Ms. Tomlinson. Ms. Hix recounts what she says Dr. Casses told the family that night, that her mother had had a heart attack. Ms. Tomlinson says in a voice-over accompanied by an image of Mrs. North's grave and then Dr. Casses walking in a parking lot and getting into an SUV. Ms. Tomlinson is shown outside Boswell Memorial and says:

Her mother died weeks later. An autopsy showed no heart damage. A jury found Dr. Casses 90% responsible. The Arizona medical board moved to revoke his licence and he surrendered it, admitting to unprofessional conduct. That same month, he started his new job performing surgeries in B.C.

[286] The scene then goes to the people seated around the dining room table. As in the September 8 TV Reports, the mood is serious and somber. Ms. Cook says: “Why didn’t I know that he wasn’t allowed to practice in Arizona?” Ms. Tomlinson says in a voice-over: “Some of his B.C. patients in Quesnel are now complaining Dr. Casses also denied or failed to treat their complications.” The photographs of Ms. Cook’s left foot are again shown. Ms. Odiorne says: “How many people are really out there like us.”

[287] The scene shifts back to Arizona, to Dr. Hunter, who is identified as the former vice-chairman of the Arizona Medical Board. Dr. Hunter says: “I was just horrified reading the cases.” In a voice-over, Ms. Tomlinson says: “This Arizona doctor reviewed some of his complications during the investigation there.” Dr. Hunter is then shown being interviewed by Ms. Tomlinson and says: “As I recollect, there were a large number of very poor surgeries and a number of people harmed.” Next is shown the image labelled “Arizona Medical Board Resolution” with the Arizona State seal and the quote that says “a paper trail preventing Dr. Casses from ever practicing in Canada.” In a voice-over, Ms. Tomlinson says: “The board resolved to create a paper trail preventing Dr. Casses from ever practicing in Canada.”

[288] The scene shifts to Dr. Casses driving away in his SUV while Ms. Tomlinson calls after him: “How about the complaints that you’re getting?” In a voice-over, Ms. Tomlinson says: “Dr. Casses refused to talk to CBC, then it appears left town. His secretary says that the office is closed for holidays and she doesn’t know where Dr. Casses is.” A couple of images, taken from a distance, of Dr. Casses’ and Ms. Schoenauer’s West Vancouver home are shown, accompanied by Ms. Tomlinson’s voice-over that: “he also has this home in West Vancouver.”

[289] The segment again ends with Ms. Tomlinson on the street in Vancouver. She says:

B.C.'s College of Physicians and Surgeons gave Dr. Casses a temporary licence when he came to B.C., then, despite knowing his history, made that licence permanent. It won't say why. There have been at least seven complaints filed against him since. The latest we know of, the patient insisted that Dr. Casses' version of what happened wasn't true. The College then decided it didn't believe him either, and it took what it calls remedial action. Tomorrow we will tell you what the health authorities knew and didn't know about Dr. Casses' history in Arizona.

(v) The September 10 TV Report

[290] The final TV Report was broadcast on the 6 p.m. local Vancouver news. Again, it was just under 3 minutes long.

[291] It was introduced by Ms. Macarenko as follows:

For the past two nights we have brought you the stories of patients who are upset about a B.C. surgeon who had surrendered his licence in Arizona. Tonight we continue with our exclusive Go Public investigation. Kathy Tomlinson now on how the doctor got his licence and job in B.C. despite his history in Arizona.

[292] The segment begins with people seated at a dining room table. The mood is somber and serious. Ms. Odiorne (not identified) says: "All of us have complained. What are they doing? What is anybody doing?" Ms. Tomlinson says in a voice-over over of shots of people seated at the table: "Former patients and their families upset over how they were treated by Quesnel surgeon Dr. Fernando Casses." There is an image of Dr. Casses, casually dressed, walking in a parking lot. Ms. Mead says: "I had six follow-up surgeries. I'm now cut [gesturing]." Ms. Cook picks up photographs of her foot, including one showing that her great toe has been amputated. Ms. Tomlinson says in a voice-over: "They say he denied or failed to treat serious complications." Ms. Mead is then shown, and says: "They need to investigate him fully." Over images of the people at the table, Ms. Tomlinson says: "This group doesn't understand why the College allowed Dr. Casses to practice here

in the first place.” Ms. Odiorne (again unidentified) says: “They are doing a really poor job.”

[293] The scene shifts to Boswell Memorial, and then the image of the “Arizona Medical Board Resolution” seen in earlier broadcasts. In a voice-over, Ms. Tomlinson says: “Before coming to Quesnel in 2001, Dr. Casses had been told, surrender his licence in Arizona or it would be suspended. He did. The Arizona Medical Board resolved to create a paper trail preventing Dr. Casses from ever practicing in Canada.” The image labelled “Arizona Medical Board Resolution” with the Arizona State seal and the quote that says “a paper trail preventing Dr. Casses from ever practicing in Canada” is again shown. Ms. Cook is shown, saying: “Why didn’t I know that he wasn’t allowed to practice in Arizona?”

[294] There is then an image of the exterior of Boswell Memorial and then Dr. Casses, dressed casually, walking in a parking lot. Ms. Tomlinson says in a voice-over: “It turns out Dr. Casses left for B.C. when the investigation in Arizona was just getting started, before his record was tarnished. He got a temporary B.C. licence first, then, even after a B.C. doctor reported his Arizona history to the College, it still made his licence permanent.” There are then some images of the exterior of the offices of the College.

[295] The scene returns to the people around the dining room table. Caroline Mitchell, identified as “Deceased patient’s daughter,” says: “The College of Physicians should give a reason why they did that.” In a voice-over of the image of the building directory for the College’s offices, Ms. Tomlinson says: “The College refused to explain any of it, citing doctor privacy.”

[296] Over images from the exterior of Baker Memorial, Ms. Tomlinson says: “The Northern Health Authority gave Dr. Casses hospital credentials after he told them he had given up his Arizona licence over one case. The Health Authority says it didn’t check that, and he’s done 1,500 surgeries here since.” There is audio (accompanied by text on the screen) of an exchange between Ms. Tomlinson and Dr. Becky Temple. Ms. Tomlinson asks Dr. Temple: “Did anyone talk to anyone on

the Arizona Medical Board?” Dr. Temple responds: “That would not be a normal procedure for the hospital. I don’t feel that the Arizona Medical Board has any authority or mandate to decide who practices in Canada or British Columbia.” There are a few more images of Dr. Casses in his SUV. Ms. Tomlinson says: “CBC News has learned there were several problem surgeries in Arizona, which the Board there reviewed. Dr. Casses admitted to harming a patient in one.”

[297] Finally, Ms. Tomlinson is back on the street in Vancouver and says:

We now know of nine complaints to the B.C. College, three of them upheld, three not upheld and others still outstanding. We’ve also heard from a few more upset patients in Quesnel who now want the authorities to take a closer look at Dr. Casses’ record.

(g) Aftermath

[298] Ms. Tomlinson explained that shortly (about a week or so) after the last TV Report was broadcast, the digital records, containing the raw footage shot in Arizona and Quesnel, were deleted from the CBC servers. This happened as part of a regular, strictly enforced practice to delete material from the CBC servers once programs have been aired, to free up space. Ms. Tomlinson described the records as being “blown away.” According to Ms. Tomlinson, editors at the CBC were constantly clearing out the servers, and she has had personal experience with material being “blown away” or deleted prematurely, before she had completed work on a story and before the story had aired.

[299] Dr. Casses did not watch any of the TV Reports when they were first broadcast. Rather, he asked Ms. Schoenauer to watch them, and report in detail what she saw to him, including a summary of “the facts” and the names of the participants. Ms. Schoenauer did as she was asked, watching carefully and taking notes. The TV Reports were also available on-line, so Ms. Schoenauer could replay them multiple times and take better notes.

[300] After the broadcast of the first TV Report, Ms. Schoenauer and Dr. Casses discussed what she had seen. Both of them were very upset. Dr. Casses recalled

saying that these were lies, a distortion of the facts and a manipulation of information. He recalled that he felt very angry, frustrated and helpless, because he did not feel he had the power to go onto the Internet and clarify the facts. He was perhaps even more upset by the second TV Report (on “The National”) and what Dr. Hunter said. Ms. Schoenauer recalled that Dr. Casses described Dr. Hunter’s statements as completely illegal.

[301] Despite feeling quite devastated and upset, Dr. Casses also recalls receiving phone calls and other communications from doctors and acquaintances expressing sympathy for his situation, and support.

[302] On September 11, 2009, Ms. Watkins posted the following to Dr. Casses’ profile on RateMDs:

Check out CBC.ca weeklong investigation regarding post-op surgical complications. The College of P&S of BC should be held accountable for granting him privileges to practise in BC. He waited too long post-surgery on our mother before sending her to VGH – she suffered 3 weeks and 5 surgeries later trying to clean up the surgical mess left by this doctor, only to succumb to her death from infection of leaking bile, sutured pancreas and nicked bowel. Had he sent her on sooner she may still be with us today. Northern Health Authority needs to investiage [sic] every patient of his to show the real statistics on post-op complications – we might all be surprised!

She gave Dr. Casses the lowest rating, one out of five stars.

[303] Ms. Watkins explained that, after viewing the TV Reports, she realized there were a lot of other people affected and she wanted to share what her family had gone through. She said that her sister Caroline Mitchell (who attended the gathering on August 24, appeared in the TV Reports and was quoted in the Web Story) told her about RateMDs.

[304] Dr. Casses waited about three months or so before he watched any of the TV Reports. He explained that he waited because he wanted to be objective, and did not want to “contaminate” himself with voices, ads and chit-chat. However, he looked at the Web Story more or less as soon as it was published.

[305] In the meantime, Dr. Casses took out a paid advertisement in the September 16, 2009 edition of Quesnel Observer newspaper. It is dated September 2009 and signed by Dr. Casses. I will refer to this as the “September Statement.” Dr. Casses testified that everything stated in the September Statement is true. He agreed on cross-examination that this was his statement to the public at large and it was very important to be forthcoming.

[306] The September Statement reads in part:

As everybody now knows, the Canadian Broadcasting Corporation has embarked on an elaborate television and radio campaign which appears to be calculated to destroy my professional reputation, to expose me to mistrust and vicious blog commentary, and to compromise my ability to practice my chosen profession. I have worked too hard to allow libels to destroy my good name and taken the appropriate steps to retain legal counsel in that regard.

The CBC programmes build innuendo upon false innuendo, all of it anchored by stories about events in Arizona. Although certain Arizona facts are true, other are not. Some CBC allegations are distortions of fact or half-truths which leave a false impression on the viewer or readers. . . .

Your readers may well ask, what truth is there to claims about your surgical history in Arizona?

What is true is that I voluntarily surrendered my medical license 10 years ago in Arizona and voluntarily admitted that in one instance, I did not perform a surgical procedure to an appropriate standard. . . .

I fully disclosed the Arizona facts and all the associated circumstances (including allegations I disputed) to the BC College of Physicians and Surgeons and to the Northern Health Authority when I surrendered my Arizona licence. . . .

As might be expected, the British Columbia College of Physicians and Surgeons conducted a thorough investigation with the assistance of two independent, outside Canadian surgeons and came to the conclusion that I was qualified and fit to practice general surgery in British Columbia. In other words, before I was permitted to practice surgery after my history had been put under the microscope.

. . .

Without breaching doctor-patient confidentiality, I tell you that it is my invariable practice to explain to each of my patients the fact that every surgical procedure has inherent risks and to describe those risks as they may apply to their particular procedures.

. . .

Following surgery, my rigid practice is to ensure that each patient is given a truthful and accurate explanation, in plain English, concerning his or her surgery and I appropriately follow them to the best of my ability in recovery. If a complication has occurred, they are given an explanation of the circumstances of that complication. . . .

. . .

You may be surprised to learn this, but . . . legal and ethical requirements continue to prevent me from speaking to the news media about any of my patients. Furthermore, any patient complaints against me have been considered by the proper authorities and addressed by independent medical reviewers.

Dr. Casses goes on to explain why he was not prepared to submit to an on-camera interview, and repeated paragraphs from his August 28, 2009 statement that referred to the **Leenen** and **Myers** cases.

[307] According to Dr. Casses, the atmosphere when he returned to work after the TV Reports was “horrible.” He felt like everyone was looking at him, but no one talked to him about the TV Reports or the Web Story. He explained that (like any surgeon) he received patients as a result of referrals from other doctors, and after the TV Reports and Web Story, his referrals dropped dramatically, about 50% by his estimate. According to Dr. Casses, before the TV Reports and the Web Story, 70% of the patients in the waiting room were for him, while 30% were for the other surgeon, Dr. Katalinic. Afterwards, he estimated 99% of the patients were for Dr. Katalinic, and only 1% for him. Before the TV Reports and the Web Story, Dr. Casses estimated that he spent two full days per week in the operating room doing surgery, and one to two days per week doing endoscopy, and, as he recalled, he had a waiting list of four months. Afterwards, he was unable to fill his allocated operating room time. As Dr. Casses explained, since operating room time is valuable, if he did not have patients, the time had to be given to someone else. He went down to a half day for surgery and a half day for endoscopy. According to Dr. Casses, all of this happened very quickly after the TV Reports and Web Story, and never recovered up until he decided to leave Quesnel.

[308] Within a few months, Dr. Casses commenced three separate lawsuits, seeking damages for defamation. His lawsuits against Mr. Backer, Ms. Watkins and

Ms. Cook were filed in November 2009, and his lawsuit against Ms. Odiorne was filed in December 2009. In June and July 2010, the Individual Defendants issued third party notices against the CBC and Ms. Tomlinson, claiming contribution and indemnity with respect to any liability for damages found against them in the Individual Actions.

[309] Dr. Casses and Casses Inc. did not sue the CBC and Ms. Tomlinson until August 9, 2011. Mr. Williams was added as a defendant in October 2013 (without prejudice to a limitation defence).

[310] Dr. Casses also commenced legal proceedings in Arizona against Ms. Hix and her brother Larry North, alleging defamation. Dr. Casses confirmed that the claims against Ms. Hix were settled by a judgment pronounced September 1, 2010, and the terms of a settlement agreement dated August 11, 2010. By the terms of the settlement agreement, Ms. Hix was required to pay Dr. Casses damages in the sum of ten dollars, and (among other matters) the parties agreed on the contents of a press release, which either party was permitted to publish once the judgment order was signed by the court. Other than the court's judgment and the press release, nothing else was to be published or communicated by Ms. Hix to anyone. The press release states in relevant part:

Dr. Fernando Casses brought a lawsuit against Sandra J. Hix in the Superior Court of the State of Arizona alleging damages for Defamation of Character. Fernando Casses and Sandra J. Hix have resolved the claims among them. Pursuant to the agreement of the parties, plaintiff, Dr. Fernando Casses was awarded judgment against Sandra J. Hix.

Sandra J. Hix now recognizes and accepts: (i) that Dr. Casses' surgery on her mother did not involve any criminal misconduct on the part of Dr. Casses; and (ii) the Arizona civil jury verdict that Dr. Casses was negligent did not involve a finding of criminal or deliberate or systemic misconduct on his part. In order to clear the air, Ms. Hix has decided to apologize to Dr. Casses for any embarrassment caused by her past allegations which may have lead [sic] some people to believe otherwise.

[311] Dr. Casses was unable to say exactly when he left Quesnel. However, based on his and other evidence, I conclude that he probably left sometime in the summer in 2012. Dr. Casses says that, for the two years or so prior to trial, he has been

working as a board-certified surgical assistant at Surrey Memorial Hospital, assisting in complicated thoracic surgeries. According to Dr. Casses, he enjoys his current work, which does not require him to deal directly with patients and their families.

3. Discussion and Analysis

[312] In this section, I will first address the plaintiffs’ defamation claims, in all four of the actions.

[313] In summary, I conclude that Casses Inc. has failed to prove a defamation claim against any of the defendants. I conclude that what I find are the inferential meanings of the Web Story and the TV Reports are defamatory of Dr. Casses. However, I conclude that Dr. Casses has failed to make out his claims against Ms. Cook, Ms. Odiorne and Mr. Backer. Finally, I conclude that what I find are the inferential meanings of Ms. Watkins’ RateMDs post are defamatory of Dr. Casses.

[314] I will then turn to the defences raised by the CBC Defendants and Ms. Watkins.

(a) The Plaintiffs’ Defamation Claims

(i) Basic Principles

[315] A plaintiff in a defamation action is required to prove three things to obtain judgment and a remedy: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff’s reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed. See **Grant v. Torstar Corp.**, 2009 SCC 61, at para. 28.

[316] The onus of proving a statement was defamatory is on the plaintiff.

[317] Any imputation that may tend to lower the plaintiff in the estimation of right-thinking members of society generally or to expose him or her to hatred, contempt or

ridicule is defamatory. In determining the meaning of a publication and whether it is defamatory, the court may take into consideration all of the circumstances of the case, including any reasonable implications the words may bear, the context in which the words are used, the audience to whom they were published and the manner in which they were presented. See **Botiuk v. Toronto Free Press Publications Ltd.**, [1995] 3 S.C.R. 3, at para. 62.

[318] Professionals may be defamed by comments that question or impugn their qualifications, knowledge, skill, capacity, judgment or efficiency. Comments suggesting that a medical practitioner is incompetent, unqualified or guilty of discreditable conduct in his or her profession are defamatory. See, for example, **Cimolai v. Hall**, 2005 BCSC 31, at para. 72, aff'd 2009 BCCA 212, and R.E. Brown, *The Law of Defamation in Canada*, 2nd ed. (Toronto: Carswell, 1994) (“*Brown on Defamation*”), at p. 4-247. Dr. Casses says that he has been defamed by publications that question and impugn his professional qualifications and skill, and impute incompetence and unfitness for his position as a general surgeon.

[319] The court applies an objective test in determining whether the meaning of a publication or statement is defamatory. In the often-cited case of **Lewis v. Daily Telegraph Ltd.**, [1963] 2 All E.R. 151 (H.L.), Lord Reid for the court said, at pp. 154-155:

What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is also regarded as part of their natural and ordinary meaning. . . .

. . .

In this case it is, I think, sufficient to put the test this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naive. One must try to envisage people between these two extremes and see what is the most damaging meaning that they would put on the words in question. . . .

What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression.

[320] Lord Reid also provided helpful guidance in ***Rubber Improvement Ltd. v. Daily Telegraph Ltd.***, [1964] A.C. 234 (H.L.), at p. 258:

There is no doubt that in actions for libel the question is what the words would convey to an ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs.

[321] With respect to the standard of what constitutes an ordinary member of the public, Abella J.A. (as she then was) wrote, in ***Color Your World Corp. v. Canadian Broadcasting Corp.*** (1998), 156 D.L.R. (4th) 27 (Ont. C.A.), at para. 15:

The standard . . . is difficult to articulate. It should not be so low as to stifle free expression unduly, nor so high as to imperil the ability to protect the integrity of a person's reputation. The impressions about the content of any broadcast -- or written statement -- should be assessed from the perspective of someone reasonable, that is, a person who is reasonably thoughtful and informed, rather than someone with an overly fragile sensibility. A degree of common sense must be attributed to viewers.

[322] The intention of the author and publisher is not relevant on the issue of meaning. The subjective opinion of a plaintiff concerning the meaning of the expression is also not relevant. See ***Lawson v. Baines***, 2011 BCSC 326, at para. 39, aff'd 2012 BCCA 117. (I will refer to the trial decision as "***Lawson v. Baines***".)

[323] The plaintiffs do not complain about the literal meanings of the words, either in any of the TV Reports or the Web Story, or in any of the statements alleged to be made by the Individual Defendants. Rather, the plaintiffs say that what is defamatory are the inferential meanings left by those publications and statements. An inferential meaning is the impression an ordinary, reasonable person would infer from the allegedly defamatory material, looking at everything in context.

[324] The TV Reports, of course, are not simply words. As Cunningham J. commented in ***Leenen***, at para. 89: "Television, a very powerful medium, provides

widespread and instantaneous dissemination of information.” The same can be said of the Internet, where all of the TV Reports and the Web Story were available on the CBC website. In **Crookes v. Newton**, 2011 SCC 47, Abella J. wrote (at para. 37): “Because the Internet is a powerful medium for all kinds of expression, it is also a potentially powerful vehicle for expression that is defamatory.”

[325] The plaintiffs bear onus to prove, on a balance of probabilities, that the TV Reports, the Web Story and the statements alleged to have been made by the Individual Defendants bore the inferential meanings alleged, or something substantially similar. See **Lawson v. Baines**, at paras. 35 and following.

[326] It is for the trier of fact (in a non-jury trial such as this one, the trial judge) to decide what natural and ordinary meaning the words bear, including what innuendos can be reasonably inferred. Thus, I am not bound by either the plaintiffs’ interpretations, or those of the defendants. See **Miller v. Canadian Broadcasting Corp.**, 2003 BCSC 258, at para. 17 (citing **Lucas-Box v. News Group Newspapers Ltd.**, [1986] 1 All E.R. 177 (C.A.)).

[327] To prove the publication element of defamation, a plaintiff must establish that the defendant has, by any act, conveyed defamatory meaning to a single third party who has received it. Traditionally, the form the defendant’s act takes and the manner in which it assists in causing the defamatory content to reach the third party are irrelevant. See **Crookes v. Newton**, at para. 16.

[328] The general rule is that a person is responsible only for his or her own defamatory publications, and not for their repetition by others: *Brown on Defamation*, at p. 7-40. The exceptions to this rule are where: (a) the original publisher authorized or intended the republication; (b) the person to whom the original publication is made was under a duty to repeat the expression; and (c) the republication was the natural and probable result of the original publication. See **Speight v. Gosnay** (1891), 60 L.J.Q.B. 231 (C.A.), at p. 232. These exceptions are discussed in *Brown on Defamation*, at pp. 7-44 to 7-46 (footnotes omitted):

These exceptions apply only where the information repeated is the same or substantially the same so that the sum and substance of the original charge remains, or at least part of the sting of the original publication is conveyed. The fact that there are some slight alterations in the republication will not affect the exceptions if the sense of the original publication is still the same. On the other hand, where the original publisher merely provides “some of the material used by another in the preparation of a defamatory piece, he will not be liable as a publisher of the later publication, if, as a whole, it is different in sense and substance from the material he provided.”

[329] A practical application of the rule and the exceptions is found in *Pressler v. Lethbridge and Westcom TV Group Ltd.*, 2000 BCCA 639, where Southin J.A. discussed the liability of an interviewee for defamatory statements in a broadcast. She wrote, at paras. 52-53:

[52] . . . [A] common technique of television producers is to interview a number of persons and take bits and pieces from each interview and put them together in a way thought to be interesting. This technique is capable of giving a false impression of the meaning the interviewee intends by his words to convey, by virtue either of editing out other words of the interviewee or juxtaposing the words used with the words of others.

[53] Publication is the essence of defamation. In principle, I consider an interviewee is liable for a publication on television if by his antecedent dealings with the broadcaster he has authorized the publication of its substance and its sting and what is published by the broadcaster is that substance and that sting. This is an application to the modern media of *R. v. Cooper* (1846), 8 Q.B. 533, 115 E.R. 976.

[330] Here, I find that the Web Story and each of the TV Reports were in fact published by the remaining CBC defendants (the CBC, Ms. Tomlinson and Mr. Williams). The main contest in the CBC Action is over the other two elements that the plaintiffs must prove: (1) that the statements were defamatory and (2) that the statements in fact referred to each of the plaintiffs. All elements are in issue in the Individual Actions.

(ii) Do any of the publications in any of the Actions refer to Casses Inc.?

[331] I will first address the question whether any of the publications or statements in issue in fact refer to, or are “of and concerning,” Casses Inc. Casses Inc. has the

burden to prove this, on a balance of probabilities. If it does not, its claims must be dismissed.

[332] The CBC defendants admit that the CBC published the Web Story and the TV Reports and that they are about Dr. Casses. However, none of the defendants in any of the actions admits that anything published referred to Casses Inc.

[333] Whether the statement or publication in fact refers to, or is “of and concerning,” the plaintiff, like questions concerning meaning generally, is determined from the perspective of an ordinary or reasonable reader or viewer. The test is stated in one of the leading cases, ***Knupfer v. London Express Newspaper, Ltd.***, [1944] A.C. 116, at p. 121 (per Viscount Simon, L.C.):

There are two questions involved in the attempt to identify the appellant as the person defamed. The first question is a question of law - can the article, having regard to its language, be regarded as capable of referring to the appellant? The second question is a question of fact - Does the article in fact lead reasonable people, who know the appellant, to the conclusion that it does refer to him? Unless the first question can be answered in favour of the appellant, the second question does not arise, and where the trial judge went wrong was in treating evidence to support the identification in fact as governing the matter, when the first question is necessarily, as a matter of law, to be answered in the negative.

[334] Statements or publications can be defamatory of a person without the person being identified by name. As is stated in *Brown on Defamation*, at pp. 6-7 to 6-10 (footnotes omitted):

It is essential to the cause of action that the words be defamatory of the plaintiff. It is not necessary that the plaintiff be named specifically, or identified by his or her proper name, or even mentioned at all, if it is otherwise shown that the words would be reasonably understood to refer to the plaintiff. Nor is it necessary for the person to whom the publication is made to know the plaintiff by name.

Direct evidence that the plaintiff is pointed to is not essential. He or she may be indicated "by designation or description", or pointed to by the circumstances ... It may be clear from other evidence that he was the one alluded to, but he must satisfy the court in that regard. This may be done by introducing evidence, apart from the publication, connecting the plaintiff with the defamatory publication. The extrinsic facts do not have to coincide exactly with the facts detailed in the publication so long as they enable a reasonable person to identify the plaintiff.

[335] Statements which do not refer to the plaintiff by name will nonetheless meet the “of and concerning” requirement if they may reasonably be found to refer to the plaintiff in light of the surrounding circumstances. Moreover, in cases involving more than one allegedly defamatory publication, the court may be entitled to look at all of the articles in considering the question of whether a particular one refers to the plaintiff. See **Butler v. Southam Inc.**, 2001 NSCA 121, at paras. 39-42.

[336] Mr. McConchie argues that the TV Reports, the Web Story and the statements made by the individual defendants were defamatory of both Dr. Casses and Casses Inc. Mr. McConchie submits that the circumstances described in the following passage from *Brown on Defamation*, at pp. 18-124 to 18-127, applies here (footnotes omitted):

However, there are occasions where personal accusations against an officer, director or employee may be defamatory of the corporation as well. Whether that is the case depends “upon the part that the director or officer is alleged to have played in the operations of the company and upon the extent to which the one is identified with or considered to be the alter ego of the other”. The question is whether the persons to whom an article refers and the corporation are so closely identified in the public mind that the accusation would be understood to be defamatory of the corporation. ...The same is true if the accusations are made against the sole owner, and it is shown that “the corporation’s trading reputation is integrally related to the personal plaintiff’s business or trading reputation”. ...

It has also been held that since a corporation can only act through its officer, directors and employees, attacks on them must necessarily affect the business reputation of the corporation and those attacks may be considered in computing the damages suffered by the corporation which has also been defamed.

[337] Mr. McConchie also cites **Barrick Gold Corp. v. Lopehandia** (2004), 71 O.R. (3d) 416 (C.A.), where the court said (at para. 47):

[47] However, a significant element in Mr. Lopehandia's defamatory campaign against Barrick consisted of lengthy attacks on the integrity and bona fides of its various officers, directors and employees. A corporation can only act through such individuals. False and defamatory statements concerning the people who are responsible for supervising and conducting the affairs of the corporation -- particularly a public corporation such as Barrick -- must inevitably affect the business reputation of the corporation, as well as that of the individuals. The authors of P.F. Carter-Ruck and H.N.A.

Starte, *Carter-Ruck on Libel and Slander*, 5th ed. (London: Butterworths, 1997), at pp. 197-98, state:

It is probable that a statement which reflects upon the honesty of the directors of a company, which is calculated by the imputations to which it gives rise to lead third parties no longer to deal with the company, would also entitle the company to seek substantial damages.

[338] The defendants say that, whatever the outcome of Dr. Casses' claims, the claims by Casses Inc. must be dismissed. They say that Casses Inc. was never identified or referred to in any way (including inferentially) in any of the publications or statements. The defendants submit that a corporation cannot maintain a defamation action for words that reflect not upon itself but solely upon its individual officers or members, who must bring the action themselves. In support, they cite *Gatley on Libel and Slander*, 7th ed. (London: Sweet & Maxwell, 1974), at p. 378 (¶ 890), and ***Church of Scientology of Toronto v. Globe and Mail Ltd. et al.***, (1978), 84 D.L.R. (3d) 239 (Ont. H.C.J.). They point out that the alleged defamatory publications and statements concern Dr. Casses' activities as a surgeon carrying out surgery and other medical procedures on patients. These activities are, necessarily, carried out by Dr. Casses personally. A corporation cannot hold a scalpel.

[339] In my opinion, the claims by Casses Inc. cannot succeed because neither the TV Reports nor the Web Story nor any statements made by any of the Individual Defendants would be understood by a reasonable person to be "of and concerning" Casses Inc. While there may be occasions where personal accusations against an officer or director or employee may be defamatory of the corporation as well, this is not one of them. Casses Inc. hardly had the profile of a public company such as Barrick Gold Corp. Perhaps Dr. Casses (and maybe Ms. Schoenauer) identified Casses Inc. as Dr. Casses' alter ego, although the evidence to support even that conclusion is slim at best. In my view, the plaintiffs have failed to prove that an ordinary, reasonable person would identify Dr. Casses with Casses Inc., and understand or infer that a reference to Dr. Casses would also be a reference to Casses Inc.

[340] The words complained of clearly referred to Dr. Casses. But there is nothing in any of the publications or statements in issue that even hint at the existence of Casses Inc., much less refer to it, even inferentially. Dr. Casses' own letterhead was devoid of any mention of Casses Inc., so it is very difficult to say that it had any kind of public profile, or that mention of Dr. Casses to anyone would also bring to mind Casses Inc. There was no evidence that the residents of Quesnel knew that Dr. Casses carried on his surgical practice through Casses Inc. There is nothing in the surrounding circumstances to suggest that any of the TV Reports, or the Web Story, or any statements made by Individual Defendants alluded to Casses Inc. in any way. Rather, they were all personal to Dr. Casses. In my opinion, looking at all of the publications and statements together, there is nothing that would suggest to a reasonable person that any of them were about both Dr. Casses and Casses Inc., or that any such inference would be drawn.

[341] In the Individual Actions, Casses Inc. pleads that statements were made by Ms. Cook, Ms. Odiorne and Mr. Backer to Ms. Tomlinson and that Ms. Tomlinson knew that Dr. Casses carried on his medical practice through Casses Inc. Based on this, the conclusion I am being asked to draw is that when Individual Defendants were speaking to Ms. Tomlinson, their statements were "of and concerning" both Dr. Casses and Casses Inc., based on Ms. Tomlinson's knowledge. However, in my opinion, this train of reasoning is too artificial to be either convincing or acceptable. The fact is each of the Individual Defendants, when speaking about Dr. Casses, was speaking about him in his capacity as an individual qualified to perform surgery. That is how what they said would be understood by the ordinary, reasonable person, even by someone who knew that Dr. Casses had a personal corporation.

[342] Moreover, a corporation cannot perform surgery. Sections 42 and 43 of the **Health Professions Act**, R.S.B.C. 1996, c. 183, which discuss "health profession corporations" and which Mr. McConchie relied on in closing submissions, do not assist Casses Inc. to make out its claims that it was defamed. That, legally, Dr. Casses may be able to carry on a surgical practice through a professional corporation does not mean that, when Dr. Casses' name is mentioned, a reasonable

person would conclude that Casses Inc. is also being mentioned. It remains the fact that it is the surgeon – Dr. Casses personally – who performs the surgery and renders the patient care. That is what Dr. Casses’ patients were unhappy about.

[343] I do not think it was an accident that, when the Individual Actions were filed in 2009, Casses Inc. was not named as a plaintiff. Rather, the naming of Dr. Casses as the sole plaintiff reflected the reality that none of the statements alleged to be defamatory would be regarded by a reasonable person as capable of referring to Casses Inc.

[344] Accordingly, I conclude that Casses Inc. has failed to prove that any of the publications or statements in issue in fact referred to it.

[345] Because Casses Inc. has failed to prove an essential element of its claims for defamation, it follows that the claims by Casses Inc. in all of the actions must be dismissed.

[346] In that light, in the discussion that follows (including references to the notices of civil claim), I will treat Dr. Casses as if he is the only plaintiff.

(iii) General comments about Dr. Casses’ pleaded meanings in the CBC Action

[347] As I noted above, in the CBC Action, Dr. Casses does not complain about the literal meanings of any of the words published or spoken in any of the TV Reports or the Web Story, or assert that the words themselves are defamatory. Rather, Dr. Casses says that the inferences an ordinary person would draw from the words published and spoken, as set out in his pleaded meanings, are defamatory.

[348] The context of the TV Reports is important. While the Web Story was mainly (although not exclusively) text, all of the TV Reports have important audio and visual elements as part of the reporting. A tone of voice and inflections can create their own impressions. Visuals create their own impression. An individual can appear to be friendly and open, with nothing to hide. Another individual – seen only from a

distance or driving away from a reporter – can appear secretive and evasive. In my opinion, this is how Dr. Casses is made to appear in the TV Reports, while the Aaslies and the group gathered at the Backers’ are portrayed sympathetically.

(iv) Meanings of the Web Story

[349] Dr. Casses says that the Web Story conveyed the following “natural and ordinary inferential meanings”:

- a) The individual plaintiff had a disgraceful history of systematic professional misconduct and habitual professional negligence in Arizona before coming to British Columbia and being licensed by the College of Physicians and Surgeons of British Columbia to practise medicine in British Columbia;
- b) The individual plaintiff has been guilty of systematic professional misconduct and habitual professional negligence in British Columbia since being licensed by the College of Physicians and Surgeons of British Columbia, in relation to his surgical care and post-surgical treatment of patients Edith Backer, Krystal Cook, Robin Odiorne, and Stephanie Aaslie together with numerous other cases in British Columbia;
- c) The plaintiffs negligently performed surgery on patients Edith Backer, Krystal Cook, Robin Odiorne, and Stephanie Aaslie, together with numerous other cases in British Columbia, thereby causing each of them to suffer needless pain;
- d) The plaintiffs negligently performed surgery on patient Edith Backer thereby causing her death;
- e) The plaintiffs dishonestly and deceitfully concealed from patient Edith Backer, from her son Douglas Backer and from her daughter Caroline Mitchell, and from others, serious complications arising from the surgery they had performed on Edith Backer;
- f) The plaintiffs deliberately refused to acknowledge and failed to treat serious complications arising from the surgery they had performed on patients Edith Backer, Krystal Cook, Robin Odiorne, and Stephanie Aaslie, together with numerous other cases in British Columbia, or alternatively, the plaintiffs negligently failed to treat such complications;
- g) The plaintiffs deliberately and deceitfully did not reveal or treat serious perforations and post-surgical infections arising from the surgery they had performed on Edith Backer;
- h) The plaintiffs negligently performed surgery on patients Krystal Cook, Robin Odiorne, and Stephanie Aaslie, together with numerous other cases in British Columbia, thereby causing them permanent damage;

- i) The plaintiffs negligently performed surgery on patient Krystal Cook thereby requiring the amputation of her big toe;
- j) The plaintiffs dishonestly and deceitfully concealed from patients Krystal Cook, Robin Odiorne, and Stephanie Aaslie, together with numerous other cases in British Columbia, serious complications arising from the surgery they had performed on them;
- k) The plaintiffs deliberately and deceitfully did not reveal or treat serious post-surgical infections caused by the surgery they had performed on Krystal Cook, together with numerous other cases in British Columbia;
- l) The plaintiffs negligently performed surgery on patients Robin Odiorne and Stephanie Aaslie, thereby nearly causing their death;
- m) The plaintiffs dishonestly and deceitfully concealed from patient Robin Odiorne serious complications arising from the surgery they had performed on her;
- n) The plaintiffs deliberately and deceitfully did not reveal or treat serious perforations caused by the surgery they had performed on Robin Odiorne;
- o) The plaintiffs negligently performed surgery on patient Stephanie Aaslie thereby severing her bile duct, liver and bowel and causing a life threatening infection;
- p) The plaintiffs deliberately and deceitfully failed to reveal and treat the severed bile duct, liver and bowel and life-threatening infection caused by the surgery they had performed on patient Stephanie Aaslie;
- q) The plaintiffs' aforesaid conduct concerning patients Edith Backer, Krystal Cook, Robin Odiorne, and Stephanie Aaslie, together with numerous other cases in British Columbia, warranted termination of their medical licence or other severe disciplinary sanctions by the College of Physicians and Surgeons of British Columbia; and/or
- r) One or more of the above.

[350] According to Dr. Casses, these (or one or more of them) are the “stings” of the Web Story.

[351] In my opinion, the meanings pleaded by Dr. Casses are at the most extreme end of what might be inferred from the Web Story. They reflect the worst and harshest interpretation of the Web Story. They are likely how Dr. Casses and Ms. Schoenauer perceived the Web Story. However, their personal reactions and subjective opinions are not the test of whether the Web Story was defamatory. Moreover, I do not think that an ordinary person – not trained as a lawyer – thinks in terms of “systematic professional misconduct” or “habitual professional negligence.”

An ordinary person, not trained as a lawyer, does not use the words “negligently” or “negligent” in any technical legal sense, contrary to what Mr. McConchie suggested in argument.

[352] I do not accept Dr. Casses’ pleaded meanings as the meanings that an ordinary, reasonable person would infer from the Web Story.

[353] In my opinion, the Web Story as a whole would probably lead an ordinary, reasonably thoughtful and informed person to infer that:

- (a) before being licensed by the College, Dr. Casses had a history in Arizona of poor surgical practice in numerous cases, leading to a loss of his licence to practice there. This occurred around the same time Dr. Casses moved to B.C. and became licensed by the College;
- (b) because of Dr. Casses’ history in Arizona, it is reasonable to ask questions about how Dr. Casses came to be licensed by the College and to receive hospital privileges here;
- (c) since being licensed to practice in B.C., Dr. Casses has had a number of cases where patients or family members of patients have raised serious issues concerning the quality of his surgical and post-surgical care;
- (d) there were incidents in which Dr. Casses did not adequately admit or treat complications after surgery;
- (e) some former patients or family members of former patients believe that Dr. Casses was careless, dismissive of their concerns and unprofessional;
- (f) claims by Dr. Casses about his low complication rate could not be verified;

- (g) former patients and family members of former patients question how Dr. Casses was able to become licensed by the College, given his history (including the loss of his licence) in Arizona;
- (h) former patients and family members of former patients are concerned about the oversight provided by the College, who they believe should have investigated Dr. Casses more fully before licensing him to practice medicine in B.C.;
- (i) the College has received complaints about Dr. Casses, but a number of patients or family members of patients are unhappy with the way the College has dealt with the complaints and feel that the College needs to take patient complaints about Dr. Casses more seriously.

[354] In my opinion, these are the inferential meanings that an ordinary person, not avid for scandal, would draw from the Web Story.

[355] Based on these meanings, I find further that the Web Story was in fact defamatory of Dr. Casses since it had the tendency to injure Dr. Casses' reputation as a surgeon in the eyes of a reasonable person. Based on these meanings, the Web Story questions and impugns Dr. Casses' professional skills and his fitness to be licensed in B.C. as a general surgeon. Such imputations are clearly defamatory.

(v) Meanings of the September 8, 2009 Local TV Report

[356] Dr. Casses says that the September 8 Local TV Report conveyed the following inferential meanings:

- a) The individual plaintiff had a disgraceful history of systematic professional misconduct and habitual professional negligence in Arizona before coming to British Columbia and being licensed by the College of Physicians and Surgeons of British Columbia to practise medicine in British Columbia;
- b) The individual plaintiff has been guilty of systematic professional misconduct and habitual professional negligence in British Columbia since being licensed by the College of Physicians and Surgeons of British Columbia, in relation to his surgical care and post-surgical

- treatment of patients Edith Backer, Krystal Cook, Robin Odiorne, and Stephanie Aaslie together with numerous other cases in British Columbia;
- c) The plaintiffs provided negligent surgical care to patients Stephanie Aaslie, Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia;
 - d) The plaintiffs negligently performed surgery on patients Stephanie Aaslie and Robin Odiorne thereby nearly causing their deaths;
 - e) The plaintiffs dishonestly and deceitfully, or alternatively negligently, concealed from patients Stephanie Aaslie, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia, serious complications arising from the surgery they had performed on them;
 - f) The plaintiffs deliberately failed to treat serious complications arising from the surgery they had performed on patients Stephanie Aaslie, Krystal Cook, and Robin Odiorne, or alternatively, the plaintiffs negligently failed to do so;
 - g) The plaintiffs negligently performed gall bladder surgery on patient Stephanie Aaslie thereby cutting other parts of her digestive system and causing a life threatening infection to pool inside of her;
 - h) The plaintiffs negligently performed surgery on patient Edith Backer thereby causing her death;
 - i) The plaintiffs dishonestly and deceitfully concealed from patient Edith Backer, from her daughter Caroline Mitchell and from her son Douglas Backer, and from others, serious complications arising from the surgery they had performed on Edith Backer;
 - j) The plaintiffs negligently performed surgery on patient Krystal Cook thereby causing the big toe on her left foot to become severely infected;
 - k) The plaintiffs callously and deliberately refused to investigate or treat complications arising from the surgery they had performed on Krystal Cook;
 - l) The plaintiffs' aforesaid conduct concerning patients Stephanie Aaslie, Edith Backer, Krystal Cook, and Robin Odiorne warranted termination of their medical licence or other severe disciplinary sanctions by the College of Physicians and Surgeons of British Columbia; and/or
 - m) One or more of the above.

[357] Dr. Casses pleads in the alternative that these meanings were conveyed by the combined effect of the Web Story and the September 8 Local TV Report.

[358] According to Dr. Casses, these (or one or more of them) are the "stings" of the September 8 Local TV Report.

[359] Again, in my opinion, the pleaded meanings are at the most extreme end of what might be inferred from the September 8 Local TV Report (either alone or by the combined effect of the TV Report and the Web Story), and they reflect the worst and harshest interpretation. As I observed above, an ordinary person, not trained as a lawyer, does not think in terms of “systemic professional negligence” or “habitual professional negligence,” and does not use the words “negligently” or “negligent” in any technical legal sense.

[360] I do not accept Dr. Casses’ pleaded meanings as the meanings that an ordinary, reasonable person would infer from the September 8 Local TV Report.

[361] In my opinion, the September 8 Local TV Report, in the context of the words and visuals, would probably lead an ordinary, reasonably thoughtful and informed person to infer that:

- (a) since being licensed to practice in B.C., Dr. Casses has had a number of cases where patients or family members of patients have raised serious issues concerning the quality of his surgical and post-surgical care;
- (b) there were incidents in which Dr. Casses did not adequately admit or treat complications after surgery;
- (c) some former patients or family members of former patients believe that Dr. Casses was careless and unprofessional;
- (d) Dr. Casses dismissed the legitimate concerns of his patients Ms. Aaslie, Ms. Cook, Ms. Mead and Ms. Odiome in relation to the care he had provided;
- (e) the College needed to take patient complaints about Dr. Casses more seriously;

- (f) before being licensed by the College, Dr. Casses had a history in Arizona of poor surgical practice in numerous cases, leading to a loss of his licence to practice there;
- (g) because of Dr. Casses' history in Arizona, it is reasonable to ask questions about how Dr. Casses came to be licenced by the College and to receive hospital privileges here.

[362] In my opinion, in the context of the whole broadcast, these are the inferential meanings that an ordinary person, not avid for scandal, would draw from the September 8 Local TV Report.

[363] Based on these meanings, I find that the September 8 Local TV Report was in fact defamatory of Dr. Casses, since it had the tendency to injure Dr. Casses' reputation as a surgeon in the eyes of a reasonable person. This TV Report questions and impugns Dr. Casses' professional skills and his fitness to be licensed in B.C. as a general surgeon. Such imputations are clearly defamatory.

(vi) Meanings of the September 8, 2009 National TV Report

[364] Dr. Casses says that the September 8 National TV Report conveyed the following inferential meanings:

- a) The individual plaintiff had a disgraceful history of systematic professional misconduct and habitual professional negligence in Arizona before coming to British Columbia and being licensed by the College of Physicians and Surgeons of British Columbia to practise medicine in British Columbia;
- b) The individual plaintiff has been guilty of systematic professional misconduct and habitual professional negligence in British Columbia since being licensed by the College of Physicians and Surgeons of British Columbia, in relation to his surgical care and post-surgical treatment of patients Edith Backer, Krystal Cook, Robin Odiorne, and Stephanie Aaslie, together with numerous other cases in British Columbia;
- c) The plaintiffs provided negligent surgical care to patients Stephanie Aaslie, Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia;
- d) The plaintiffs negligently performed surgery on patient Stephanie Aaslie thereby nearly causing her death;

- e) The plaintiffs negligently performed gall bladder surgery on patient Stephanie Aaslie thereby cutting other parts of her digestive system and causing a life threatening infection to pool inside of her;
- f) The plaintiffs negligently performed surgery on patient Edith Backer thereby causing her death;
- g) The plaintiffs dishonestly and deceitfully, or alternatively negligently, concealed serious surgical complications arising from surgery they had performed on patients Stephanie Aaslie, Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia;
- h) The plaintiffs negligently performed surgery on patient Krystal Cook thereby causing the big toe on her left foot to become severely infected;
- i) The plaintiffs deliberately failed to treat serious complications arising from the surgery they had performed on patients Stephanie Aaslie, Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia, or alternatively, the plaintiffs negligently failed to do so;
- j) The plaintiffs' aforesaid conduct concerning patients Stephanie Aaslie, Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia, warranted termination of their medical licence or other severe disciplinary sanctions by the College of Physicians and Surgeons of British Columbia; and/or
- k) One or more of the above.

[365] Dr. Casses pleads in the alternative, and by way of legal innuendo, that these defamatory meanings were conveyed by the combined effect of the Web Story and the two September 8 TV Reports.

[366] According to Dr. Casses, these (or one or more of them) are the “stings” of the September 8 National TV Report.

[367] Once again, in my opinion, the pleaded meanings are at the most extreme end of what might be inferred from the September 8 National TV Report (either alone or combined with the Web Story and the September 8 Local TV Report), and reflect the worst and harshest interpretation. Again, as I observed above, an ordinary person, not trained as a lawyer, does not think in terms of “systemic professional negligence” or “habitual professional negligence,” and does not use the words “negligently” or “negligent” in any technical legal sense.

[368] I do not accept Dr. Casses' pleaded meanings as the meanings that an ordinary, reasonable person would infer from the September 8 National TV Report.

[369] In my opinion, the September 8 National TV Report, in the context of the words and the visuals, would probably lead an ordinary, reasonably thoughtful and informed person to infer that:

- (a) before being licensed by the College, Dr. Casses had a history in Arizona of very poor surgical practice in numerous cases, leading to a loss of his licence to practice there;
- (b) because of Dr. Casses' history in Arizona, it is reasonable to ask questions about how Dr. Casses came to be licensed by the College and to receive hospital privileges here;
- (c) since being licensed to practice in B.C., Dr. Casses has had a number of cases where patients or family members of patients have raised serious issues concerning the quality of his surgical and post-surgical care;
- (d) there were incidents in which Dr. Casses did not adequately admit or treat complications after surgery;
- (e) some former patients and family members of former patients believe that Dr. Casses was careless, dismissive of their concerns and unprofessional;
- (f) patients are concerned about the degree of oversight Dr. Casses received from the College;
- (g) claims by Dr. Casses about his low complication rate could not be verified.

[370] In my opinion, in the context of the whole broadcast, these are the inferential meanings that an ordinary person, not avid for scandal, would draw from the September 8 National TV Report.

[371] Based on these meanings, I find further that the September 8 National TV Report was in fact defamatory of Dr. Casses. It had the tendency to injure Dr. Casses' reputation as a surgeon in the eyes of a reasonable person. This TV Report questions and impugns Dr. Casses' professional skills and his fitness to be licenced in B.C. as a general surgeon. Such imputations are clearly defamatory.

(vii) Meanings of the September 9, 2009 TV Report

[372] Dr. Casses says that the September 9 TV Report conveyed the following inferential meanings:

- a) The individual plaintiff had a disgraceful history of systematic professional misconduct and habitual professional negligence in Arizona before coming to British Columbia and being licensed by the College of Physicians and Surgeons of British Columbia to practise medicine in British Columbia;
- b) The individual plaintiff has been guilty of systematic professional misconduct and habitual professional negligence in British Columbia since being licensed by the College of Physicians and Surgeons of British Columbia, in relation to his surgical care and post-surgical treatment of patients Edith Backer, Krystal Cook, Robin Odiorne, and Stephanie Aaslie, together with numerous other cases in British Columbia;
- c) The plaintiffs provided negligent surgical care to patients Edith Backer, Krystal Cook, Robin Odiorne, together with numerous other cases in British Columbia;
- d) The plaintiffs dishonestly and deceitfully concealed from patient Edith Backer, from her daughter Caroline Mitchell and her son Douglas Backer, and from other persons, serious complications arising from the surgery they had performed on Edith Backer;
- e) The plaintiffs deliberately, or alternatively negligently, failed to admit or treat serious complications arising from the surgery they had performed on patients Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia;
- f) The plaintiffs negligently performed surgery on patient Krystal Cook thereby causing the big toe on her left foot to become severely infected;
- g) The plaintiffs dishonestly and deceitfully denied serious complications arising from the surgery they had performed on patients Edith Backer, Krystal

Cook, and Robin Odiorne, together with numerous other cases in British Columbia;

- h) The plaintiffs' conduct concerning patients Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia, warranted termination of their medical licence or other severe disciplinary sanctions by the College of Physicians and Surgeons of British Columbia; and/or
- i) One or more of the above.

[373] Dr. Casses alleges in the alternative, and by way of legal innuendo, that these meanings were conveyed by the combined effect of the Web Story and the September 8 and September 9 TV Reports.

[374] According to Dr. Casses, these (or one or more of them) are the "stings" of the September 9 TV Report.

[375] Once again, in my opinion, the pleaded meanings are at the very extreme end of what might be inferred from the September 9 TV Report (either alone or together with the Web Story and the earlier TV Reports), and reflect the worst and harshest interpretation. Again, as I observed above, an ordinary person, not trained as a lawyer, does not think in terms of "systemic professional negligence" or "habitual professional negligence," and does not use the words "negligently" or "negligent" in any technical legal sense.

[376] I do not accept Dr. Casses' pleaded meanings as the meanings that an ordinary, reasonable person would infer from the September 9 TV Report.

[377] In my opinion, the September 9 TV Report, in the context of the words and the visuals, would probably lead an ordinary, reasonably thoughtful and informed person to infer that:

- (a) before being licensed by the College, Dr. Casses had a history in Arizona of very poor surgical practice in numerous cases, leading to a loss of his licence to practice there. This occurred around the same time Dr. Casses moved to B.C. and became licensed by the College;

- (b) because of Dr. Casses' history in Arizona, it is reasonable to ask questions about how Dr. Casses came to be licensed by the College and to receive hospital privileges here;
- (c) some former patients or their family members (or both) feel that Dr. Casses failed to acknowledge and failed properly to treat complications arising from the surgeries he had performed on them or family members;
- (d) the College needs to take patient complaints about Dr. Casses more seriously, and should not believe what Dr. Casses says.

[378] In my opinion, in the context of the whole broadcast, these are the inferential meanings that an ordinary person, not avid for scandal, would draw from the September 9 TV Report.

[379] Based on these meanings, I find that the September 9 TV Report was in fact defamatory of Dr. Casses. It had the tendency to injure Dr. Casses' reputation as a surgeon in the eyes of a reasonable person. This TV Report questions and impugns Dr. Casses' professional skills and his fitness to be licenced in B.C. as a general surgeon. Such imputations are clearly defamatory.

(viii) Meanings of the September 10, 2009 TV Report

[380] Dr. Casses says that the September 10 TV Report conveyed the following inferential meanings:

- a) The individual plaintiff had a disgraceful history of systematic professional misconduct and habitual professional negligence in Arizona before coming to British Columbia and being licensed by the College of Physicians and Surgeons of British Columbia to practise medicine in British Columbia;
- b) The individual plaintiff has been guilty of systematic professional misconduct and habitual professional negligence in British Columbia since being licensed by the College of Physicians and Surgeons of British Columbia, in relation to his surgical care and post-surgical treatment of patients Edith Backer, Krystal Cook, Robin Odiorne, and Stephanie Aaslie, together with numerous other cases in British Columbia;

- c) The plaintiffs provided negligent surgical care to patients Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia;
- d) The plaintiffs dishonestly and deceitfully concealed from patient Edith Backer, from her daughter Caroline Mitchell and her son Douglas Backer, and from other persons, serious complications arising from the surgery they had performed on Edith Backer;
- e) The plaintiffs deliberately failed to admit or treat serious complications arising from the surgery they performed on patients Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia, or alternatively, the plaintiffs negligently failed to do so;
- f) The plaintiffs negligently performed surgery on patient Krystal Cook thereby causing the amputation of the big toe on her left foot;
- g) The plaintiffs dishonestly and deceitfully denied serious complications arising from the surgery they performed on patients Krystal Cook and Robin Odiorne, together with numerous other cases in British Columbia;
- h) The plaintiffs' conduct concerning patients Edith Backer, Krystal Cook, and Robin Odiorne, together with numerous other cases in British Columbia, warranted severe disciplinary sanctions by the College of Physicians and Surgeons of British Columbia; and/or
- i) One or more of the above.

[381] Dr. Casses alleges in the alternative, and by way of legal innuendo, that these meanings were conveyed by the combined effect of the Web Story and all of the TV Reports.

[382] According to Dr. Casses, these (or one or more of them) are the “stings” of the September 10 TV Report.

[383] Once again, in my opinion, the pleaded meanings are at the most extreme end of what might be inferred from the September 10 TV Report (either alone or together with the Web Story and the other TV Reports), and reflect the worst and harshest interpretation. Again, as I observed above, an ordinary person, not trained as a lawyer, does not think in terms of “systemic professional negligence” or “habitual professional negligence,” and does not use the words “negligently” or “negligent” in any technical legal sense.

[384] I do not accept Dr. Casses' pleaded meanings as the meanings that an ordinary, reasonable person would infer from the September 10 TV Report.

[385] In my opinion, the September 10 TV Report, in the context of the words and the visuals, would probably lead an ordinary, reasonably thoughtful and informed person to infer that:

- (a) before being licensed by the College, Dr. Casses had a history in Arizona of poor surgical practice in numerous cases, leading to a loss of his licence to practice there. This occurred around the same time Dr. Casses moved to B.C. and became licensed by the College;
- (b) because of Dr. Casses' history in Arizona, it is reasonable to ask questions about how Dr. Casses came to be licensed by the College and to receive hospital privileges here;
- (c) some patients have complained to the College about Dr. Casses, but they are disappointed at the College's response;
- (d) the College needs to take patient complaints about Dr. Casses more seriously;
- (e) since being licensed to practice in B.C., Dr. Casses has had a number of cases where patients or family members of patients (or both) have raised serious issues concerning the quality of his surgical and post-surgical care;
- (f) there were incidents in which Dr. Casses did not adequately admit or treat complications after surgery;
- (g) some former patients or family members of former patients feel that Dr. Casses was careless, dismissive of their concerns and unprofessional.

[386] In my opinion, in the context of the whole broadcast, these are the inferential meanings that an ordinary person, not avid for scandal, would draw from the September 10 TV Report.

[387] Based on these meanings, I find that the September 10 TV Report was in fact defamatory of Dr. Casses. It had the tendency to injure Dr. Casses' reputation as a surgeon in the eyes of a reasonable person. This TV Report questions and impugns Dr. Casses' professional skills and his fitness to be licenced in B.C. as a general surgeon. Such imputations are clearly defamatory.

(ix) Has Dr. Casses met his burden to prove that the CBC publications bore the inferential meanings he alleges, or something substantially the same?

[388] I have concluded that all of the CBC publications bore defamatory meanings. However, the meanings I found were not the inferential meanings pleaded by Dr. Casses, which I rejected. Does this matter?

[389] The law on this point is discussed in *Lawson v. Baines*, at paras. 35 and following. It is also discussed in *Brown on Defamation*, where the learned author writes, at pp. 19-82 to 19-83 (footnotes omitted):

Where false innuendoes are pleaded by the plaintiff, he or she is confined to the meanings relied upon or something substantially the same. If the imputation specified in the pleading is found not to be the imputation made by the published material, the plaintiff's action will fail even though another and different defamatory imputation was present and could have been pleaded...

A plaintiff's claim will not be defeated merely because the pleaded imputation does not state with complete accuracy the imputation in the published material if the essence of the plaintiff's complaint is otherwise clear to the finder of fact. "The critical consideration is whether it is prejudicial, disadvantageous or unfair to the defendant, to allow a plaintiff to seek a verdict on the basis that the matter complained of bears a meaning different from that previously relied on".

[390] In closing argument, the plaintiffs accepted that this is a correct statement of the law.

[391] Although in closing submissions, Mr. Burnett (for the CBC Defendants) argued that none of Dr. Casses' pleaded inferential meanings had been made out, he did not seek dismissal of the CBC Action on that basis. Rather, the CBC Defendants have pleaded alternative defamatory meanings (the "CBC's Pledged

Meanings”), which I set out in Section 3(b)(i) below. The CBC Defendants assert (among other things) that the CBC’s Pleded Meanings were justified. The meanings I have found are much closer to the CBC’s Pleded Meanings than to those pleaded by Dr. Casses, but nevertheless carry a greater “sting” than the CBC’s Pleded Meanings.

[392] In those circumstances, I conclude that it would not be prejudicial or unfair to the CBC Defendants to allow Dr. Casses to seek a verdict on the basis that the Web Story and the TV Reports bear meanings different from those pleaded by Dr. Casses and on which he relied.

(x) Was Dr. Casses defamed by Krystal Cook?

[393] Dr. Casses asserts that, on or before September 8, 2009, Ms. Cook published the following words (and certain photographs) about him to Ms. Tomlinson:

I suffered needlessly and was damaged permanently when Dr. Casses failed to address serious complications arising from a surgery he performed on me. As a result of the surgery Dr. Casses performed on the big toe on my left foot, it became grossly swollen and infected and had to be amputated. Dr. Casses also refused to acknowledge and/or treat those complications. Dr. Casses did not reveal or treat my serious post-surgical infections. He told me that he was sympathetic but I was milking it, quit being a baby. That was what my toe looked like [identifying photographs].

[394] Dr. Casses describes the words he alleges Ms. Cook said to Ms. Tomlinson as the “Cook Words” and the photographs depicting Ms. Cook’s left foot as the “Cook Photographs.”

[395] Dr. Casses does not complain about the literal meanings of either the Cook Words or the Cook Photographs. Rather, he alleges that “in the context of the interviews as a whole,” the Cook Words and the Cook Photographs conveyed the following inferential meanings:

- a) [Dr. Casses] negligently performed surgery on [his] patient, Krystal Cook, thereby causing her to suffer needless pain;

- b) [Dr. Casses] negligently performed surgery on [his] patient, Krystal Cook, thereby causing her permanent damage;
- c) [Dr. Casses] negligently performed surgery on [his] patient, Krystal Cook, thereby requiring the amputation of the big toe on her left foot;
- d) [Dr. Casses] dishonestly and deceitfully concealed from [his] patient, Krystal Cook, serious complications arising from the surgery [he] performed on her;
- e) [Dr. Casses] deliberately failed to treat serious complications arising from the surgery [he] performed on [his] patient, Krystal Cook, or alternatively, [Dr. Casses] negligently failed to do so;
- f) [Dr. Casses] deliberately and deceitfully failed to reveal and treat serious post-surgical infections caused by the surgery [he] performed on [his] patient, Krystal Cook; and/or
- g) One or more of the above.

[396] However, I find that, apart from the last two statements (“He told me that he was sympathetic but I was milking it, quit being a baby” and “That was what my toe looked like,” accompanied by photographs), Ms. Cook did not say the Cook Words to Ms. Tomlinson.

[397] Ms. Cook communicated her story about events in 2004 by way of the e-mail message sent to Ms. Uda on May 28, 2009 by Ms. Hix. This message from Ms. Hix forwarded a lengthy e-mail message from Ms. Cook describing, in detail and from her perspective, what happened to her in 2004. Ms. Tomlinson read these messages. Ms. Cook’s lengthy message mentioned Dr. Casses, but it also mentioned that other doctors had been involved in Ms. Cook’s care. Dr. Casses makes no allegations about the statements in this message. Rather, his claim is based on what he alleges Ms. Cook communicated to Ms. Tomlinson during interviews by Ms. Tomlinson “on or before September 8, 2009.” This would include statements Ms. Cook made at the August 24 gathering at Mr. Backer’s.

[398] The statement “I suffered needlessly and was damaged permanently,” and the other words in the first four statements pleaded by Dr. Casses as the Cook Words are not in Ms. Cook’s voice at all. This is obvious when they are compared with words that are actually written or said by Ms. Cook (such as her e-mail messages in evidence), and I find she did not say or publish them. Rather, these

are close to words written by Ms. Tomlinson as part of the Web Story and scripts for the TV Reports. Although Ms. Cook had a poor opinion of Dr. Casses, the story she related about her experience (and which provided the context for the photographs) was much more nuanced than the Cook Words, and included criticism of her family doctor and others, in addition to Dr. Casses. In context, the statement “Quit being a baby,” which Ms. Cook told Ms. Tomlinson Dr. Casses had said to her, is not capable of bearing any of the inferential defamatory meanings alleged.

[399] I find that, in the full context of Ms. Cook’s statements to Ms. Tomlinson on or before September 8, 2009, what Ms. Cook said and the photographs that she showed to Ms. Tomlinson and others do not bear the inferential meanings alleged by Dr. Casses or anything substantially the same.

[400] It follows that Dr. Casses’ claim against Ms. Cook must fail unless Ms. Cook can be liable for republication.

[401] On this point, Dr. Casses says that Ms. Cook is liable for defamatory inferences that would be drawn from her words and the photographs of her toe in the TV Reports and the Web Story. Dr. Casses says that, with respect to the TV Reports and the Web Story, Ms. Cook comes within the exceptions that makes an initial publisher liable for republication. In this case, he says that Ms. Cook either authorized or intended the republication or the republication was the natural and probable result of the original publication (or both). Dr. Casses says that Ms. Cook’s encouragement and recommendation to others that they access the CBC website to read the Web Story and view the TV Reports demonstrates that the republication on the CBC’s website was not only the natural and probable result of her statements to Ms. Tomlinson and others, but that Ms. Cook, by her recommendation, must be taken to have authorized the republication.

[402] Ms. Cook on the other hand says that she is not liable for republication by the CBC.

[403] It is true that Ms. Cook appears in every TV Report. However, that was a decision made by Ms. Tomlinson over which Ms. Cook had no control and no input. Mr. Beckmann, Ms. Cook's counsel, submitted that her words are merely bits and pieces of each TV Report, and most of her story was not told by the CBC. I agree. Ms. Cook had already published her story in her own words. That story is much more detailed than what appears in the TV Reports and the Web Story. However, what Ms. Cook said on those earlier occasions is not the subject of any complaint by Dr. Casses.

[404] In the circumstances in which Ms. Cook appeared in the TV Reports and the Web Story, I find that she did not authorize or intend the republication, nor was the content of the TV Reports and the Web Story the natural and probable result of Ms. Cook's communications with Ms. Uda and Ms. Tomlinson. I find that, so far as Ms. Cook is concerned, neither the TV Reports nor the Web Story capture the sum and substance of what she originally communicated to the CBC.

[405] There may be occasions when encouraging others to watch or tune into a broadcast for which you were interviewed may lead to the conclusion that you intended or authorized the republication of defamatory statements made in the original interview. However, I find this is not one of them. On the facts, Ms. Cook's case is distinguishable from *Pressler*, where much of what the defendant Dr. Lethbridge had communicated to the reporter was subsequently published.

[406] I find, therefore, that Ms. Cook is not liable for what I have found to be the defamatory meanings arising from the TV Reports and the Web Story. She is not the original publisher of any of them, and the exceptions under which she might be liable for republication do not apply.

(xi) Was Dr. Casses defamed by Robin Odiorne?

[407] Dr. Casses asserts that, on or before September 8, 2009, Ms. Odiorne published the following words about him to Ms. Tomlinson:

I filed a complaint with the College of Physicians & Surgeons of British Columbia against Dr. Fernando Casses.

Dr. Casses caused me to suffer needlessly.

I was damaged permanently when Dr. Casses failed to address serious complications arising from a surgery he performed on me.

My complaint to the College also concerned how Dr. Casses refused to acknowledge and/or treat those complications.

Dr. Casses did not reveal or treat my serious perforations.

My bladder was nicked during surgery.

Another surgeon who operated on me after Dr. Casses told me that it was a bloody mess in there — and if it had been the next day — I probably wouldn't have survived.

Dr. Casses defines these as the “Odiorne Words.”

[408] Dr. Casses also asserts that, while speaking these words, Ms. Odiorne shook her head and adopted “facial expressions.” This is a reference to what can be seen in the TV Reports, in the scenes from the August 24 gathering.

[409] Dr. Casses says that Ms. Odiorne’s words and expressions communicated to Ms. Tomlinson conveyed the following inferential meanings:

- a) [Dr. Casses] negligently performed surgery on [his] patient, Robin Odiorne, thereby causing her to suffer needless pain;
- b) [Dr. Casses] negligently performed surgery on [his] patient, Robin Odiorne, thereby causing her permanent damage;
- c) Dr. Casses dishonestly and deceitfully concealed from [his] patient, Robin Odiorne, serious complications arising from the surgery [he] performed on her;
- d) [Dr. Casses] deliberately failed to treat serious complications arising from the surgery [he] performed on [his] patient, Robin Odiorne, or alternatively, [Dr. Casses] negligently failed to do so;
- e) [Dr. Casses] deliberately and deceitfully failed to reveal and treat serious perforations caused by the surgery [he] performed on [his] patient, Robin Odiorne;
- f) [Dr. Casses] negligently performed surgery on [his] patient, Robin Odiorne, thereby creating a terrible mess of her internal organs and related physiology;
- g) [Dr. Casses] negligently performed surgery on [his] patient, Robin Odiorne, thereby nearly causing her death;

- h) The plaintiff Casses' aforesaid conduct concerning his patient, Robin Odiorne, warranted severe disciplinary sanction by the College of Physicians and Surgeons of British Columbia; and/or
- i) One or more of the above.

[410] Dr. Casses alleges further that the Odiorne Words were republished in the TV Reports and the Web Story.

[411] For example, with respect to the Web Story, Dr. Casses alleges that Ms. Tomlinson and the CBC republished the substance and sting of Ms. Odiorne's interviews with Ms. Tomlinson, in particular by stating:

Several people in Quesnel, B.C., have filed complaints about their hospital's general surgeon, Dr. Fernando Casses. They claim they suffered needlessly — and were damaged permanently — when he failed to address serious complications from his surgeries.

The most common complaint is not just that they suffered complications after Casses operated on them, but that he refused to acknowledge and/or treat those complications.

In most cases, they said, serious perforations ... were not revealed or treated...

"[The other surgeon] told me that it was 'a bloody mess' in there — and if it had been the next day — he would have been on the golf course, and I probably wouldn't have survived," said Odiorne, who's suffered complications after she said her bladder was "nicked" during surgery by Casses.

[412] Dr. Casses asserts that, in context of the Web Story as a whole, these words would be understood to mean:

- a) [Dr. Casses] negligently performed surgery on [his] patient, Robin Odiorne, thereby causing her to suffer needless pain;
- b) [Dr. Casses] negligently performed surgery on [his] patient, Robin Odiorne, thereby causing her permanent damage;
- c) [Dr. Casses] negligently performed surgery on [his] patient, Robin Odiorne, thereby nearly causing her death;
- d) [Dr. Casses] dishonestly and deceitfully concealed from [his] patient, Robin Odiorne, serious complications arising from the surgery they performed on her;
- e) [Dr. Casses] deliberately refused to acknowledge or treat serious complications arising from the surgery [he] performed on [his] patient, Robin Odiorne, or alternatively, [Dr. Casses] negligently failed to do so;

- f) [Dr. Casses] deliberately and deceitfully did not reveal and treat serious perforations caused by the surgery [he] performed on [his] patient, Robin Odiorne;
- g) The plaintiff Casses's aforesaid conduct concerning his patient, Robin Odiorne, warranted severe disciplinary sanction by the College of Physicians and Surgeons of British Columbia; and/or
- h) One or more of the above.

[413] I will first address whether the "Odiorne Words" and expressions were published by Ms. Odiorne and are defamatory as alleged.

[414] At trial, Ms. Odiorne confirmed that she made a complaint to the College (something about which there is no dispute). Ms. Odiorne also told Ms. Tomlinson that her complaint had not been upheld, that she was upset about the College's response and that she had thrown away the College's letter. Ms. Odiorne communicated (or "published") all of this to Ms. Tomlinson prior to the August 24 gathering at the Backers'.

[415] Ms. Odiorne had no recollection of saying that Dr. Casses had caused her to suffer needlessly, or that she was damaged permanently as a result of complications from surgery performed by Dr. Casses. I find that Ms. Odiorne did not make either statement to Ms. Tomlinson. Rather, these were more general conclusions that Ms. Tomlinson drew on her own, based on what she was being told by Dr. Casses' former patients (including Ms. Odiorne), and which she included in the Web Story and her scripts for the TV Reports.

[416] According to Ms. Odiorne, she told Ms. Tomlinson that part of her complaint to the College was about post-operative care she received from Dr. Casses, and his failure to tell her what in fact happened during the surgery. This might be understood as a complaint to the College about a refusal by Dr. Casses to acknowledge a complication. Ms. Odiorne did not recall telling Ms. Tomlinson that "Dr. Casses did not reveal or treat my serious perforations," although she did tell Ms. Tomlinson that, during surgery, Dr. Casses had "nicked" her bladder. This, in fact, was true. Ms. Odiorne also recalled telling Ms. Tomlinson about what she recalled

the other surgeon (Dr. Thomas) had said to her concerning the repair, including about the “bloody mess.”

[417] I find that Ms. Odiorne did not say to Ms. Tomlinson that “Dr. Casses did not reveal or treat my serious perforations.” Again, this is a conclusion Ms. Tomlinson drew based on her interviews with Dr. Casses’ former patients. The words are Ms. Tomlinson’s, not Ms. Odiorne’s.

[418] However, although Dr. Casses told Ms. Odiorne that her bladder had been nicked in the surgery, I find that Dr. Casses was not candid with Ms. Odiorne about what had happened in the operating room, and did not tell her that it was his failed attempt to repair her bladder that led to Dr. Thomas’ involvement. Dr. Casses was not candid with the College about this either.

[419] I find that Ms. Odiorne told Ms. Tomlinson that, during surgery, Dr. Casses had nicked (i.e., made a small cut in) her bladder and that, later, Dr. Casses was not forthcoming with Ms. Odiorne about what had been done during surgery to make the repair. I find further that Ms. Odiorne also told Ms. Tomlinson about what Dr. Thomas had told her (and Dr. Casses had not) about the repair.

[420] The result, in my opinion, is that Dr. Casses has failed to prove, on a balance of probabilities, that Ms. Odiorne published most of the “Odiorne Words” to Ms. Tomlinson.

[421] Based on my findings concerning the statements Ms. Odiorne made to Ms. Tomlinson, I find that Ms. Odiorne’s statements do not bear any of the inferential meanings pleaded, which represent the harshest and most extreme inferences that might be drawn from Ms. Odiorne’s statements.

[422] Nothing defamatory can be inferred from (for example) the fact that Ms. Odiorne’s bladder was nicked during surgery (since a reasonable person would appreciate that accidents can happen during surgery) or that Ms. Odiorne filed a complaint about Dr. Casses with the College, and certainly nothing at the extreme alleged by Dr. Casses. Ms. Odiorne shaking her head and adopting facial

expressions are, in the circumstances, too ambiguous to support the conclusion that her words bear any of the inferential meanings pleaded by Dr. Casses.

[423] However, what of Ms. Odiorne's statements that Dr. Casses had not been forthcoming about what had been done during surgery to make the repair and about the "bloody mess" comment from Dr. Thomas? In context, and in my opinion, a reasonable person, not avid for scandal, would infer that Dr. Casses is not candid and forthcoming with patients concerning surgical complications. This impugns his professionalism. Accordingly, I find the inferential meaning of these statements to be defamatory of Dr. Casses.

[424] In contrast to the position taken by the CBC Defendants, Mr. West, Ms. Odiorne's counsel, argues that if Dr. Casses fails to meet his burden to prove that statements published by Ms. Odiorne bear the inferential meanings pleaded, or something substantially the same, Dr. Casses' case against her must be dismissed.

[425] I find that Dr. Casses has failed to prove that Ms. Odiorne's statements bear the meanings alleged or something substantially the same. Rather, the "sting" of what Ms. Odiorne said is that Dr. Casses is not candid and forthcoming with patients concerning surgical complications. In my opinion, it would be unfair and prejudicial to Ms. Odiorne to allow Dr. Casses to seek a verdict against her on the basis of that meaning, rather than his pleaded inferential meanings.

[426] Is Ms. Odiorne nevertheless liable for republication?

[427] Based on my conclusion that Dr. Casses has failed to prove that Ms. Odiorne published most of the "Odiorne Words, and has failed to prove that what Ms. Odiorne published bears the inferential meanings alleged, or anything substantially the same, it follows that Dr. Casses has failed to meet the burden of proving that, in relation to the TV Reports and the Web Story, Ms. Odiorne has republished the substance and sting of the "Odiorne Words," as alleged. In addition, I reject Dr. Casses' pleaded inferential meanings in relation to each of the TV Reports and the Web Story, for the same reasons that I rejected his pleaded meanings with respect

to the Odiorne Words. Moreover, Ms. Odiorne had no control over, and no input into, what Ms. Tomlinson included in the TV Reports or the Web Story.

[428] Accordingly, I find that Dr. Casses' claims against Ms. Odiorne, on the basis of republication, must fail.

(xii) Was Dr. Casses defamed by Douglas Backer?

[429] Dr. Casses alleges that "on or before September 8, 2009," Mr. Backer defamed Dr. Casses by publishing the following words to Ms. Tomlinson and the CBC:

My family filed a complaint with the College of Physicians & Surgeons of British Columbia against Dr. Fernando Casses concerning how our mother, Edith Backer, suffered needlessly when Dr. Casses failed to address serious complications arising from a surgery he performed on her.

My mother died last year after her bile duct and pancreas were sutured during the surgery.

Our complaint to the College also concerned how Dr. Casses refused to acknowledge and/or treat those complications.

Dr. Casses did not reveal or treat my mother's serious perforations and post-surgical infections.

Dr. Casses describes these as the "Backer Words."

[430] Dr. Casses says that the inferential meanings of the Backer Words are as follows:

- a) [Dr. Casses] negligently performed surgery on [his] patient, Edith Backer, thereby causing her to suffer needless pain;
- b) [Dr. Casses] negligently performed surgery on [his] patient, Edith Backer, thereby causing her death;
- c) [Dr. Casses] dishonestly and deceitfully concealed from [his] patient, Edith Backer, from the defendant Backer and from other persons, serious complications arising from the surgery [he] performed on Edith Backer;
- d) [Dr. Casses] deliberately failed to treat serious complications arising from the surgery [he] performed on [his] patient, Edith Backer, or alternatively, [Dr. Casses] negligently failed to do so;

- e) [Dr. Casses] deliberately and deceitfully failed to reveal and treat serious perforations and post-surgical infections caused by the surgery [he] performed on [his] patient, Edith Backer;
- f) The plaintiff Casses' aforesaid conduct concerning his patient, Edith Backer, warranted severe disciplinary sanction by the College of Physicians and Surgeons of British Columbia; and/or
- g) One or more of the above.

[431] However, I find that Mr. Backer did not publish the alleged Backer Words to Ms. Tomlinson or the CBC. At most, he communicated:

- (a) that his family, and specifically Ms. Watkins, filed a complaint with the College concerning Dr. Casses;
- (b) that his mother had died in 2008 after her bile duct and pancreas were sutured during surgery performed by Dr. Casses;
- (c) his opinion concerning the response from the College (that, as far as the College was concerned, "our case is written off");
- (d) his opinion that that Baker Hospital needed to go back and do a follow-up on each of Dr. Casses' surgeries.

[432] I note that Dr. Casses does not complain about the last two statements.

[433] Before contacting Mr. Backer and before the August 24 gathering, Ms. Tomlinson had received copies of the letters that Ms. Watkins had sent to the Northern Health Authority and to the College, and copies of the replies. Ms. Tomlinson had read them thoroughly and carefully. She drew her own conclusions about the contents, and about Dr. Casses based on the contents. Her conclusions were not a product of anything that Mr. Backer said to her, either before or at the August 24 gathering. Prior to the August 24 gathering, Mr. Backer's communications with Ms. Tomlinson were brief, and dealt mainly with logistics.

[434] At the August 24 gathering, Mr. Backer (at the urging of his wife) said little, although he acknowledged making the statements (quoted in the Web Story) that:

“As far as [the College] is concerned, our case is written off” and “The hospital should go back to every surgery that man has performed – and do a followup on every one of them.” However, as I noted above, these statements are not the subject of complaint by Dr. Casses. Mr. Backer thought he probably also made a statement to the effect that “His mother, Edith Baxter, died last year – after her bile duct and pancreas were sutured during gallbladder surgery.”

[435] Therefore, with respect to the “Backer Words,” I find that Mr. Backer did not publish most of them. He communicated to Ms. Tomlinson that his family filed a complaint with the College and that his mother had died in 2008 after her bile duct and pancreas were sutured during surgery performed by Dr. Casses.

[436] In my opinion, Mr. Backer’s words published to Ms. Tomlinson, in their full context (including that the College rejected the complaint), cannot bear the inferential meanings pleaded by Dr. Casses, which are harsh and extreme, or anything substantially the same. I find that Mr. Backer’s words that his mother died in 2008 after her bile duct and pancreas were sutured would be capable of leading a reasonable person to draw the defamatory inference that Dr. Casses lacked skill as a surgeon. However, in my opinion, it would be unfair and prejudicial to Mr. Backer to allow Dr. Casses to seek a verdict based on a defamatory meaning different from the meanings that Dr. Casses pleaded and on which he relied.

[437] Dr. Casses goes on to allege that the CBC and Ms. Tomlinson republished the Backer Words and their substance and sting in the Web Story and the TV Reports. For example, in relation to the Web Story, Dr. Casses pleads as particulars of the defamatory expression for which he says Mr. Backer should be held liable the following:

Several people in Quesnel, B.C., have filed complaints about their hospital's general surgeon, Dr. Fernando Casses. They claim they suffered needlessly — and were damaged permanently — when he failed to address serious complications from his surgeries.

. . . Doug Backer. His mother, Edith Backer, died last year – after her bile duct and pancreas were sutured during gallbladder surgery. . . .

The most common complaint is not just that they suffered complications after Casses operated on them, but that he refused to acknowledge and/or treat those complications.

In most cases, they said, serious perforations or post-surgical infections were not revealed or treated . . .

[438] Based on these particulars from the Web Story, Dr. Casses then pleads seven inferential meanings (either singly or in combination) that he says are defamatory. Dr. Casses takes a similar approach in relation to each of the TV Reports.

[439] However, since, in my opinion, Dr. Casses has failed to prove that Mr. Backer published most of the Backer Words, and has failed to prove that what Mr. Backer said bears the inferential meanings alleged (or anything substantially the same), his case to have Mr. Backer found liable for defamation, based on republication of the Backer Words and their substance and sting, cannot succeed.

[440] Dr. Casses also alleges that Mr. Backer is responsible for the publication of a statement on the RateMDs website. However, the evidence is that the statement was published by Ms. Watkins, and that Mr. Backer was not involved in any way. I find that the RateMDs posting was made by Ms. Watkins, and that she was the publisher. Mr. Backer was not involved in the publication of Ms. Watkins' posting, and I find that he was not a publisher of it.

[441] Accordingly, Dr. Casses' claim against Mr. Backer, alleging that Mr. Backer made defamatory statements about him on the RateMDs website, fails.

(xiii) Was Dr. Casses defamed by Elizabeth Watkins?

[442] Dr. Casses alleges that on or before September 11, 2009, Ms. Watkins (together with Mr. Backer) defamed him by publishing the following in her statement on RateMDs:

Check out CBC.ca - weeklong investigation regarding post-op surgical complications. . . . He waited too long post-surgery on our mother before sending her to VGH - she suffered 3 weeks and 5 surgeries later trying to clean up the surgical mess left by this doctor, only to succumb to her death

from infection of leaking bile, sutured pancreas and nicked bowel. Had he sent her on sooner she may still be with us today. . . .

[443] Ms. Watkins' complete post is found in Section 2(g) above.

[444] Dr. Casses asserts that the inferential meaning of the publication was that:

[Dr. Casses] negligently caused the death of Edith Backer by negligently nicking her bowel during surgery, and/or negligently suturing her pancreas, and/or negligently creating a surgical mess, and/or negligently failing to treat in a timely way a serious infection caused by his negligent surgery.

[445] Dr. Casses asserts in the alternative that his pleaded meaning was conveyed by way of legal innuendo, by the combined effect of the Web Story and the TV Reports, or alternatively by virtue of extrinsic facts known to viewers who personally knew Ms. Watkins and her family and knew that Edith Backer had died.

[446] There is no dispute that Ms. Watkins made the post to RateMDs, and I find she is the publisher. There is also no dispute that the post refers to Dr. Casses.

[447] Ms. Watkins' complete post does not appear alone. There are numerous other postings that pre-date her post. For example, the posting immediately below Ms. Watkins' post (stated to be submitted September 10, 2009) reads (as posted):

I had the pleasure of dealing with this man when my dads family doc sent him to see him to get a biopsy done. he had a lump on his neck, after the surgery Dr. Casses called my dad at home and told him he was fine not to worry about anything.. later they found that my dad had cancer in his limpnoids it moved to his lungs he died within 6 months.

[448] The implication of this posting is that Dr. Casses failed to diagnose a serious medical condition (that turned out to be fatal) and actively misled his patient.

[449] However, the posting that followed (also stated to be submitted September 10, 2009) gave Dr. Casses the highest rating available, and reads (as posted):

First of all I am so sorry to hear of the many problems patients have had with Dr. Casses. I am just writing from my perspective what our family experienced when our sister had cancer.. we found Dr. Casses to be very kind and compassionate with us and my sister he was very patient with her..

as she was not dealing with the diagnosis very well ...he performed her surgeries with no problems at all... my sister adores him as he helped her through a very tough time.. we say he save her life as I said I am sorry to hear of the problems others have had as I know how that feels as I have had a bad experience with a Dr also...I just wanted to say how we had a positive experience with Dr. Casses.. we will be for ever grateful for his help in saving my sisters life...

[450] There are other postings, dated before Ms. Watkins' posting, that are highly critical of Dr. Casses, and still others that rate him highly or very highly and describe him in very positive terms. All of these postings are part of the context in which Ms. Watkins' posting appears.

[451] In my opinion, Dr. Casses' pleaded meanings (with their repetition of "negligently") might be inferences drawn by a lawyer, who is familiar with the concept of negligence. However, I do not think these are what an ordinary, reasonably thoughtful individual would take from Ms. Watkins' posting. Rather, I find the following inferences would likely be drawn:

- (a) Ms. Watkins has a very poor opinion of Dr. Casses and his skills as a surgeon (she gave him one star out of a possible five);
- (b) Dr. Casses bore some responsibility for the death of Edith Backer;
- (c) the College should not have granted Dr. Casses a licence to practice in B.C.

[452] These meanings are defamatory of Dr. Casses.

(xiv) Summary on the Plaintiffs' defamation claims

[453] At this point, I will summarize my conclusions respecting the plaintiffs' defamation claims.

(A) The claims by Casses Inc. in all actions

[454] The claims by Casses Inc. in all of the actions are dismissed. Casses Inc. has failed to prove, on a balance of probabilities, that any of the publications or statements in issue in fact referred to it.

(B) The claims by Dr. Casses in the CBC Action

[455] With respect to Dr. Casses' claims against the CBC, Ms. Tomlinson and Mr. Williams (subject to his limitation defence):

- (a) I find that each of the Web Story and the TV Reports was published, and each of them referred to Dr. Casses;
- (b) with respect to the Web Story, I reject Dr. Casses' pleaded meanings as what an ordinary, reasonably thoughtful person would infer. However, I find that there are inferential meanings that would be drawn from the Web Story that are defamatory of Dr. Casses. These meanings are set out in Section 3(a)(iv) above;
- (c) with respect to the September 8 Local TV Report, I reject Dr. Casses' pleaded meanings as what an ordinary, reasonably thoughtful person would infer. However, I find that there are inferential meanings that would be drawn from that TV Report that are defamatory of Dr. Casses. These meanings are set out in Section 3(a)(v) above;
- (d) with respect to the September 8 National TV Report, I reject Dr. Casses' pleaded meanings as what an ordinary, reasonably thoughtful person would infer. However, I find that there are inferential meanings that would be drawn from that Report that are defamatory of Dr. Casses. These meanings are set out in Section 3(a)(vi) above;
- (e) with respect to the September 9 TV Report, I reject Dr. Casses' pleaded meanings as what an ordinary, reasonably thoughtful person would infer. However, I find that there are inferential meanings that

would be drawn from that Report that are defamatory of Dr. Casses. These meanings are set out in Section 3(a)(vii) above; and

- (f) with respect to the September 10 TV Report, I reject Dr. Casses' pleaded meanings as what an ordinary, reasonably thoughtful person would infer. However, I find that there are inferential meanings that would be drawn from that Report that are defamatory of Dr. Casses. These meanings are set out in Section 3(a)(viii) above;
- (g) although I have not accepted Dr. Casses' pleaded meanings, I conclude that it is not unfair or prejudicial to the CBC Defendants to allow Dr. Casses to seek a verdict on the basis of meanings different from his pleaded meanings.

[456] Accordingly, I find that Dr. Casses has proved the necessary elements of a defamation claim against the CBC Defendants (subject to Mr. Williams' limitation defence).

(C) The claims by Dr. Casses against Ms. Cook

[457] I find that Ms. Cook did not make most of the statements alleged to be the "Cook Words," and, in the full context of her communications with Ms. Uda and Ms. Tomlinson, her words and her photographs were not defamatory of Dr. Casses.

[458] I find further that, with respect to the Web Story and the TV Reports, Ms. Cook is not liable for republication.

[459] Accordingly, I find that Dr. Casses has failed to prove the necessary elements of a defamation claim against Ms. Cook.

(D) The claims by Dr. Casses against Ms. Odiorne

[460] I find that Dr. Casses has failed to prove that Ms. Odiorne published most of the "Odiorne Words." With respect to the statements I have found Ms. Odiorne published, I find that Dr. Casses has failed to prove that they bear the meanings

alleged by him or anything substantially the same. Finally, with respect to the defamatory meaning I have concluded certain of Ms. Odiorne's words bear, I have concluded that it would be unfair and prejudicial to Ms. Odiorne to allow Dr. Casses to seek a verdict based on a meaning he did not plead or rely on.

[461] I find further that, with respect to the Web Story and the TV Reports, Ms. Odiorne is not liable for republication.

[462] Accordingly, I find that Dr. Casses has failed to prove the necessary elements of a defamation claim against Ms. Odiorne.

(E) The claims by Dr. Casses against Mr. Backer

[463] I find that Dr. Casses has failed to prove that Mr. Backer published most of the "Backer Words." With respect to the statements I have found Mr. Backer published, I find that they cannot bear the inferential meanings pleaded by Dr. Casses or anything substantially the same. Although the statement to the effect that Mr. Backer's mother died after her bile duct and pancreas were sutured would be capable of leading a reasonable person to draw a defamatory inference, it would be unfair and prejudicial to Mr. Backer to allow Dr. Casses to seek a verdict based on a meaning he did not plead or rely on.

[464] Further, Dr. Casses' claims based on republication of the "Backer Words" in the Web Story and the TV Reports must fail. In addition, I find that Mr. Backer did not publish the September 11, 2009 RateMDs posting.

[465] Accordingly, I find that Dr. Casses has failed to prove the necessary elements of a defamation claim against Mr. Backer.

(F) The claims by Dr. Casses against Ms. Watkins

[466] I find that Ms. Watkins published the September 11, 2009 RateMDs posting, and that it was defamatory of Dr. Casses.

[467] Accordingly, I find that Dr. Casses has proved the necessary elements of a defamation claim against Ms. Watkins.

(b) The Defences

(i) Introduction and the CBC's Pleded Meanings

[468] Once a plaintiff proves the required elements in a defamation claim, the onus then shifts to the defendant to advance a defence in order to escape liability: see *Grant*, at para. 29.

[469] In the CBC Action, the CBC Defendants have pleaded three separate defences: responsible communication, justification and fair comment. They have also pleaded alternative defamatory meanings as follows (underlining indicating amendments omitted):

- a) Edith Backer, Krystal Cook, Robin Odiorne and Stephanie Aaslie together with numerous other cases in British Columbia about Dr. Casses's surgery, raise troubling questions about the oversight and licensing of Dr. Casses in British Columbia given his history of quality assurance concerns, suspension, unprofessional conduct and negligence in Arizona before coming to British Columbia and being licenced to practise in British Columbia.
- b) In the British Columbia cases involving complaints against Dr. Casses, either with the College of Physicians and Surgeons, the Health Authority, or informally, including the Edith Backer, Krystal Cook, Robin Odiorne and Stephanie Aaslie cases, there were cases in which the College of Physicians and Surgeons or Health Authority did not find fault with Dr. Casses, other cases in which he was found to have fallen below the required standard of care, and other cases in which there has been no ruling one way or the other or no ruling available to the defendants.
- c) There were incidents in which Dr. Casses did not adequately admit or treat complications after surgery.

I will refer to these as the "CBC's Pleded Meanings."

[470] In addition, Mr. Williams has pleaded a limitation defence in relation to the TV Reports, relying on s. 3(2)(c) of the former *Limitation Act*, R.S.B.C. 1996, c. 266, which provides for a limitation period of 2 years from the time the cause of action arose. He says that any cause of action for defamation in relation to the TV Reports arose in September 2009, and the limitation period had long since expired by the

time he was named as a defendant in 2013. Mr. Williams concedes that, under the law as it currently stands in Canada, there is no limitation defence in relation to the Web Story, which continued to be available as of trial.

[471] The CBC and Ms. Tomlinson have also filed amended responses to civil claim in each of the Individual Actions, pleading the three defences pleaded in the CBC Action. They have done so in their capacity as third parties named in the Individual Actions, relying on Rule 3-5(12) of the **Supreme Court Civil Rules**, which provides:

A third party who has filed a response to third party notice may, within the period for filing and serving a response to the third party notice, file and serve on all parties of record a response to civil claim to the plaintiff's notice of civil claim, raising any defence open to a defendant.

[472] In closing argument, Mr. McConchie submitted that an Individual Defendant could not rely on the response to civil claim filed by the CBC and Ms. Tomlinson in that Defendant's Individual Action. Rather, in Mr. McConchie's submission, the Individual Defendant was confined, by way of defence, to whatever had been pleaded in the response to civil claim filed by that Individual Defendant. The CBC Defendants, on the other hand, could rely on everything in the Individual Defendant's response and in their response. Mr. McConchie did not cite any authority in support of his submissions.

[473] I reject Mr. McConchie's submissions on this point. In my opinion, they are fundamentally inconsistent with Rule 3-5(12). Where a defendant and a third party have both filed a response to civil claim, the defence or response consists of both pleadings. A defendant can rely on the contents of the response to civil claim filed by the third party as setting out the defendant's defence(s) to the plaintiff's claim, in addition to whatever has been pleaded in the defendant's response to civil claim. Both pleadings taken as a whole constitute the defence in response to the plaintiff's claims.

[474] However, the third party notice filed in the Backer and Watkins action was in respect of the Web Story and the TV Reports only. It did not make any claim in

respect of Ms. Watkins' RateMDs posting. In my opinion, it follows that Ms. Watkins cannot take advantage of the amended response to civil claim filed by the CBC and Ms. Tomlinson in the Backer and Watkins action. Her defence is found in the statement of defence filed January 19, 2010 only.

(ii) **Responsible Communication**

[475] This defence is pleaded both in the CBC Action and in the Individual Actions (except for the claim against Ms. Watkins) through the third parties' amended responses to civil claim.

[476] **Grant** is the leading case on the defence of responsible communication. There, the Supreme Court of Canada concluded that the law of defamation should be modified to provide greater protection for communications on matters of public interest. McLachlin C.J. wrote, at paras. 53 and 65:

[53] Freedom does not negate responsibility. It is vital that the media act responsibly in reporting facts on matters of public concern, holding themselves to the highest journalistic standards. But to insist on court-established certainty in reporting on matters of public interest may have the effect of preventing communication of facts which a reasonable person would accept as reliable and which are relevant and important to public debate. The existing common law rules mean, in effect, that the publisher must be certain before publication that it can prove the statement to be true in a court of law, should a suit be filed. Verification of the facts and reliability of the sources may lead a publisher to a reasonable certainty of their truth, but that is different from knowing that one will be able to prove their truth in a court of law, perhaps years later. This, in turn, may have a chilling effect on what is published. Information that is reliable and in the public's interest to know may never see the light of day.

...

[65] Having considered the arguments on both sides of the debate from the perspective of principle, I conclude that the current law with respect to statements that are reliable and important to public debate does not give adequate weight to the constitutional value of free expression. While the law must protect reputation, the level of protection currently accorded by the law — in effect a regime of strict liability — is not justifiable. The law of defamation currently accords no protection for statements on matters of public interest published to the world at large if they cannot, for whatever reason, be proven to be true. But such communications advance both free expression rationales mentioned above — democratic discourse and truth-finding — and therefore require some protection within the law of defamation.

When proper weight is given to the constitutional value of free expression on matters of public interest, the balance tips in favour of broadening the defences available to those who communicate facts it is in the public's interest to know.

[477] The defence of responsible communication is described at para. 98:

[98] This brings us to the substance of the test for responsible communication. In *Quan*, Sharpe J.A. held that the defence has two essential elements: public interest and responsibility. I agree, and would formulate the test as follows. First, the publication must be on a matter of public interest. Second, the defendant must show that publication was responsible, in that he or she was diligent in trying to verify the allegation(s), having regard to all the relevant circumstances.

[478] Chief Justice McLachlin summarized the more detailed elements of the defence, at para. 126:

[126] The defence of public interest responsible communication is assessed with reference to the broad thrust of the publication in question. It will apply where:

- A. The publication is on a matter of public interest, and
- B. The publisher was diligent in trying to verify the allegation, having regard to:
 - (a) the seriousness of the allegation;
 - (b) the public importance of the matter;
 - (c) the urgency of the matter;
 - (d) the status and reliability of the source;
 - (e) whether the plaintiff's side of the story was sought and accurately reported;
 - (f) whether the inclusion of the defamatory statement was justifiable;
 - (g) whether the defamatory statement's public interest lay in the fact that it was made rather than its truth ("reportage"); and
 - (h) any other relevant circumstances.

[479] With respect to "other relevant circumstances," Chief Justice McLachlin noted (at paras. 122-125) that:

[122] . . . the factors serve as non-exhaustive but illustrative guides. Ultimately, all matters relevant to whether the defendant communicated responsibly can be considered.

[123] Not all factors are of equal value in assessing responsibility in a given case. For example, the “tone” of the article . . . may not always be relevant to responsibility. While distortion or sensationalism in the manner of presentation will undercut the extent to which a defendant can plausibly claim to have been communicating responsibly in the public interest, the defence of responsible communication ought not to hold writers to a standard of stylistic blandness [citation omitted]. Neither should the law encourage the fiction that fairness and responsibility lie in disavowing or concealing one’s point of view. The best investigative reporting often takes a trenchant or adversarial position on pressing issues of the day. An otherwise responsible article should not be denied the protection of the defence simply because of its critical tone.

[124] If the defamatory statement is capable of conveying more than one meaning, the jury should take into account the defendant’s intended meaning, if reasonable, in determining whether the defence of responsible communication has been established. This follows from the focus of the inquiry on the conduct of the defendant. The weight to be placed on the defendant’s intended meaning is a matter of degree: “The more obvious the defamatory meaning, and the more serious the defamation, the less weight will a court attach to other possible meanings when considering the conduct to be expected of a responsible journalist in the circumstances” [citation omitted]. Under the defence of responsible communication, it is no longer necessary that the jury settle on a single meaning as a preliminary matter. Rather, it assesses the responsibility of the communication with a view to the range of meanings the words are reasonably capable of bearing.

[125] Similarly, the defence of responsible communication obviates the need for a separate inquiry into malice. (Malice may still be relevant where other defences are raised.) A defendant who has acted with malice in publishing defamatory allegations has by definition not acted responsibly.

[480] When determining responsibility, the trier of fact must consider the broad thrust of the publication as a whole rather than minutely parsing individual statements: see *Quan v. Cusson*, 2009 SCC 62, at para. 30.

[481] I find that the “public interest” aspect of the test is satisfied for all of the Web Story and the TV Reports. Health care, patient safety, the qualifications and licencing of health care providers, and the oversight of physicians by the College are all clearly matters of public interest. There was no dispute about this.

[482] Mr. Burnett, for the CBC Defendants, submits that the necessary elements of the second part of the defence – that the publisher was diligent in trying to verify the allegation – have also been satisfied in this case.

[483] Mr. Burnett submits the evidence shows that Ms. Tomlinson, both on her own and in the support she received from Ms. Uda and the guidance from Mr. Williams, conducted extensive research into numerous cases of patient concerns. The story started with the contact from Ms. Hix about Beverly North's case and Dr. Casses' surrender of his licence in Arizona. However, it did not stop there. The cases researched included those where the patient's concerns were found by the College to be justified (e.g., Ms. Mead) and where they were found not to be (e.g., Mr. Giesbrecht and Edith Backer). In Mr. Burnett's submission, in that light, in the development of the story, it was not a matter of speculating about whether there were issues with Dr. Casses' practice. Rather, it had been established that there were issues, since Dr. Casses had in fact surrendered his licence in Arizona and he had been the subject of criticism by the College (most of which Dr. Casses ultimately accepted at trial). It was a matter of determining the extent of the problem, and whether the known issues were part of a larger concern or simply aberrations. Mr. Burnett points out that Ms. Tomlinson and the CBC stayed away from the extreme allegations made by Larry North, who was identified very early on as an unreliable source. Mr. Burnett points out that Ms. Tomlinson messaged everyone commenting about Dr. Casses on RateMDs, not merely those who had bad or negative opinions. In Mr. Burnett's submission, Ms. Tomlinson's notes show that she consulted and interviewed many sources, including an individual whose husband had died and who nevertheless spoke positively about Dr. Casses.

[484] Mr. Burnett notes that Ms. Tomlinson's collected research included some medical records from Ms. Mead and Mr. Giesbrecht. Ms. Tomlinson explained why she was not more insistent that patients she interviewed provide her with their medical records. In response to the repeated criticism of Ms. Tomlinson that she should have obtained and reviewed medical records for all of the patients, and that her failure to do so demonstrates her lack of diligence (and possibly malice), Mr.

Burnett argues that, at trial, all of the medical records were available, but, in the end, very few of them were admitted into evidence and they made no real difference to the story.

[485] In Mr. Burnett's submission, the sheer number of patients interviewed, and the commonality between many of them, are indicative of reliability of what they were telling Ms. Tomlinson concerning Dr. Casses.

[486] In addition to contacting people in B.C., Mr. Burnett notes that Ms. Tomlinson travelled to Arizona to interview Ms. Hix and Dr. Hunter. She contacted individuals at the College and at Northern Health. Mr. Burnett also points out that Ms. Tomlinson made a number of attempts to hear what Dr. Casses had to say. Following the trip to Quesnel, Ms. Tomlinson sent a written request to Mr. McConchie detailing the subject areas she wished to ask Dr. Casses about. Dr. Casses never spoke to her, and responded through his lawyer to the written request. Ms. Tomlinson reported what he had communicated about his complication rate and his position that he could not speak to the CBC because of patient confidentiality. Mr. Burnett submits that Dr. Casses' claim that he was prevented from speaking by patient confidentiality was a disingenuous excuse, and that Dr. Casses would never have spoken to Ms. Tomlinson even with patient consent.

[487] With respect to whether there was any urgency in broadcasting the stories, Mr. Burnett submits that, while there was no rush to get the story to air and the research had taken place over about three and a half months (since late May), there was nevertheless a pressing issue, namely patient safety, which could not wait forever. Dr. Casses was, at the time, one of only two general surgeons practicing in Quesnel. In Mr. Burnett's submission, Ms. Tomlinson's evidence that many potential Go Public stories are killed, sometimes very close to air, is indicative of a good faith attitude and an ongoing open mind regarding stories being researched.

[488] On the factor concerning the justifiability of including the allegedly defamatory statements, Mr. Burnett emphasized that Dr. Casses is not complaining that the actual words, in their literal meanings, are defamatory. In that light, in Mr. Burnett's

submission, Dr. Casses' criticism of Ms. Tomlinson's repeated statements about the Arizona Bomex resolution and the "paper trail" should not be given much (or any) weight, since Dr. Hunter's comments about the "paper trail" would still have been featured in the story, even though they were not part of the Arizona Bomex resolution.

[489] On the other hand, Mr. McConchie, for Dr. Casses, argues that the CBC Defendants have failed utterly to satisfy the onus to prove that they were diligent in trying to verify the defamatory expressions, having regard to the factors described in **Grant**. Mr. McConchie argues that the TV Reports and the Web Story are a disgrace to journalism. In Mr. McConchie's submission, deliberate lies, reckless invention, malignant distortion, calculated ambiguity, superficial and lazy research, and callous indifference to the public's interest in fair, balanced and accurate reporting, made a potent recipe for devastating injury to reputation.

[490] One of Dr. Casses' main arguments is that the defence of responsible communication must fail because Ms. Tomlinson (and others) were actuated by malice toward him.

[491] Mr. McConchie submits that there was nothing urgent about publishing any story concerning Dr. Casses. He argues that proper diligence in verifying the allegations required that Ms. Tomlinson obtain medical records from all of the patients interviewed, which she did not do, preferring instead to rely on what she was told in oral interviews with patients. Mr. McConchie submits that this approach displayed a reckless indifference to the facts. He submits that Ms. Tomlinson should not have treated Ms. Hix as either a credible or reliable source of information. Mr. McConchie says that there is no evidence Ms. Tomlinson made any efforts to get independent advice from a physician. He submits that Ms. Tomlinson's lack of due diligence, indeed her recklessness (and hence her malice), is illustrated by her failure to press Dr. Hunter (when she interviewed him in Arizona) about the actual content of the Arizona Bomex resolution, which she repeatedly misquoted in the

Web Story (until corrected in December 2014, at the close of the evidence), in the TV Reports and elsewhere.

[492] Mr. McConchie submits that the people who gathered at the Backers' house on August 24, 2009 were not independent of one another. Rather, in his submission, Ms. Tomlinson, in organizing the gathering, had created the equivalent of a lynch mob to solidify her agenda against Dr. Casses. Mr. McConchie notes that, for example, Ms. Tomlinson did not make any arrangements to ensure that the College's response to Ms. Watkins' complaint concerning Dr. Casses' treatment of Edith Backer was circulated to those at the gathering.

[493] In Mr. McConchie's submission, all of these circumstances (and more) demonstrate Ms. Tomlinson's malice toward Dr. Casses, and her malice is fundamentally incompatible with her acting responsibly in publishing the Web Story and the TV Reports.

[494] However, in my opinion, the CBC Defendants are entitled to succeed on the defence of responsible communication, in relation to both the Web Story and each of the TV Reports. I will now explain why I have come to that conclusion.

[495] The story began as one about a surgeon who had surrendered his licence in Arizona, but nevertheless obtained a licence and was practicing in B.C. In my opinion, Ms. Tomlinson's essential perspective concerning each of the publications is reflected in the CBC's Pleded Meanings. In that context, and in the light of the circumstances I describe below, I find that Ms. Tomlinson was diligent, in the sense used in **Grant**, in trying to verify the allegations about Dr. Casses.

[496] The allegations about Dr. Casses in the Web Story and the TV Reports were serious, as were the inferences likely to be drawn by an ordinary, reasonable person. Indeed, although I did not accept Dr. Casses' pleaded meanings, I concluded that the inferential meanings that I found the publications bore were defamatory of Dr. Casses.

[497] However, Dr. Casses was one of only two general surgeons practicing in Quesnel. For that community in particular, his background, qualifications and skill as a surgeon were very important indeed. He could, quite literally, have their lives in his hands. This was one of the reasons why Ms. Odiorne, for example, spoke out. Concern for the community also motivated Mr. Backer and Ms. Cook.

[498] Moreover, many of the statements in the Web Story and the TV Reports were substantially true.

[499] The statements concerning Dr. Casses' history in Arizona provide examples.

[500] In the Fall of 2000, Dr. Casses' staff privileges at the Boswell Memorial and Del E. Webb Memorial Hospital were in fact summarily suspended based on quality assurance concerns, something Dr. Casses admitted was true. In the Consent Agreement, Dr. Casses formally admitted that in connection with a surgery (in fact, the surgery on Beverly North) he fell below the standard of care which might have been harmful to the health of a patient, and that his conduct constituted unprofessional conduct. At trial, rather than testifying he admitted facts that were not true, Dr. Casses confirmed his admissions. In my view, there can be no doubt that Dr. Casses voluntarily surrendered his medical licence in Arizona, rather than face further disciplinary proceedings.

[501] Dr. Casses had in fact been found liable for negligence by the Arizona jury in the negligence case concerning Beverly North's death. The fact that he had not participated in the trial because he had settled earlier was not reported. However, Dr. Casses acknowledged on cross-examination that he did not dispute that he was partially at fault, although he disputed the jury's finding that he was 90% at fault.

[502] In my opinion, the circumstances in which Dr. Casses applied for and became licenced by the College raise very troubling questions. This also goes to the truth of one of the CBC's Pleaded Meanings, and to the truth of some of the defamatory meanings that I have found in relation to the Web Story and the TV Reports.

[503] Dr. Casses' conduct in relation to the B.C. Application was consistent with that of someone with something to hide, and intent on hiding it. His patients, such as Mr. Caskey, Ms. Odiorne and Mr. Field, complained that he was not forthcoming with them about the medical care he had rendered and that he concealed relevant facts. I find this is true. This same pattern of concealing uncomfortable facts can be seen in Dr. Casses' dealings with the College in relation to the B.C. Application for his medical licence. It was only when Dr. Casses had no other choice and was forced to answer a specific inquiry from the College, that he disclosed his history in Arizona. In the meantime, he had been performing surgery on patients in Port Alberni.

[504] I find that, during the application process in B.C., Dr. Casses deliberately did not disclose anything about events in Arizona (the suspension of his hospital privileges, the investigation by the Arizona Bomex and the surrender of his licence) to the College. Dr. Casses did not disclose what was happening in Arizona, even when he knew his statements on the B.C. Application were no longer true. His explanation, essentially, was that, after he submitted the B.C. Application, he was not specifically asked about these events, and therefore he had no obligation to disclose them to the College. Dr. Casses' explanation strongly implies that he will not disclose or acknowledge, or will minimize, facts and circumstances which reflect (or may reflect) poorly on him as a surgeon, unless he has no other option, even if making full and candid disclosure would likely be in the best interests of patients.

[505] I find that is how Dr. Casses conducted himself in relation to his B.C. medical licence. It was only after he was confronted by the College by letter at the end of February 2001, and required to give an explanation about events in Arizona, that he did so. Even then, Dr. Casses' explanation was self-serving and (for example) he did not disclose that he had signed the Consent Agreement.

[506] I find that this is also how he conducted himself in relation to patient complaints. At trial, Dr. Casses "humbly" accepted criticism from the College. But earlier, in a number of his responses to the College, he very firmly rejected any

possibility that he might have made a slip or error, or that a patient criticism might be valid. His response to Ms. Mead's complaint – a complaint that the College upheld and which Dr. Casses ultimately accepted – provides an example.

[507] Dr. Casses' answers on the annual questionnaires he completed for the College were also not truthful. A truthful answer would have required him to say "yes" in response to the question whether he had ever entered into an agreement with a licensing authority in the face of potential disciplinary action. Instead, he answered "no." His explanation for doing so provides no justification for giving an answer that is not true, and that Dr. Casses knows is not true. However, it is consistent with a pattern where Dr. Casses will not disclose or acknowledge, or will minimize, facts and circumstances which reflect poorly on him as a surgeon, unless he has no other option. Dr. Casses' conduct in relation to the College's annual questionnaire again raises troubling questions about the oversight by the College.

[508] With respect to whether there was any urgency in publishing the Web Story and the TV Reports, I agree with Mr. Burnett. This Go Public story had been developed and researched over about 3 months. Dr. Casses was a surgeon who had surrendered his medical licence in Arizona and whose conduct had been found to be unprofessional by the governing body there. There was a jury verdict against him in a negligence action in the U.S. He had been the subject of complaints to the College and been sued for negligence in B.C. He was continuing to operate on patients in Quesnel. As of August 28, 2009, Dr. Casses was not going to provide any further information to or answer questions posed by Ms. Tomlinson. Publication of the Web Story and the TV Reports was delayed so that Ms. Tomlinson could investigate further Dr. Casses' statements about his complication rates. In my opinion, in the circumstances, a timely report was justified, and there was no undue haste or cutting corners in the CBC publishing the Web Story and the TV Reports when it did.

[509] Mr. McConchie argues that Ms. Tomlinson, acting responsibly and not maliciously, should have taken the time to obtain and review all of the medical

records for all of the relevant patients before publishing anything about Dr. Casses. She did not do this. Thus (he argues), she failed to carry out proper due diligence and relied on sources that were unreliable. Mr. McConchie describes her conduct as reckless.

[510] I do not agree.

[511] I find that, in the circumstances, responsible reporting did not require Ms. Tomlinson to obtain and review all of the medical records. Ms. Tomlinson asked patients that she interviewed for their records, and reviewed what she was provided. To require a journalist in Ms. Tomlinson's position to do more and not report at all on a story such as the stories here without obtaining and reviewing medical records is not reasonable, in my opinion. As Mr. Burnett pointed out in closing submissions, at the trial, all of the medical records were available, but little use was made of the vast majority of them.

[512] According to Ms. Tomlinson, some Go Public stories had been killed at the last minute. However, Mr. McConchie did not identify anything in particular that would have been found – if only Ms. Tomlinson had reviewed the medical records – that would or should have altered in Dr. Casses' favour the fundamentals of the Web Story or any of the TV Reports, or led the CBC to kill any of them. In my opinion, there was nothing.

[513] On the other hand, the medical records that are in evidence do little to help Dr. Casses, in my view. At trial, Dr. Casses often qualified or elaborated on statements in his own operative reports, for example, and implied that simply reading the reports would not present an accurate picture. The medical records do not support Mr. McConchie's argument that Ms. Tomlinson acted irresponsibly in not obtaining medical records from everyone.

[514] The records concerning Ms. Odiorne's surgery provide an example. In his operative report for Ms. Odiorne, Dr. Casses states clearly that "I made the . . . injury" in the bladder. This is the "nick" Ms. Odiorne described to Ms. Tomlinson.

Any reasonable person reading Dr. Casses' operative report would conclude that he, personally, cut the bladder. However, at trial, Dr. Casses attempted to distance himself from his own words. Dr. Casses did not mention in his operative report that he had made a failed effort to repair the bladder, before calling in Dr. Thomas, so a reader who had spoken to Ms. Odiorne (as Ms. Tomlinson did) might well question whether Dr. Casses told Ms. Odiorne anything about it, or had concealed it from her. In that light, Dr. Casses' operative report would support what Ms. Odiorne communicated to Ms. Tomlinson, that she found out what happened, not from Dr. Casses, but from Dr. Thomas. Someone reviewing Dr. Casses' operative report (which in fact described a complication) might also question why it was dictated 11 days after the surgery, and after Dr. Thomas' report (dictated the same day as the surgery), and question whether Dr. Casses' conduct was consistent with his patient's best interests.

[515] The medical records for Mr. Caskey would have shown that Dr. Casses did not have any consent from Mr. Caskey for the additional surgery he performed. Mr. Caskey did not learn what had happened during his surgery until after he had been discharged home and removed the bandages. He then had to ask Dr. Casses what had been done. This is a far cry from what Dr. Casses describes in his September Statement as his "rigid practice" following surgery, of ensuring that each patient is given a truthful and accurate explanation, in plain English, of what went on. Plainly, in Mr. Caskey's case, Dr. Casses did not do this. Mr. Caskey's case also goes to the truth of even some of the extreme defamatory meanings pleaded by Dr. Casses, in addition to defamatory meanings that I have found and the CBC's Pleading Meanings.

[516] There were no medical records that contradicted the version of events that Ms. Mead communicated to Ms. Tomlinson. Although, in his response to the College in relation to Ms. Mead's complaint, Dr. Casses attempted to create a scenario where physicians in Prince George were responsible for Ms. Mead's problems, the College rejected his theory, and ultimately (at trial) Dr. Casses accepted the conclusions reached by the College. Again, this supports the truth of

some of the defamatory meanings pleaded by Dr. Casses, meanings found by me and the CBC's Pleadings.

[517] The operative report for Mr. Field's hernia surgery provides another example where, in my view, having more records would not have assisted Dr. Casses. In his evidence, Dr. Casses emphasized the importance of dictating the operative report promptly after the surgery is completed, since the surgeon is relying on memory, and he was critical of other physicians for not doing so. However, his report for Mr. Field was dictated a week after the surgery, and was incomplete and inaccurate. Dr. Casses attempted to minimize the fact that he had not described the use of two plugs in his operative report (indeed, a reader would conclude a single plug was used). However, based on the opinion evidence I accept, using two plugs was unusual. It should have been mentioned in the operative report and disclosed to Dr. Casses' patient, Mr. Field. Mr. Field's case is an example where Dr. Casses failed to acknowledge, and attempted to minimize, a complication suffered by his patient from the surgery Dr. Casses performed. The College was critical of Dr. Casses and, for the most part, at trial, Dr. Casses accepted the criticism.

[518] In Ms. Aaslie's case, VGH's records described a bile duct injury. This description (although ultimately wrong) was consistent with what Ms. Aaslie communicated to Ms. Tomlinson. It shows that reading the VGH medical records would probably not have fundamentally altered the story.

[519] In August 2009, Ms. Tomlinson also had the College's response to the complaint by Ms. Watkins concerning Edith Backer. This set out in some detail Dr. Casses' and Dr. Scudamore's versions of the facts. In my opinion, having all of Mrs. Backer's medical records would have made little difference.

[520] Accordingly, in my opinion, Ms. Tomlinson was not required to obtain medical records from all of the patients before she could publish the Web Story and the TV Reports. She was not required to track down and review every possible source of information concerning surgeries performed by Dr. Casses on the patients she was interviewing. In the circumstances, obtaining medical records was not required as

an element of responsible communication. A failure to do so was neither reckless nor evidence of malice.

[521] With respect to other sources, Ms. Tomlinson's (and Ms. Uda's) research and development of the story about Dr. Casses began with Ms. Hix and Ms. Cook, but certainly did not stop there. Larry Hix was quickly identified as unreliable, and they paid no attention to him. Ms. Hix's story was confirmed by the admissions made by Dr. Casses in the Consent Agreement, and which he confirmed at trial.

[522] Ms. Tomlinson reviewed the material Ms. Uda had collected from the Arizona Bomex, a reliable source. It is true that Ms. Tomlinson misread the content of the Arizona Bomex resolution concerning Dr. Casses. Dr. Hunter's statement concerning the "paper trail" was not part of the actual resolution. However, Dr. Casses does not complain about the literal words in any of the publications, but about the inferential meanings. The "paper trail" statement had been made at the Arizona Bomex public meeting by the Vice-chairman and was recorded in the meeting minutes, and Ms. Tomlinson testified that, as a result, it still would have been featured in the story. In the circumstances, I find that there is little substantial difference between what was reported as the resolution, and a statement about the actual resolution accompanied by a statement that the Vice-chairman wanted to see a paper trail, in terms of the inferences that a reasonable person would draw.

[523] Ms. Tomlinson was even-handed in locating patients who would speak to her. She did not seek out only those who had an axe to grind. She interviewed everyone separately, by telephone, first. She confirmed at trial that her notebook illustrates the extent of the contacts and what she was told. Many people (although not all) described similar experiences with Dr. Casses. Ms. Mead's story, for example, was confirmed through the response (which took into account what Dr. Casses had to say) of the College to her complaint. The gathering at the Backers' was set up after the telephone interviews. This was not creating a lynch mob of people out to get Dr. Casses. Individual citizens are entitled to have opinions about the medical care they receive and the physicians who provide it. Ms. Tomlinson spoke to Dr. O'Dwyer and

Dr. Hutchinson about Dr. Casses' time in Port Alberni, and used Dr. Hutchison as someone who could help, off-the-record, with occasional questions about medical matters.

[524] As far as Ms. Tomlinson was concerned, the role of the College was an important part of the story. In cross-examination, questions were put to Ms. Tomlinson suggesting that she acted irresponsibly in not educating herself better about the workings of the College and about why Ms. Prins was telling her the College could not disclose information, by, for example, consulting the **Health Professions Act**, especially s. 53, which (as of August and September 2009) provided:

Confidential Information

53 (1) Subject to the *Ombudsman Act*, a person must preserve confidentiality with respect to all matters or things that come to the person's knowledge while exercising a power or performing a duty under this Act unless the disclosure is

- (a) necessary to exercise the power or to perform the duty, or
- (b) authorized as being in the public interest by the board of the college in relation to which the power or duty is exercised or performed.

(2) Insofar as the laws of British Columbia apply, a person must not give, or be compelled to give, evidence in a court or in proceedings of a judicial nature concerning knowledge gained in the exercise of a power or in the performance of a duty under Part 2.1 or Part 3 unless

- (a) the proceedings are under this Act, or
- (b) disclosure of the knowledge is authorized under subsection (1) (b) or under the bylaws or regulations made under this Act.

(3) The records relating to the exercise of a power or the performance of a duty under Part 2.1 or Part 3 are not compellable in a court or in proceedings of a judicial nature insofar as the laws of British Columbia apply unless

- (a) the proceedings are under this Act, or
- (b) disclosure of the knowledge is authorized under subsection (1) (b) or under the bylaws or regulations made under this Act.

[525] Ms. Tomlinson acknowledged that it may have been a good idea to include some discussion of these provisions in the story. They indicate that the “troubling questions” are unlikely to be answered.

[526] However, in my opinion, Ms. Tomlinson was not acting irresponsibly by not including some discussion of these legislative provisions. The absence of such a discussion did not alter the fundamentals of the story.

[527] Ms. Tomlinson made attempts to speak to Dr. Casses directly. These were rebuffed, and by the morning of August 25, 2009, Dr. Casses had retained legal counsel. I conclude that, by this stage, Dr. Casses had decided he would not speak with Ms. Tomlinson under any circumstances. Dr. Casses' and Ms. Schoenauer's description of events at this time reflect a strong view Dr. Casses was being unfairly persecuted and hounded by Ms. Tomlinson, and was driven to take unusual steps to escape. Ms. Tomlinson's written request for an interview met with predictable results, in the form of what Ms. Tomlinson and Mr. Williams described as a "chill letter." Nevertheless, Ms. Tomlinson reported what Dr. Casses said about his complication rate and his reason for not speaking to her. She reported what Dr. Temple had to say about whether something done by the Arizona Bomex would influence decisions made by the Northern Health Authority. She also reported that the College had sided with Dr. Casses on a number of the patient complaints.

[528] Shortly after the last of the TV Reports was broadcast, Dr. Casses published his side of the story in the September Statement. Of course, Dr. Casses could characterize matters as he saw fit, although he testified that everything he said was true and also that it was very important to be forthcoming. However, in my opinion, his statement that "I voluntarily surrendered my medical license" is disingenuous and shades the truth. In fact, he agreed to surrender his licence in exchange for not facing a potentially much more serious level of scrutiny and discipline in Arizona. Moreover, his statement that this event happened "10 years ago" is simply untrue, and implies that the events were more distant in the past than in fact they were. His statement that "I fully disclosed the Arizona facts and all the associated circumstances . . . to the BC College" leaves out the facts that he had not done this when he obtained a license in the Fall of 2000 and only did so in early 2001 when he had no other option. The September Statement reflects the pattern that was part of

the Go Public story: that Dr. Casses minimized or would not acknowledge facts and circumstances that reflected poorly on him as a surgeon.

[529] In summary, I find that Ms. Tomlinson and the CBC acted responsibly in developing and publishing the Web Story and each of the TV Reports. I find that Ms. Tomlinson, who was responsible for the contents of each publication, was diligent in trying to verify the allegations concerning Dr. Casses, having regard to all of the circumstances, and that much of what she reported in the Web Story and the TV Reports was true. The defamatory stings are no worse than the facts that have been proved at trial, and a more complete reporting of the facts would have been more damaging for Dr. Casses.

[530] I conclude, therefore that, with respect to the Web Story and each of the TV Reports, the CBC Defendants are entitled to succeed on the defence of responsible communication.

(iii) Fair Comment

[531] Since I have found that the CBC Defendants are entitled to succeed on the defence of responsible communication, and despite the detailed submissions I received on fair comment, I do not intend to deal with the defence of fair comment in relation to them.

[532] However, fair comment is the only defence raised by Ms. Watkins.

[533] A defendant claiming fair comment must satisfy the following test: (a) the comment must be on a matter of public interest; (b) the comment must be based on fact; (c) the comment, although it can include inferences of fact, must be recognisable as comment; (d) the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts? See **WIC Radio Ltd. v. Simpson**, 2008 SCC 40, at para. 28

[534] Even though the comment satisfies the objective test, the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice,

and that this was the defendant's primary or predominant motive in publishing the comment. See **WIC**, at paras. 28 and 63, and **Ross v. New Brunswick Teachers' Assn.**, 2001 NBCA 62, at paras. 113-116. As **Ross** illustrates, a defendant can in fact have a great deal of ill-will towards a plaintiff, but a plaintiff may still fail to prove malice sufficient to defeat a defence of fair comment. The defence will not be defeated unless the court also concludes that the defendant's dominant purpose in publishing the material in issue was to injure the plaintiff because of spite or ill-will.

[535] There is no doubt that Ms. Watkins' statement was on a matter of public interest. However, the three remaining elements are in issue. Moreover, Dr. Casses says that Ms. Watkins was actuated by express malice.

[536] **WIC** expanded the fair comment defence by changing the traditional requirement that the opinion be one that a "fair-minded" person could honestly hold, to a requirement that it be one that "anyone could honestly have expressed", which allows for robust debate: see **Grant**, at para. 31. As Binnie J. put it in **WIC** (at para. 4), "[w]e live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones."

[537] "Honest belief" requires the existence of a relationship between the comment and underlying facts. The question is whether anyone, however prejudiced the person might be, however exaggerated or obstinate the person's views might be, could honestly express the opinions, based on the proven facts: see **WIC**, at para. 40.

[538] In order to determine whether a defamatory imputation can be protected as fair comment, it must be initially determined whether it is comment upon given facts or a statement of facts. The distinction is fundamental and must absolutely be made because an assertion of facts can never be defended as fair comment: see **Ross**, at para. 55.

[539] However, words that may appear to be statements of fact may be properly construed as comment: see **WIC**, at para. 26. What is comment and what is fact

must be determined from the perspective of a reasonable viewer or reader: see **WIC**, at para. 27 (citing **Ross**, at para. 62). Context is important. Whether something is fact or comment is for me to decide: see **WIC**, at para. 55.

[540] A properly disclosed or sufficiently indicated (or so notorious as to be already understood by the audience) factual foundation is an important objective limit to the fair comment defence: see **WIC**, at para. 34. If the factual foundation is unstated or unknown, or turns out to be false, the fair comment defence is not available: see **WIC**, at para. 31 (citing **Price v. Chicoutimi Pulp Co.** (1915), 51 S.C.R. 179], at p. 194). A single fact, proved to be substantially true, can provide a sufficient foundation for a fair comment defence: see **Simpson v. Mair and WIC Radio Ltd.**, 2004 BCSC 754, at paras. 56-60.

[541] Here, I find that Ms. Watkins' statements about Dr. Casses would be understood as comment, not fact, particularly given the context (RateMDs) in which her statements were made. The facts that form the basis for the comment are that: (a) Dr. Casses performed surgery on Mrs. Backer; (b) after a period in hospital in Quesnel, she was transferred to VGH, where she had further surgeries; and (c) Mrs. Backer later died in hospital in Vancouver. All of these facts are true, and are sufficiently stated in Ms. Watkins' posting. These facts provide the anchor for her opinions: that Dr. Casses waited too long before sending Mrs. Backer to Vancouver, and if he had acted sooner, Mrs. Backer may not have died; that Dr. Casses had left a mess that needed to be cleaned up in Vancouver; that Mrs. Backer suffered through further surgeries and complications led to her untimely death; and the College should not have granted Dr. Casses a licence to practice in B.C. I find that these are opinions that anyone could honestly have expressed, based on the facts. Ms. Watkins' opinions do not have to be reasonable or fair-minded.

[542] I turn then to Dr. Casses' assertion that the defence should be defeated because of malice.

[543] In my opinion, Dr. Casses has failed to prove that, in posting on RateMDs, Ms. Watkins was actuated by express malice. First, he has failed to prove that Ms.

Watkins did not honestly hold the views she expressed, and I find that, since of August 2008, following the death of her mother, she held these views. Moreover, Dr. Casses has failed to prove Ms. Watkins' primary or predominant motive for publishing her comments on RateMDs was to injure him because of spite or animosity, or that she had some other dominant improper purpose. Ms. Watkins explained that she made her RateMDs posting after seeing the TV Reports and realizing that there were other people affected, and that she wanted to share with others what her family had gone through. Her evidence in that respect was unchallenged.

[544] I find, therefore, that Ms. Watkins is entitled to succeed on her defence of fair comment.

[545] Although I have found that Dr. Casses failed to make out his defamation claims against Ms. Cook, Ms. Odiorne and Mr. Backer, I will say a few words concerning the fair comment defence raised by each of them. Had it been necessary for me to do so, I would have given effect to that defence.

[546] For Ms. Cook and Ms. Odiorne, the basic factual foundation (communicated to Ms. Tomlinson) was that each had surgery performed by Dr. Casses and each suffered a complication in connection with the surgery (either after, in Ms. Cook's case, or during, in Ms. Odiorne's case). These facts were true. In Ms. Odiorne's case, she communicated the additional fact that she had complained to the College about Dr. Casses, which was also true. The defamatory meanings that Dr. Casses pleaded in respect of the "Cook Words" and the "Odiorne Words" are opinions, not facts, and, apart from the basic facts, what Ms. Cook and Ms. Odiorne communicated to Ms. Tomlinson were their opinions about how they had been treated by Dr. Casses and (in Ms. Odiorne's case) the College. The basic factual foundation would, and in my opinion did, provide a sufficient foundation for the opinions later expressed by Ms. Cook and Ms. Odiorne. They were opinions that anyone could honestly express, based on the proven facts.

[547] In Mr. Backer's case, the basic factual foundation (also communicated to Ms. Tomlinson) was that Dr. Casses had sutured Mrs. Backer's bile duct and pancreas during surgery and she died about a month later. Both facts were true. Again, the defamatory meanings that Dr. Casses pleaded in respect of the "Backer Words" are opinions not facts, and what Mr. Backer communicated to the gathering on August 24 were his opinions. The basic factual foundation would, and in my opinion did, provide a sufficient foundation for the opinions expressed by Mr. Backer. They were opinions that anyone could honestly express, based on the proven facts.

[548] I would also have found that each of Ms. Cook, Ms. Odiorne and Mr. Backer honestly held the views they expressed, and, in the case of each of them, although they had very poor opinions about Dr. Casses, their predominant motive in saying what they said was concern for their own welfare and the welfare of their community, and not to injure Dr. Casses because of spite or ill-will. I would not have given effect to Dr. Casses' argument that the fair comment defence should be defeated because these Individual Defendants were actuated by express malice.

(iv) The CBC's defence of justification

[549] Because I have concluded that the CBC Defendants are entitled to succeed on the defence of responsible communication, it is unnecessary for me to deal with justification. However, I will make a few very brief comments.

[550] Justification is an absolute defence to defamation. It applies to statements of fact. It will succeed if the defendant proves, on a balance of probabilities, the truth of what is alleged to be defamatory. However, what is required to be proven is not the truth of each and every word or the literal truth of the statement. Rather, a defendant must only prove on a balance of probabilities that the gist or sting of the defamation was true, and it is sufficient if the defendant proves that a defamatory expression was substantially true. Minor inaccuracies do not preclude a defence of justification so long as the publication conveyed an accurate impression. The test is whether the defamatory expression, as published, would have a different effect on a reader or listener than what the pleaded truth would have produced. See ***Cimolai***

v. Hall, at paras. 171-173; *Wilson v. Switlo*, 2011 BCSC 1287, at paras. 440-441; and *Jay v. Hollinger Canadian Newspapers*, 2002 BCSC 1840, at para. 4.

[551] The CBC Defendants have pleaded justification in respect of both the CBC's Pleded Meanings, and, in the alternative, the defamatory meanings alleged by Dr. Casses. From the findings I made in the "Background Facts" section and the discussion above regarding the defence of responsible communication, it can be seen that, in my opinion, much of what was reported in the Web Story and the TV Reports was substantially true, and, in my opinion, the CBC's Pleded Meanings can be justified.

[552] However, I have not accepted that the defamatory "stings" were as Dr. Casses alleged, nor have I accepted that they are reflected in the CBC's Pleded Meanings. Rather, I concluded that the inferential meanings of the Web Story and the TV Reports were much milder than Dr. Casses alleged, although still defamatory. Indeed, they are closer to the CBC's Pleded Meanings, than to the extreme meanings pleaded by Dr. Casses. Nevertheless, in order to succeed on their justification defence, the CBC Defendants would have to justify the "stings" found by me: see *Miller v. Canadian Broadcasting Corp.*, at paras. 18-19.

[553] Both the CBC Defendants and Dr. Casses made detailed submissions on justification. The CBC Defendants say that they are entitled to succeed on the defence and that the truth in relation to Dr. Casses' handling of many of the cases was worse and more stinging than what was reported in the Web Story and the TV Reports.

[554] On the other hand, Dr. Casses says (although in relation to his pleaded inferential meanings, which I have rejected) that the CBC Defendants have failed to make out the elements of the defence.

[555] I have concluded that there will be no real benefit to either Dr. Casses or the CBC Defendants in engaging in a full analysis of the CBC's justification defence.

Rather, in my opinion, this case illustrates the importance and value of the defence of responsible communication.

(v) Mr. Williams' limitation defence

[556] Since I have found that the CBC Defendants are entitled to succeed on their responsible communication defence, it is unnecessary for me to deal with Mr. Williams' limitation defence. Indeed, very little was said about it in closing submissions.

[557] Had it been necessary for me to do so, I would have found that the limitation period for a defamation claim against Mr. Williams in relation to the TV Reports had expired within 2 years of September 2009. As of 2013, when Mr. Williams was joined as a defendant, any such claim was statute-barred, and his limitation defence would be entitled to succeed. However, I would have found that the limitation period in relation to the Web Story had not expired, and his limitation defence was not entitled to succeed in respect of a defamation claim based on the Web Story.

(c) Damages

[558] I have concluded that, although the Web Story and each of the TV Reports were defamatory of Dr. Casses, the CBC Defendants are entitled to succeed on their defence of responsible communication. I have concluded that Dr. Casses has failed to make out his defamation claims against Ms. Cook, Mr. Backer and Ms. Odiorne. I have concluded that, although Ms. Watkins' RateMDs post was defamatory of Dr. Casses, she is entitled to succeed on her defence of fair comment.

[559] In that light, it follows that Dr. Casses' claims must be dismissed and it is unnecessary for me to address damages.

[560] Nevertheless, I will make some relatively brief comments, principally in relation to the CBC Defendants.

[561] Dr. Casses was seeking very substantial damages against the CBC Defendants, on the basis that the four TV Reports may be said to represent "the

most savage attack on the reputation of a professional person by the news media of this province in living memory.” Mr. McConchie submitted that this case warranted damages in excess of the substantial damages awarded in **Leenen** and **Myers**, and that an award in the range of \$1 million (including general, special, aggravated and punitive damages) or more would be justified.

[562] Dr. Casses sought more modest damages against Ms. Cook, Ms. Odiorne and Mr. Backer, in the order of between \$50,000 and \$70,000 each. As against Ms. Watkins, Mr. McConchie suggested damages in the range of \$20,000 would be justified.

[563] General damages in defamation cases are presumed from the very publication of the false statement and are awarded at large: see **Hill**, at para. 164 and **Grant**, at para. 28. A plaintiff is not required to prove a specific financial loss. Nevertheless, in this case, the plaintiffs tendered expert opinion evidence, relating to past and future income loss, from Mr. Robert Carson, an economist. The CBC Defendants countered with their own expert report from Mr. Stephen Cheng, an expert in pension and actuarial consulting. They say further that any damages would be mitigated either entirely or at least substantially by the damaging true information about Dr. Casses.

[564] In my view, this case is, on the facts, very far from **Leenen** or **Hill**. Anyone who did a Google search on Dr. Casses would find the Arizona Bomex resolution, for example. Dr. Casses and Ms. Hix agreed to a press release, the content of which is not flattering to Dr. Casses. RateMDs contains some very harsh criticism of Casses. Finally, what I have found in this trial to be true would likely also have a negative impact on Dr. Casses.

4. Summary and disposition

[565] In summary:

- (a) the claims by Casses Inc. in all actions are dismissed, as Casses Inc. has failed to make out one of the essential elements of a claim for

defamation, namely, that the publications and statements in fact referred to it;

- (b) in relation to the CBC Action, I find that Dr. Casses has proved he was defamed by each of the Web Story and each of the TV Reports, but I find that the CBC Defendants are entitled to succeed on their defence of responsible communication. In that light, I have not addressed the defences of justification or fair comment;
- (c) in relation to the Cook Action, I find that Dr. Casses has failed to prove that he was defamed by Ms. Cook;
- (d) in relation to the Odiorne Action, I find that Dr. Casses has failed to prove that he was defamed by Ms. Odiorne;
- (e) in relation to the Backer and Watkins Action, I find that Dr. Casses has failed to prove that he was defamed by Mr. Backer. I find that Dr. Casses has proved that he was defamed by Ms. Watkins. However she is entitled to succeed on her defence of fair comment;
- (f) in the light of those conclusions, I decline to make any assessment of damages.

[566] Accordingly, each action is dismissed and the third party proceedings are also dismissed.

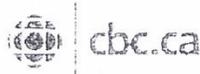
[567] If the parties are unable to agree on costs and wish to make submissions, they should contact Scheduling within the next 30 days to make arrangements for a hearing at a date and time convenient to counsel and the court.

“Adair J.”

Appendix "A" – the Web Story – Text only

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Appendix A



September 8, 2009

Patients complain about B.C. surgeon barred in Arizona

CBC News

Several people in Quesnel, B.C., have filed complaints about their hospital's general surgeon, Dr. Fernando Casses. They claim they suffered needlessly - and were damaged permanently - when he failed to address serious complications from his surgeries.

Several people in Quesnel, B.C., have filed complaints about their hospital's general surgeon, Dr. Fernando Casses. They claim they suffered needlessly - and were damaged permanently - when he failed to address serious complications from his surgeries.

"He said to me, 'Lady, you just had surgery. Go home and have a hot bath,'" said Tammy Mead, who said she ended up at "death's door" following routine gallbladder surgery at G.R. Baker Memorial Hospital.

"After the third day, I knew there was something wrong - because I was throwing up green bile. He had cut my liver, my bowel and my intestine," Mead said.

Mead and several other complainants said they were also shocked to learn Casses had been asked to leave his medical practice in Arizona, but was later granted a permanent licence to practise in B.C.

After Casses "dismissed" her symptoms on followup, Mead said, her husband rushed her to another hospital, where other doctors performed emergency surgery.

"If I wouldn't have taken Tammy to Prince George - to emergency - she wouldn't be here today," said Chuck Mead.

The former patients and their families are speaking out in frustration. They believe their complaints weren't taken seriously enough by the College of Physicians and Surgeons of B.C.

"All of us have complained," said Robin O'Diorne, whose complaint to the college was not upheld. "What are they doing? What is anybody doing?"

Complaints and lawsuits in B.C.

At least nine complaints have been filed. In six of those cases, the complainants were later informed that the investigation was completed. Three of the complaints were upheld, including Tammy Mead's. However, the college did not criticize Casses in three others. After hearing his explanations, it agreed his treatment was appropriate.

"As far as [the college] is concerned, our case is written off," said Doug Backer. His mother, Edith Backer, died last year - after her bile duct and pancreas were sutured during gallbladder surgery. The college said it "would not be specifically critical" of Casses for how he handled her case.

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- 91 Three B.C. lawsuits have also been filed against Casses - two have been settled and one is set for trial next year.
- 93 "We were told we didn't have enough time or money to take him on [in a lawsuit]," said Chuck Mead.
- 94 O'Diome, Mead and others said they realize all surgery is risky, but they were shocked to discover how similar their experiences were.
- 95 The most common complaint is not just that they suffered complications after Casses operated on them, but that he refused to acknowledge and/or treat those complications.
- 96 In most cases, they said, serious perforations or post-surgical infections were not revealed or treated - until after other physicians became involved.
- 97 "[The other surgeon] told me that it was 'a bloody mess' in there - and if it had been the next day - he would have been on the golf course, and I probably wouldn't have survived," said O'Diome, who's suffered complications after she said her bladder was "nicked" during surgery by Casses.
- 98 The patients want to know why Casses has been allowed to practise in B.C.
- 99 "The College of Physicians should give a reason why they did that," said Caroline Mitchell, daughter of the patient who died. "Why would they allow that - when they knew his history?"
- 100 'Unprofessional conduct' in Arizona
- 101 Nine years ago, Casses's privileges were suspended at a hospital in Sun City, Ariz., following surgical complications there. Before coming to Quesnel, he surrendered his Arizona medical licence, admitting to "unprofessional conduct" in one case.
- 102 "Because [Casses] was not allowed to practise in Arizona - why is he allowed to practise here?" asked Krystal Cook, whose grossly swollen and infected toe had to be removed by another surgeon.
- 103 The College of Physicians and Surgeons gave Casses a "temporary/provisional" licence when he came to B.C. from Arizona in October 2000. His B.C. licence was made permanent in 2003.
- 104 Casses declined to be interviewed by CBC News about his background or the specific complaints against him, citing patient confidentiality.
- 105 The College of Physicians and Surgeons of B.C. also refused a request for an interview and would not explain why Casses's first licence was temporary - or how and why it was made permanent. Spokeswoman Susan Prins said all doctors under temporary licence are supervised.
- 106 The complaints from patients who spoke to CBC News were all about surgeries performed by Casses after he got his permanent B.C. licence in 2003.
- 107 Tammy Mead feels she "won" in her complaint to the college in 2005. Casses insisted his surgery did not cause her injuries - but the college disagreed with him. It also advised him to follow his patients more closely.
- 108 "My bowels were shutting down and they were going to put me on a bag for the rest of my life with 12 IV's. I wish they'd seen that picture," said Mead.
- 109 "They need to investigate him fully," she added.
- 110 Doctor says all surgery has risks
- 111 In a written statement, submitted to CBC News through his lawyer, Casses pointed out "every surgical procedure has inherent risks" and that accidental perforations are quite common.
- 112 "I have performed over 5,000 (five thousand) surgical procedures in the span of nine years," he wrote. "My surgical complication rate is approximately .3% (point three per cent!), well below the average for a general surgeon."
- 113 However, Dr. David Butcher, vice-president of medicine for B.C.'s Northern Health Authority, told CBC News that Casses has performed 1,500 surgeries in Quesnel since becoming a full-time surgeon there eight years ago.

(11)

114 If Casses's surgical complication rate is .3 per cent, then only 4.5 surgeries of his surgeries at the Quesnel hospital should have resulted in complications. CBC News has found 18 cases there, where patients or their families said there were complications following surgery by him at G.R. Baker.

115 Butcher also said doctors calculate their own surgical complication rates - and those figures are not tracked by the hospital. If a patient's complication is treated at another hospital - as many of the complaining patients were - he said that would not reflect back to the original surgeon's records.

116 "That would not show up in our system," said Butcher. "We are currently working to develop a physician-specific performance management system."

117 "Following surgery," Casses said in his statement, "my invariable practice is to ensure that each patient is given a truthful and accurate explanation, in plain English, concerning his or her surgery, and I appropriately follow them to the best of my ability in recovery."

118 "If a complication has occurred, they are given an explanation of the circumstances of that complication," he added.

119 Leigh-Anne Monahan is another patient who filed a formal complaint to the college, but she said she received no response. She sued Casses, claiming he failed to identify her deteriorating medical condition after surgery.

120 "He was supposed to just tie her [fallopian] tubes. Instead, he cut the ligaments that go alongside the tubes - and she just about bled to death," said Wendy Monahan, who said her daughter received an out-of-court settlement from Casses in 2007.

121 In the recovery room, her mother said Leigh-Anne heard the nurses arguing with Casses about her condition - telling them she was not OK, while he insisted she was.

122 "Why would he argue with the nurses when her vitals were crashing?" asked Monahan.

123 She said another doctor stepped in and saved her daughter's life and later told the family it was "a matter of minutes before her heart would have stopped."

124 "It was so scary. I will remember that for the rest of my life," said Monahan.

125 'Cone of silence' criticized by patient group

126 Phil Hassen, chief executive of the Canadian Patient Safety Institute, said all surgeons have an ethical obligation to disclose and treat any adverse event as soon as possible. He said non-disclosure causes serious problems for the health care system.

127 "It's a cone of silence," said Hassen. "The problem is that if someone is harmed - there are consequences that could be fairly severe, and therefore the disclosure is to be able to take care of it right away."

128 "[Casses] never admitted to doing anything," said Stephanie Aaslie, who said her life was also at risk - from complications following gallbladder surgery.

129 "The only thing he had said is there was an infection inside of me, that had pooled inside of me, but ... he was going to let it run its course," said Aaslie.

130 Her husband said he pulled her out of Quesnel and got her to another hospital, after her eyes rolled into the back of her head - and hospital nurses urged him to get another doctor.

131 "The nurses pulled me aside and said, 'We are really concerned about her, and we feel that you should go - and get a second opinion,'" said Stig Aaslie. "I believe they went beyond what they are allowed to do."

132 Other doctors found a large amount of bile in her abdomen, Aaslie said, and discovered her bile duct, liver and bowel had been severed.

133 Because she was young and naïve when it happened, she said, she did not file any formal complaints.

134 "How many people are really out there like us?" asked O'Diorne.

(12)

- 137 "The hospital should go back to every surgery that man has performed - and do a followup on every one of them," suggested Backer.
- 136 Casses obtained his medical degree in Bogota, Colombia, in 1981 and completed his residency at the University of Toronto teaching hospital, from 1986 to 1991. Two years later, he was licensed to practice in Arizona.
- 137 In 2000, the Boswell Memorial Hospital in Sun City suspended his privileges to perform surgeries there, citing "quality assurance concerns."
- 138 Arizona doctor 'horrified' by cases
- 139 Dr. Tim Hunter, vice-chair of the Arizona Medical Board at the time, told CBC News the hospital then submitted several patient cases to the board for review.
- 140 "I was just horrified - reading the cases," said Hunter. "There were a large number of very poor surgeries and a number of people harmed."
- 141 "There were many, many bad cases. It wasn't just an isolated case - where there was an accident," he said. "The complications he had - and the large numbers of them - were way beyond expectations."
- 142 One of those cases was Beverly North, who died six weeks after Casses cut a major vein, during vascular surgery to remove blockages in her legs.
- 143 "She lost so much blood," said her daughter Sandy Hix. "They had to fill her with saline water to keep her alive."
- 144 "He drew a little thing on a napkin and said he nicked her vein and she lost a little bit of blood and everything was fine from the surgery - but when she got to ICU, she had a heart attack," Hix said.
- 145 An autopsy later showed her mother's heart was healthy and undamaged.
- 146 "If my mom had died right away, that night [after surgery] - my family would not know what really happened," Hix added.
- 147 Casses left for B.C. soon afterward, in the fall of 2000.
- 148 After North's death, the family sued Casses and the hospital. A Maricopa County jury found him 90 per cent at fault. Hix said the Arizona Medical Board told her that her mother's case was number 17 - on the list of problem surgeries by Casses, reported by the hospital.
- 149 The Arizona Medical Board held a hearing - in January of 2001 - and decided to summarily suspend Casses's licence, if he didn't surrender it within 30 days.
- 150 Because he knew Casses had spent time in Canada, Hunter also made a motion - which passed - that read, "Dr. Hunter would like to see a paper trail preventing the doctor from practising in Canada."
- 151 "I wanted documentation that we were in the process of trying to have his licence either surrendered or revoked," said Hunter.
- 152 Casses surrendered his Arizona licence the day after that hearing, listing his address as Port Alberni, B.C.
- 153 Although the board had reviewed several of his Arizona cases, he admitted fault in only one, agreeing he "fell below the standard of care which might have been harmful to the health of a patient."
- 154 By that time, he was already working at his new job - as a surgeon at the West Coast General Hospital. He had received his new B.C. medical licence three months earlier.
- 155 B.C. licence obtained before U.S. investigation
- 156 To get that licence, the college indicated Casses would have had to produce a "certificate of good standing" from Arizona - which he could have obtained before the Arizona investigation began.
- 157 "When we saw him and interviewed him [in the fall of 2000] there was nothing in the pipeline," said Dr. Robert O'Dwyer, head of internal medicine for West Coast General.

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- 159 He had a letter of good standing [from Arizona]."
- 159 He said Casses told them nothing about any trouble he might have been facing. "He gave us references," he added, "They were good references."
- 160 Later, when Sandy Hix saw Casses's new Canadian address - listed on the Arizona document - she called the health authority in B.C. to report his history.
- 161 "I was astonished to get her call," said Dr. Robin Hutchinson, who was vice president of medicine for the health authority at the time. "I then reported it to the college, which is my duty," he added.
- 162 Hutchinson said hospital brass then informed Casses of what they knew.
- 163 "He just up and left," said O'Dwyer. "It was a big blow to us."
- 164 The College of Physicians and Surgeons suggested it would have contacted Arizona after Casses's history was reported to them.
- 165 "If we learn of an incident that causes us concern after a licence has been granted, we would certainly make contact with the appropriate regulatory authority to gather more information for an investigation," wrote spokeswoman Susan Prins in an email.
- 166 Casses then spent a short time working at the Creston Valley Hospital in the B.C. interior. That resulted in his first B.C. lawsuit - from a patient named Carol Alvarez, who alleged his hernia surgery resulted in painful, "grotesque" scarring. The lawsuit was settled in 2006.
- 167 According to Dr. Becky Temple, northeast medical director for the Northern Health Authority, when Casses applied for credentials to work in Quesnel, in 2001, he wrote a letter, as part of his application, advising them he voluntarily gave up his privileges in Arizona because of complaints about one case there.
- 168 **Health Authority didn't check background**
- 169 She said the health authority did not check with the Arizona Medical Board, to see if it knew of more cases - or what its overall assessment of him was.
- 170 "That would not be a normal procedure for the hospital," said Temple. "If he was granted licence in the province of British Columbia, that would be sufficient for us."
- 171 Temple said Casses provided three positive references, as every applicant is required to. She added, his hospital credentials are reviewed every year.
- 172 When asked about the Arizona medical board's resolution - that a paper trail should have been created to prevent Casses from practising in Canada - she responded, "I don't feel that the Arizona board has any authority or mandate to decide who practices in Canada or in British Columbia."
- 173 "If he was stopped from operating now - the health authority might have to admit they were wrong [to give him credentials]," said Leigh-Anne Monahan's daughter, Justine Norgaard.
- 174 The college doesn't tell the public anything about individual doctors, except whether they have a licence, unless the doctor has been disciplined. Casses has not been.
- 175 "The college is not able to provide information about an individual registrant, including details of his/her application for licensure, complaints filed against him/her, or any subsequent investigation," spokeswoman Prins wrote.
- 176 That means even when complaints from patients are found valid, as in Tammy Mead's case, that information is not released.
- 177 "Don't they have the responsibility to protect us?" asked Mead.
- 178 "Why wasn't all of it public knowledge?" said Krystal Cook. "Why didn't I know that he wasn't allowed to practise in Arizona? I shouldn't have been 19 years old and missing a toe."

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176 Temple said she would not speculate on what, if any, action the health authority might take, now that it has new information on Casses's history.

180 "Northern Health will accept and investigate and respond to all complaints from all patients who feel they have been harmed by any physician who practises in Northern Health," she added.

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Appendix “B” – the Web Story – Text and pictures

1

Patients complain about B.C. surgeon barred in Arizona - British Columbia - CBC News

Patients complain about B.C. surgeon barred in Arizona

Dr. Fernando Cassez claims his complication rate is very low

Last Updated: Tuesday, September 8, 2009 | 8:23 PM PT By Kathy Tomlinson, CBC News

Several people in Quesnel, B.C., have filed complaints about their hospital's general surgeon, Dr. Fernando Cassez. They claim they suffered needlessly — and were “damaged permanently — when he failed to address serious complications from his surgeries.



Quesnel surgeon Dr. Fernando Cassez surrendered his medical licence in Arizona. (CBC)

“He said to me, ‘Lady, you just had surgery. Go home and have a hot bath,’” said Tammy Mead, who said she ended up at “death’s door” following routine gallbladder surgery at G.R. Bakor Memorial Hospital.

“After the third day, I knew there was something wrong — because I was throwing up green bile. He had cut my liver, my bowel and my intestine,” Mead said.

Mead and several other complainants said they were also shocked to learn Cassez had been asked to leave his medical practice in Arizona, but was later granted a permanent licence to practise in B.C.

After Cassez “dismissed” her symptoms on followup, Mead said, her husband rushed her to another hospital, where other doctors performed emergency surgery.

“If I wouldn’t have taken Tammy to Prince George — to emergency — she wouldn’t be here today,” said Chuck Mead.

The former patients and their families are speaking out in frustration. They believe their complaints weren’t taken seriously enough by the College of Physicians and Surgeons of B.C.

“All of us have complained,” said Robin O’Diorne, whose complaint to the college was not upheld. “What are they doing? What is anybody doing?”

Complaints and lawsuits in B.C.

At least nine complaints have been filed. In six of those cases, the



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- VIDEO: Kathy Tomlinson reports: Surgeon in Canada after surrendering licence in Arizona (Runs 2:50)

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complainants were later informed that the investigation was completed. Three of the complaints were upheld, including Tammy Mead's. However, the college did not criticize Casses in three others. After hearing his explanations, it agreed his treatment was appropriate.

As far as [the college] is concerned, our case is written off," said Doug Backer. His mother, Edith Backer, died last year — after her bile duct and pancreas were sutured during gallbladder surgery. The college said it "would not be specifically critical" of Casses for how he handled her case.

Three B.C. lawsuits have also been filed against Casses — two have been settled and one is set for trial next year.

"We were told we didn't have enough time or money to take him on [in a lawsuit]," said Chuck Mead.



Former patient Tammy Mead is the only one in the group who feels she 'won' her complaint. (CBC)

O'Diome, Mead and others said they realize all surgery is risky, but they were shocked to discover how similar their experiences were.

The most common complaint is not just that they suffered complications after Casses operated on them, but that he refused to acknowledge and/or treat those complications.

In most cases, they said, serious perforations or post-surgical infections were not revealed or treated — until after other physicians became involved.

"The other surgeon] told me that it was 'a bloody mess' in there — and if it had been the next day — he would have been on the golf course, and I probably wouldn't have survived," said O'Diome, who's suffered complications after she said her bladder was "nicked" during surgery by Casses.

The patients want to know why Casses has been allowed to practise in B.C.

"The College of Physicians should give a reason why they did that," said Caroline Mitchell, daughter of the patient who died. "Why would they allow that — when they knew his history?"

'Unprofessional conduct' in Arizona

Nine years ago, Casses's privileges were suspended at a hospital in Sun City, Ariz., following surgical complications there. Before coming to Quesnel, he surrendered his Arizona medical licence, admitting to "unprofessional conduct" in one case.

"Because [Casses] was not allowed to practise in Arizona — why is he allowed to practise here?" asked Krystal Cook, whose grossly swollen and infected toe had to be removed by another surgeon.

The College of Physicians and



Boswell Memorial Hospital in Sun City, Ariz., suspended his privileges. (CBC)

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Surgeons gave Casses a "temporary/provisional" licence when he came to B.C. from Arizona in October 2000. His B.C. licence was made permanent in 2003.

Casses declined to be interviewed by CBC News about his background or the specific complaints against him, citing patient confidentiality.

The College of Physicians and Surgeons of B.C. also refused a request for an interview and would not explain why Casses's first licence was temporary — or how and why it was made permanent. Spokeswoman Susan Prins said all doctors under temporary licence are supervised.

The complaints from patients who spoke to CBC News were all about surgeries performed by Casses after he got his permanent B.C. licence in 2003.

Tammy Mead feels she "won" in her complaint to the college in 2005. Casses insisted his surgery did not cause her injuries — but the college disagreed with him. It also advised him to follow his patients more closely.

"My bowels were shutting down and they were going to put me on a bag for the rest of my life with 12 IV's. I wish they'd seen that picture," said Mead.

"They need to investigate him fully," she added.

Doctor says all surgery has risks

In a written statement, submitted to CBC News through his lawyer, Casses pointed out "every surgical procedure has inherent risks" and that accidental perforations are quite common.

"I have performed over 5,000 (five thousand) surgical procedures in the span of nine years," he wrote. "My surgical complication rate is approximately .3% (point three per cent), well below the average for a general surgeon."



This group of former B.C. patients and family members wants his surgeries investigated. (CBC)

However, Dr. David Butcher, vice-president of medicine for B.C.'s Northern Health Authority, told CBC News that Casses has performed 1,500 surgeries in Quesnel since becoming a full-time surgeon there eight years ago.

If Casses's surgical complication rate is .3 per cent, then only 4.5 surgeries of his surgeries at the Quesnel hospital should have resulted in complications. CBC News has found 18 cases there, where patients or their families said there were complications following surgery by him at G.R. Baker.

Butcher also said doctors calculate their own surgical complication rates — and those figures are not tracked by the hospital. If a patient's complication is treated at another hospital — as many of the complaining patients were — he said that would not reflect back to the original surgeon's records.

"That would not show up in our system," said Butcher. "We are currently working to develop a physician-specific performance management system."

"Following surgery," Casses said in his statement, "my invariable practice is to ensure that each patient is given a truthful and accurate explanation, in plain English, concerning his or her surgery, and I

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appropriately follow them to the best of my ability in recovery."

"If a complication has occurred, they are given an explanation of the circumstances of that complication," he added.

Leigh-Anne Monahan is another patient who filed a formal complaint to the college, but she said she received no response. She sued Casses, claiming he failed to identify her deteriorating medical condition after surgery.

"He was supposed to just tie her [fallopian] tubes. Instead, he cut the ligaments that go alongside the tubes — and she just about bled to death," said Wendy Monahan, who said her daughter received an out-of-court settlement from Casses in 2007.

In the recovery room, her mother said Leigh-Anne heard the nurses arguing with Casses about her condition — telling them she was not OK, while he insisted she was.

"Why would he argue with the nurses when her vitals were crashing?" asked Monahan.

She said another doctor stepped in and saved her daughter's life and later told the family it was "a matter of minutes before her heart would have stopped."

"It was so scary. I will remember that for the rest of my life," said Monahan.

'Cone of silence' criticized by patient group

Phil Hassen, chief executive of the Canadian Patient Safety Institute, said all surgeons have an ethical obligation to disclose and treat any adverse event as soon as possible. He said non-disclosure causes serious problems for the health care system.

"It's a cone of silence," said Hassen. "The problem is that if someone is harmed — there are consequences that could be fairly severe, and therefore the disclosure is to be able to take care of it right away."



Former patient Stephanie Aaslie said she almost died after Dr. Fernando Casses failed to treat surgical complications. (CBC)

"[Casses] never admitted to doing anything," said Stephanie Aaslie, who said her life was also at risk — from complications following gallbladder surgery.

"The only thing he had said is there was an infection inside of me, that had pooled inside of me, but ... he was going to let it run its course," said Aaslie.

Her husband said he pulled her out of Quesnel and got her to another hospital, after her eyes rolled into the back of her head — and hospital nurses urged him to get another doctor.

"The nurses pulled me aside and said, 'We are really concerned about her, and we feel that you should go — and get a second opinion,'" said Stig Aaslie. "I believe they went beyond what they are allowed to do."

Other doctors found a large amount of bile in her abdomen, Aaslie said, and discovered her bile duct, liver and bowel had been severed.

Because she was young and naïve when it happened, she said, she did not file any formal complaints.

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"How many people are really out there like us?" asked O'Diome.

"The hospital should go back to every surgery that man has performed — and do a followup on every one of them," suggested Backer.

Casses obtained his medical degree in Bogota, Colombia, in 1981 and completed his residency at the University of Toronto teaching hospital, from 1986 to 1991. Two years later, he was licensed to practice in Arizona.

In 2000, the Boswell Memorial Hospital in Sun City suspended his privileges to perform surgeries there, citing "quality assurance concerns."

Arizona doctor 'horrified' by cases

Dr. Tim Hunter, vice-chair of the Arizona Medical Board at the time, told CBC News the hospital then submitted several patient cases to the board for review.

"I was just horrified — reading the cases," said Hunter. "There were a large number of very poor surgeries and a number of people harmed."



Former Arizona Medical Board vice-chair Dr. Tim Hunter said he was 'horrified' when reviewing Dr. Fernando Casses's case file there. (CBC)

"There were many, many bad cases. It wasn't just an isolated case — where there was an accident," he said. "The complications he had — and the large numbers of them — were way beyond expectations."

One of those cases was Beverly North, who died six weeks after Casses cut a major vein, during vascular surgery to remove blockages in her legs.

"She lost so much blood," said her daughter Sandy Hix. "They had to fill her with saline water to keep her alive."

"He drew a little thing on a napkin and said he nicked her vein and she lost a little bit of blood and everything was fine from the surgery — but when she got to ICU, she had a heart attack," Hix said.

An autopsy later showed her mother's heart was healthy and undamaged.

"If my mom had died right away, that night [after surgery] — my family would not know what really happened," Hix added.

Casses left for B.C. soon afterward, in the fall of 2000.

After North's death, the family sued Casses and the hospital. A Maricopa County jury found him 90 per cent at fault. Hix said the Arizona Medical Board told her that her mother's case was number 17 — on the list of problem surgeries by Casses, reported by the hospital.

The Arizona Medical Board held a hearing — in January of 2001 — and decided to summarily suspend Casses's licence, if he didn't surrender it within 30 days.

Because he knew Casses had spent time in Canada, Hunter also made a motion — which passed — that read, "Dr. Hunter would like to see a aper trail preventing the doctor from practising in Canada."

"I wanted documentation that we were in the process of trying to have his licence either surrendered or revoked," said Hunter.

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Casses surrendered his Arizona licence the day after that hearing, listing his address as Port Alberni, B.C.

Although the board had reviewed several of his Arizona cases, he admitted fault in only one, agreeing he "fell below the standard of care which might have been harmful to the health of a patient."

By that time, he was already working at his new job — as a surgeon at the West Coast General Hospital. He had received his new B.C. medical licence three months earlier.

B.C. licence obtained before U.S. investigation

To get that licence, the college indicated Casses would have had to produce a "certificate of good standing" from Arizona — which he could have obtained before the Arizona investigation began.

"When we saw him and interviewed him [in the fall of 2000] there was nothing in the pipeline," said Dr. Robert O'Dwyer, head of internal medicine for West Coast General.



"He had a letter of good standing [from Arizona]."

Arizona resident Sandy Hix is upset that Dr. Fernando Casses is working in Canada after being found at fault in her mother's death. (CBC)

He said Casses told them nothing about any trouble he might have been facing. "He gave us references," he added, "They were good references."

Later, when Sandy Hix saw Casses's new Canadian address — listed on the Arizona document — she called the health authority in B.C. to report his history.

"I was astonished to get her call," said Dr. Robin Hutchinson, who was vice president of medicine for the health authority at the time. "I then reported it to the college, which is my duty," he added.

Hutchinson said hospital brass then informed Casses of what they knew.

"He just up and left," said O'Dwyer. "It was a big blow to us."

The College of Physicians and Surgeons suggested it would have contacted Arizona after Casses's history was reported to them.

"If we learn of an incident that causes us concern after a licence has been granted, we would certainly make contact with the appropriate regulatory authority to gather more information for an investigation," wrote spokeswoman Susan Prins in an email.

Casses then spent a short time working at the Creston Valley Hospital in the B.C. interior. That resulted in his first B.C. lawsuit — from a patient named Carol Alvarez, who alleged his hernia surgery resulted in painful, "grotesque" scarring. The lawsuit was settled in 2006.

According to Dr. Becky Temple, northeast medical director for the Northern Health Authority, when Casses applied for credentials to work in Quesnel, in 2001, he wrote a letter, as part of his application, advising them he voluntarily gave up his privileges in Arizona because of complaints about one case there.

Health Authority didn't check background

She said the health authority did not check with the Arizona Medical

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Board, to see if it knew of more cases — or what its overall assessment of him was.

"That would not be a normal procedure for the hospital," said Temple. "If he was granted licence in the province of British Columbia, that would be sufficient for us."

Temple said Casses provided three positive references, as every applicant is required to. She added, his hospital credentials are reviewed every year.

When asked about the Arizona medical board's resolution — that a paper trail should have been created to prevent Casses from practising in Canada — she responded, "I don't feel that the Arizona board has any authority or mandate to decide who practices in Canada or in British Columbia."

"If he was stopped from operating now — the health authority might have to admit they were wrong [to give him credentials]," said Leigh-Anne Monahan's daughter, Justine Norgaard.

The college doesn't tell the public anything about individual doctors, except whether they have a licence, unless the doctor has been disciplined. Casses has not been.

"The college is not able to provide information about an individual registrant, including details of his/her application for licensure, complaints filed against him/her, or any subsequent investigation," spokeswoman Prins wrote.

That means even when complaints from patients are found valid, as in Tammy Mead's case, that information is not released.

"Don't they have the responsibility to protect us?" asked Mead.

"Why wasn't all of it public knowledge?" said Krystal Cook. "Why didn't I know that he wasn't allowed to practise in Arizona? I shouldn't have been 19 years old and missing a toe."

Temple said she would not speculate on what, if any, action the health authority might take, now that it has new information on Casses's history.

"Northern Health will accept and investigate and respond to all complaints from all patients who feel they have been harmed by any physician who practises in Northern Health," she added.

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