

## Medicare on Trial in British Columbia

Through the years, time and again, Canadians have expressed strong support for our country's single-payer, public health care system. Medicare is a cherished feature of Canadian life and is considered a mark of a caring, compassionate society in which all citizens have equal access to health care -- access based on medical need, not the ability to pay.

Today Medicare is on trial. Dr. Brian Day, President and CEO of Cambie Surgeries Corporation, along with several individual patients, has filed a Charter challenge to BC's ban on private health care. Arguing before the province's Supreme Court, Dr. Day asserts that specific provisions of the BC Medicare Protection Act, which restrict charging patients privately, infringe upon the rights of patients *to life, liberty, and security of the person* under Section 7 of the Canadian Charter of Rights and Freedoms.

The case was launched by Dr. Brian Day in 2009 when he learned that his clinics were going to be audited by the BC Government. Dozens of patients had complained that they had been illegally overbilled at Cambie's clinics. The BC Medical Services Commission audit was released in 2012; it found that Cambie Surgeries and another private clinic had indeed billed patients more than is permitted by law for health services covered by Medicare. For one 30-day sample, the amount of over billing was almost half a million dollars. The audit also found instances of double billing: patients in that same period had been billed directly in the amount of more than \$66,000 while the tax-payer-funded provincial plan also had been billed the same amount for the same services.

The trial began in the British Columbia Supreme Court on September 6, 2016. Between that time and March 17, 2017, the plaintiffs had presented the testimony of 42 witnesses. On April 10th, 2017, Day 83 of trial, the parties appeared before Mr. Justice Steeves with a joint application seeking an adjournment. The trial resumed on April 9, 2018.

**The Trial Issues:** Dr. Day and Cambie Surgeries argue that there should be no limits on extra billing for medical services. They say also that private health insurance to cover medically necessary care should be freely available and lawful, and that there should be no prohibition against doctors working privately and in the public health care system at the same time.

They argue further that since some patients in the public system must wait for elective surgery and non-urgent specialist appointments, they should have the right to obtain medical services more quickly by paying privately, either out-of-pocket or through private insurance. They maintain that a parallel private option would not only increase reasonable access to health services but also improve quality of care and reduce costs.

**The Defendants and Their Arguments:** The Attorney General of BC (the Province, the Minister of Health) and B.C.'s Medical Services Commission, who are the defendants in this

case, will likely argue that a parallel private system will not necessarily reduce wait times, but rather create a health system preferring those who can afford to pay. Profits would be prioritized as private system practitioners set their own fees, making money off publicly covered care, and profiting insurance companies. Physicians will be lured by financial gain out of the public system into private clinics, leaving fewer physicians and other medical personnel in the public system. With fewer doctors, wait times would grow: the availability, quality and timeliness of care in the publicly funded system would be diminished. In a two-tiered system, where physicians could work in both systems, they could drive traffic to their more lucrative private practice. They could select the “best” patients – the healthiest and the wealthiest, the medically low risk patients who can be treated quickly with straightforward medical interventions. Serious, chronic or complex cases would be left to the public system.

**The Intervenors:**

Intervenors are apparently quite rare at the trial level. In this case, however, there are three distinct groups of intervenors: first are the BC Health Coalition, the Canadian Doctors for Medicare, two patients and two doctors; second, a group of patients who say they were unlawfully billed at Dr. Day’s clinics and who, supported by the BC Nurses’ Union, brought the original legal petition forward to compel the province to act. They are intervenors who are protecting public health care, representing health professionals and Canadians who believe in the value of our Medicare system – and that, as surveys consistently show, is the great majority of us. A third group of intervenors is the B.C. Anaesthesiologists’ Society.

“The evidence and facts provided at the trial stage in BC will be the record upon which a Supreme Court of Canada decision, if necessary, will be made,” says Adam Lynes-Ford of the BC Health Coalition. “Our direct participation as intervenors is essential.”

**The Role of the Canadian Government:** In addition to the plaintiffs and defendants, the Attorney General of Canada is a party in the litigation to protect the Canada Health Act and to respond to the constitutional questions raised by the plaintiffs.

At issue, according to the Canadian Health Coalition, is the foundational principle that all Canadians should receive health care based on what they need, not on what they can pay. Although this case is being heard in British Columbia, experts agree it is likely to be appealed and end up in the Supreme Court of Canada, making it relevant to all Canadians.

At stake is Medicare as it is here for us today.

*~ JoAnn Lauber, NPF Health Committee Member*