

Dr. Profit Takes the B.C. Government – and Medicare – to Court

The battle to keep health care privatization at bay will soon be fought over B.C.'s provincial health care legislation.

The B.C. government is facing a lawsuit from a group of for-profit clinics led by Dr. Brian Day, who is widely known as “Dr. Profit” for his aggressive efforts to establish private health care in Canada. Dr. Day is the owner of Vancouver’s for-profit Cambie Surgery Centre, one of the clinics at the centre of the lawsuit. The lawsuit seeks to strike down provincial health legislation that limits the for-profit delivery of medically necessary services, claiming that these rules violate the Canadian Charter of Rights and Freedoms.

This case will likely end up in the Supreme Court of Canada, and may produce the defining Charter interpretation that would apply across the country. Not only would this destroy the “need, not ability to pay” paradigm of medicare, it would also require all taxpayers to subsidize the cost of care that only a wealthy few will be able to afford.

The BC Health Coalition, of which the Council of Canadians is a member, and Canadian Doctors for Medicare applied for – and won – intervener status in this case in order to defend our public health care system.

Private clinics in B.C.

Around 2001, private surgical clinics began contravening B.C.’s medicare legislation, the Medicare Protection Act (MPA). Specifically, physicians began doing “MSP work” (publicly insured medically required services) at these clinics and started billing patients directly and outside the limited circumstances where this is allowed. In some instances the clinics charged much more than the MSP payment schedule

allows, or “double-billed,” charging the patient or a third party while also billing the province.

The Chaoulli Case

In 2005, the Supreme Court of Canada held that Quebec legislation prohibiting the sale of private insurance for procedures already covered by the province’s public insurance plan was invalid. A majority decision found this legislation violated the rights to life and security of person under the Quebec Charter of Human Rights and Freedoms (meaning the decision was only applicable in Quebec). A minority decision held also that the legislation violated the Canadian Charter of Rights and Freedoms. The Chaoulli case set the stage for a challenge to medicare based on the Canadian Charter that could have a national application.

Since the Chaoulli case, there has been a significant increase in the number and scope of private clinics in B.C. and across Canada. It has also become more obvious that private clinics are contravening B.C.’s MPA, and the negative impact from these clinics on the public system has become increasingly apparent.

Cambie clinic audit

In April 2012, the Medical Services Commission conducted an audit of the Cambie Clinic. They found close to \$500,000 in illegal extra billing and \$66,000 in double billing within a 30-day period.

Following this audit, the B.C. government gave the Cambie Clinic 30 days to comply with the law. The clinic did not do so.



The B.C. government moved to file an injunction to prevent the clinic from continuing these illegal practices. This injunction is now in limbo until the constitutional challenge is decided.

The threat to medicare

B.C. private clinic owners have launched a direct attack on the single most important feature of the medicare model, which is that health care must be provided according to a patient’s need, not her or his ability to pay. The clinics argue that medicare rules are unconstitutional because they prohibit privatized care for those who can afford to pay for it. So while this case is being heard in a B.C. court, it actually threatens key parts of the Canada Health Act that are incorporated into the health care statutes of all provinces.

The Cambie case goes well beyond the Chaoulli decision because it takes direct aim not only at B.C.’s ban on private insurance, but also at any restriction on the ability of physicians to provide – and patients to purchase – health care services now covered by medicare.

While arguments will be put forward in a court room, this issue will also be fought in the court of public opinion. Public health care advocates have an important role to play in spreading the word about the serious threat this case poses to our medicare system.

The trial date is set for January 15, 2014.

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