

The Council of Canadians and members of the BC Health Coalition drew attention to Dr. Brian Day's private health care clinic, the Cambie Surgery Centre, in 2007. The Council is supporting the legal case against Dr. Day's push for more private health care.



Jan Malek

For-Profit Clinic Lawsuit May Transform Health Care

“Hard to overstate” impact of Brian Day’s extra-billing challenge, doctors say **by Andrew MacLeod**

A court case scheduled to start in September in British Columbia could have severe consequences for public health care in Canada, warn those speaking on behalf of two interveners in the case.

“It’s hard to overstate the importance of this court case,” said Vanessa Brcic, a family doctor in Vancouver who is on the board of Canadian Doctors for Medicare, speaking at a public forum last spring at the University of Victoria.

The case between Dr. Brian Day’s Cambie Surgery clinic and the B.C. government will test whether Canada’s running a public health care system that restricts extra billing is constitutional, Brcic said. A win for the clinics would spell the end of a system where servic-

es are based on need rather than ability to pay, she said.

With a few exceptions, the province’s Medicare Protection Act prohibits doctors and other care providers from charging patients directly for services that are insured through the public system. The law says people should have “reasonable access” to care that is universal and unimpeded by user fees or extra billing.

In 2012, a B.C. Medical Services Commission (MSC) audit found Cambie Surgeries Corporation and the closely related Specialist Referral Clinic (Vancouver) Inc. were guilty of extra billing on a “recurring basis.”

The Cambie clinic offers a variety of surgical procedures, including ortho-

paedic, eye and dental, with fees ranging in the neighbourhood of \$15,000. The audit found nearly \$500,000 in extra billing, and \$66,000 in double billing within a 30-day period.

Day responded to the audit and the MSC’s steps to stop extra billing at his clinic by launching the constitutional challenge.

Initially several clinics were involved, but Day’s clinic is the only one that remains in the challenge; the others, he said, have dropped out voluntarily to make preparations for the case less onerous. The other plaintiffs are five patients.

Raising public awareness

In the months before the hearings began in B.C. Supreme Court, the interveners were raising public awareness

about what's at stake, said Adam Lynes-Ford, the Medicare Campaigner for the B.C. Health Coalition.

Whatever the provincial court decides, lawyers for the interveners are expecting an appeal to the Supreme Court of Canada, he said. The coalition is trying to raise \$550,000 to cover legal bills.

There's strong support in Canada for protecting the public health care system, said Lynes-Ford. "We have public opinion on our side."

They will, however, be up against "emotional" stories from patients involved in the case, he acknowledged.

Vancouver Sun health writer Pamela Fayerman summarized some of those stories in a 2012 article, which quoted a health ministry official who argued that in the public system, anyone who needs urgent care should not have to wait.

The article included stories about two young people who would have had to wait a year or more for knee surgery in the public system. Another was about a 79-year-old woman with terminal lung cancer given two years to live who didn't want to wait a year for knee surgery. The fourth was about a 36-year-old who got a quicker diagnosis of her colon cancer by avoiding a nine-month wait in the public system for a colonoscopy.

Teen waited 27 months for surgery

Walid Khalfallah was also added to the case in January 2013, Day said. A teenager from the Okanagan, Khalfallah became paralyzed from the waist down after waiting 27 months for surgery, which he eventually received in Washington State after his family gave up on the B.C. system.

In 2012, the B.C. Patient Care Quality Review Board found that the Provincial Health Services Authority had failed Khalfallah, and an assistant deputy minister acknowledged he'd been inadequately served.

"Nobody knows when they're going to suddenly deteriorate," said Day. "Twenty-seven months for a child is too long Our opponents are going to have to justify the system is worth saving despite this kind of incident."

The court case, he said, is about whether patients who are suffering on a wait list for a medical service should be restricted from spending their own money to get treatment sooner.

While the stories are emotional, they have to be separated out from the broader story of how growth in for-profit care would erode the public system, said Lynes-Ford. "We'll have to work at extracting those things," he said, noting that it's an opportunity for public education on the implications of for-profit care.

The interveners also include two patients with chronic conditions, Glyn Townson and Thomas McGregor, who argue they'll be hurt by a shift to two-tiered care.

"If access to necessary medical or hospital services may increasingly depend on ability to pay and not medical need, then I am concerned that physicians and other health care providers and resources now available to me in the public system will be shifted to a for-profit private system, to which only wealthier and healthier individuals may have access," Townson said in his 2009 affidavit. "This in turn would reduce the physician and other health care resources available in the public system."

For-profit clinics tend to "cherry-pick" people who are healthy, wealthy and easily treated, said Brcic. They draw professionals out of the public system and leave that system to deal with the most difficult situations, she said.

Brcic was also candid in her criticism of the current system, saying there is a need for innovation. The province will make its defence in the case by blaming doctors for not shepherding patients through the public system better; however, B.C. is in a position

where it could and should do much to improve that system, she said.

"We're just funding the continuing juggernaut, and it's really not an intelligent way to proceed at all," she said.

Other fixes needed, says doctor

Increasing for-profit care is not the way to fix the public system, Brcic added. For-profit clinics will only provide care that they can profit from, and won't deal with anything requiring more complex care, she said.

Lynes-Ford raised concerns that a proliferation of for-profit care could lead to doctors making referrals to themselves that would benefit them financially. Brcic said paying for care puts people in the position of having to make major financial decisions at times when they are under duress.

Provincial defence?

Several audience members at the University of Victoria event raised concerns about the provincial government's role in the case. They said the B.C. government has, in recent years, appeared keen to encourage for-profit health care while choking the public system, and questioned whether it would take its role defending against Dr. Day's legal challenge seriously.

Health ministry spokesperson Ryan Jabs emailed a statement on the government's position. "Private clinics in B.C. must operate within the Medicare Protection Act," he wrote. "The Medicare Protection Act is designed to preserve a publicly managed and fiscally sustainable health care system for British Columbia and ensures access to medical care is based on need and not on an individual's ability to pay."

The hearings were scheduled to start in September and last 18 weeks.

Andrew MacLeod is The Tyee's Legislative Bureau Chief in Victoria.

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