

# The Private Clinics' Legal Threat to Medicare

HEALTH CARE PRIVATIZATION IN B.C. IS OCCURRING AT AN EVER-increasing pace. One area of particular concern has been the growth of private for-profit surgical and diagnostic facilities. For-profit clinics in B.C. have grown increasingly bold in violating Medicare laws designed to guarantee that care is provided on the basis of need and not on the ability to pay. With virtually non-existent provincial investigation and no federal action, clinics are expanding both in size and scope.

For-profit clinics across the province openly “extra-bill” or charge patients additional fees to jump the queue for services that are publicly funded. These fees are a necessary part of the for-profit medical business, and every year thousands of British Columbians pay fees ranging from \$700 to \$17,000 to obtain surgery.

Despite the favorable climate for-profit clinics enjoy in B.C., the provincial government finds itself facing a legal challenge from a group of for-profit clinics led by former Canadian Medical Association President Dr. Brian Day – owner of Vancouver’s for-profit Cambie Surgery Centre and the leading proponent of privatized health care. The group is seeking 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 lawsuit represents a crossroads for Medicare. It is likely that it will end up in the Supreme Court of Canada, and may produce the defining Charter interpretation that would apply across the country.

The lawsuit also casts the BC Government as the major defender of Medicare in this litigation. Yet, troublingly, the provincial government has laid out an agenda that sees for-profit clinics as central to its broader objective of a two-tier, pay-per-service health care system.

It is therefore critical that there are other parties who are involved in this case so that the courts can hear from groups with a demonstrated interest and expertise in the issues raised, and whose members include affected patients, in order to ensure that the public’s interest in preserving Medicare is well represented.

## The Legal Case

The for-profit clinics launched their lawsuit, in part, to prevent Dr. Day’s for-profit Cambie Surgery Centre and Specialist Referral Clinic from being audited by the Medical

Services Commission. The MSC attempted to audit the clinics after it was legally petitioned by patients who had been charged illegal user fees. These patients argued that in its dealings with the for-profit clinics, the MSC and the provincial government are failing to comply with the *Medicare Protection Act* (MPA) and the *Canada Health Act*.

### THE PLAINTIFFS:

Canadian Independent Medical Clinics Association (CIMCA), Cambie Surgeries Corporation, Delbrook Surgical Centre Inc., False Creek Surgical Centre Inc., Okanagan Health Surgical Centre Inc. and Ultima Medical Services Inc.

- Filed writ of summons in January 2009.
- Argue that patients have a constitutional guarantee of access to medical care in the private or public systems; any restriction of access is a violation of patient’s Charter rights.
- Contend that they should be free to charge for services that are insured under the province’s public insurance plan (MSP).
- Argue that MPA provisions prohibiting the sale of private insurance for publicly insured services are invalid.
- Contend that the government does not have the statutory power to audit or investigate for-profit facilities.

### THE DEFENDANTS:

Medical Services Commission of British Columbia (MSC), Minister of Health Services of British Columbia and Attorney General of British Columbia.

- Filed statement of defence and counterclaim in February 2009.
- Argue that the for-profit clinics are refusing MSC auditors access to and inspection of their billing records.
- Claim that the Cambie Surgery Centre and the Specialist Referral Clinic are illegally charging patients additional fees for insured services, and requiring patients to sign “acknowledgment forms” guaranteeing that they will not notify the MSP in order to reclaim those fees.
- Request a warrant authorizing inspectors to enter the Cambie Surgery Centre and for an injunction restraining Cambie

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from hindering the inspectors' investigation.

- Request an injunction restraining Cambie from charging patients illegal fees or requiring the signing of acknowledgment forms.

### INTERVENORS:

In November 2009, the trial Judge ruled that the BC Health Coalition and its partners are allowed to participate in the lawsuit as intervenors. Intervening with the BCHC are Canadian Doctors for Medicare, an individual physician representing doctors practicing in the public system, plus two people representing patients who rely on the public system. The judge also announced that the MSC will be allowed to move forward with the audit of Dr. Day's Cambie Surgery Center and Specialist Referral Clinic in 2010.

## Wolves in Sheep's Clothing

The for-profit clinics claim to be acting on behalf of patients but this lawsuit is driven by private, for-profit clinic owners who want private

health insurance companies to have access to Canadian health care. These are the same companies who are fighting to prevent millions of Americans from accessing the kind of universal health care coverage we have here in Canada. Dr. Day has advocated for the private health care industry extensively in the U.S., including on U.S. television.

The prohibition against extra-billing in our health care legislation that the plaintiffs want the Courts to strike down is the mechanism that ensures health care is provided on the basis of need and not simply on the ability to pay. Allowing the sale of private health insurance for necessary health services threatens British Columbians' ability to access affordable health care when they need it. It threatens the principles of equality and fairness that are fundamental to our Canadian health care system.

The BC Health Coalition, Canadian Doctors for Medicare and others are acting out of concern that the provincial government will be unwilling to mount an effective defence to the for-profit clinics' lawsuit. We're here to ensure that the best possible legal arguments are made to uphold public health care and to protect patients from private health insurance companies, in order to uphold British Columbians' access to affordable health care based on need, not ability to pay.

### CIMCA Myths

According to CIMCA, if for-profit clinics win their legal challenge we will all enjoy a superior health care system. Unfortunately, CIMCA's arguments are not supported by the facts.

CIMCA says that a legal win for private clinics will lead to:

#### "The elimination of costly waitlists."

*In reality allowing private insurers to compete with the public system will increase wait times for treatment, not lower them. That's because a minority of those who can afford to pay for private insurance coverage will be served first, based on their ability to pay, by doctors, nurses and other health providers who are already in short supply.*

#### "Citizens being allowed choice and the right to purchase private insurance"

*The reality is that special access for those few who can afford the high user fees or insurance premiums is not choice – and it is a risk to health care equality, affordability and accessibility that Canadians rely on.*

#### "The creation of a hybrid 'European Style' universal health system."

*In reality, private health insurance will lead Canada toward a U.S.-style health care system, one that fails on all counts of access, affordability, quality of care, life expectancy and infant mortality.*

## Take Action!

**SPEAK** out for the good of your health. For-profit clinics and private health insurance are a serious and increasing threat to our health and our wallets — we'll pay more, get less and end up worse off. We are better off with public health care — it covers everyone, it ensures equal treatment, and no one has to worry about whether they can afford the care they need.

**CONNECT** with your neighbours and get involved in supporting positive, public solutions to make Medicare stronger in BC. For more information, contact the BCHC or visit the websites below:

**DEMAND** that the province take a strong stand in defending provincial health legislation from the legal challenge launched by private for-profit clinic operators. Visit the BCHC website to send a message to Health Minister Kevin Falcon demanding that he protect Medicare from for-profit operators and investors, by prohibiting private health insurance and the charging of user-fees or extra billing by any health care provider for necessary medical services.



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