



As Brian Day's court case ends, the future of healthcare hangs in the balance

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Successful Charter challenge to provisions banning extra-billing, private insurance would create two-tier system

By HSA President Val Avery

Public health care is one of Canada's greatest achievements. But our most-cherished social program is under threat.

A group of plaintiffs led by Dr. Brian Day, CEO of the for-profit Cambie Surgeries Corporation, is challenging the constitutionality of key provisions of B.C.'s Medicare Protection Act, which protects our universal health care system. The long, costly trial is expected to end this week with closing arguments.

Day wants to get rid of critical aspects of the current law that prevent doctors from having one foot in the public system and the other in the private system, billing both the government and patients directly for services.

Day also wants to remove the ban on private insurance to cover hospital and physician services already covered by the public system. These laws are the backbone of B.C.'s publicly funded health care system. They ensure that access to health care is based on medical need, not ability to pay.

British Columbians value this core principle of our health care system. A recent poll conducted by Research Co. commissioned by the BC Health Coalition found that 90 per cent of British Columbians agree that health care should be based on need and not ability to pay.

If Day is successful, the foundation of our public health care system will be dismantled, and the dangerous precedent will likely lead to similar legal challenges in other provinces. And, province by province, Canadian medicare will be taken apart.

The origin of this court case goes back more than a decade. In 2007, the BC Medical Services Commission told Day that his for-profit clinics (Cambie Surgery Centre and Specialist Referral Clinic) would be audited, because the commission had received patient complaints about improper billing.

Before the commission could conduct the audit, Day organized a group of plaintiffs to launch a Charter challenge against sections of the Medicare Protection Act. The plaintiffs successfully blocked the audit from happening until 2011.

When the audit was finally complete and released in 2012, it found evidence of "extensive" illegal extra-billing and overlapping claims to the BC Medical Services Plan by Day's clinics.

The audit report said that "not only were patients unlawfully charged for insured health care services at the Cambie Surgery Centre and Specialist Referral Clinic, but physicians in the clinics were doing so with the benefit of a very substantial public subsidy by submitting claims to, and receiving payments from, the Medical Services Plan for services that 'overlap' with those for which patients paid privately."

To be clear, B.C. doctors have always been able to opt out of the public system and directly charge patients whatever the market will bear. Day wants doctors to have free rein to bill patients directly and also be compensated by the public purse.

Over the course of this trial, B.C. government and BC Health Coalition expert witnesses have testified

extensively about the dangers of privately financed health care where doctors, for-profit clinics and insurance companies can charge patients whatever they want for basic medical care.

During this case, Day has consistently suggested B.C. should become more like European countries in financing health care. But the truth is that striking down these essential laws would move us closer to the U.S. model, where the for-profit medical industry charges patients whatever it wants and where income determines your access to timely health care.

Let's not forget that the United States also spends by far the most among industrialized countries on health care and has inferior outcomes to Canada.

Our current system is not perfect. There is no question that we can improve public health care. In fact, the B.C. government's recent efforts are doing just that: opening operating rooms that were shuttered by the previous BC Liberal government, centralizing surgery bookings and introducing "first available surgeon" triaging models that are successfully reducing waits times for a variety of procedures.

British Columbians understand what's at stake. The coalition's recent poll found 80 per cent agree that an increase of for-profit, private-pay health care will only help the wealthiest British Columbians who can pay to access health services faster.

Certainly, we have more work to do. But increased privatization is not the answer. Rapidly implementing proven innovations in our public health care system is the only path forward if our commitment is to improve care for all British Columbians.

In other words, if you can pay to jump the queue, you can get your public health care needs met faster. That is the opposite of the core principles of equity and fairness that guide our system.

The Health Sciences Association of BC has been involved in this case as a member of the BC Health Coalition, which has intervenor status to ensure that critical evidence is heard about why a health care system based on profit and one's ability to pay is not in the public interest.

This oped first appeared in [The Tyee](#) on Dec. 3, 2019.

Editor's note: Closing arguments were post-poned to January 2020 when the judge was unable to attend.

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