

Questions and Answers

Cambie Surgeries Corporation et al v. Attorney General of BC et al

Q. What is this case about?

A. Brian Day, CEO of Cambie Surgical Clinic has filed an application to have the sections of the BC Health Care Act banning extra billing and the use of private insurance for publicly insured services struck down under the Canadian Charter of Rights and Freedoms.

Day is arguing that the ban on extra billing and private insurance infringes on individual rights by preventing patients from seeking private health care options when they experience difficult wait times.

Q. Why should all Canadians be concerned about what is taking place in British Columbia?

A. The health care laws that Day wants removed strike at the heart of the Canadian Health care system and in fact are in place in BC to conform to the Canada Health Act. Every province has similar laws. We expect this case whatever the outcome, will be appealed and end up in the Canadian Supreme Court and challenge public health care laws across Canada.

Q. Is Day arguing that a private health care system would improve wait times?

A. No. You would think so. But, Day does not have to prove that a private system would do better on wait times, nor could he. There is no evidence that a private system would alleviate diagnostic or surgical wait times.

Because this is a Charter case, Day has only to prove that one person's rights have been contravened. He is attempting to prove that there are dangerous wait times for medically necessary services (those covered by public insurance) and that patients have suffered because of it. He has co-plaintiffs in this case who make the argument that their health has been harmed because of wait times. However, the only remedy he seeks is to remove the restrictions against extra-billing and duplicative private insurance for medically necessary services. He does not have to prove that would make things better.

The Crown, on the other hand, has to prove that the limitations on individual rights under health care legislation is justified and proportional (Section 1 of The Charter). And, it will bring forward evidence that removing these protections from the public system will produce more harm.

Q. So does this boil down to a difference of opinion about whether the public or private system is better?

A. While Day's public statements are about his opinion that a private system provides better delivery, he is only asking the court to rule on whether he can both the patient and the taxpayer for the same service and to open the system to private insurers. That will create a US style two-tier health care system. The government will make the case that the universal, single pay system works best for everyone.

Q. But there are already lots of private clinics in every province. With so many already in operation, isn't it too late to say this hurts our health care system?

In fact, the Canadian health care system is about 30 percent privately funded. The problem is using the private sector to charge more fees for publicly insured, medically necessary services. There are a lot of private clinics in British Columbia, all across Canada more and more for-profit facilities have popped up challenging our health care system by charging extra fees for publicly insured services.

A recent study by the Ontario Health Coalition found evidence that at least 88 clinics in six provinces are charging extra user-fees. Interviews with two-hundred and fifty patients recounted the hardships faced in being charged extra for care, charges they did not want but didn't feel they had the ability to refuse. We believe we should be demanding our governments defend and enforce health care laws by levying fines on double billing.

Q. What is double billing?

A. Double billing is a physician billing the provincial system for the provision of insured services and then billing the patient again on top of that. That creates a system where patients are charged different fees for the same health care service. If the service is better in some way or faster, that would mean the health care system changed from one where there is equal access to one where access is based on ability to pay. It also means that the public system would be subsidizing a private one by covering part of the cost. So while Day wants to give rich patients the ability to jump the queue, he also wants the public system to help pay for it.

Q. Why does he want to allow private insurers into the health care field?

A. There is already a great deal of private insurance in health care in Canada. But allowing private insurance to also cover medically necessary, provincially insured services is banned in 6 provinces. Day would like the ban lifted because asking patients to pay the additional fees out of pocket without the assistance of private medical insurance is not economically viable. Simply stated, there is no viable business case for private surgical clinics without private insurance.

We have said it before, this case is not about high quality health care or wait times. It is about profit — profit for doctors, profit for private clinics and profit for insurance companies.

Q. Why is it so important to limit payment to public insurance?

A. The single payer system on which Canada's health care system is based ensures universality and equality of access – that care is based on need, not who can pay. The province sets the price and determines what is covered — for everyone. Private insurance provides different types of coverage to different people, often based on health status. Only with a single payer system are all people covered equally with one price for a particular service. The objective is to provide comprehensive coverage not produce profits. It is also important to keep costs low. Multiple insurance providers means additional administrative costs.

Q. But wouldn't opening the system to more money via private insurance help alleviate the funding problem and thereby improve service delivery and wait times?

A. There is absolutely no evidence that a two-tiered system provides better or faster care. In fact, there is an abundance of evidence that a two-tier system worsens wait times for those in the public system who cannot afford additional insurance. While doctors move those with money or straightforward cases onto the private list, patients who aren't rich or who have more complex health situations languish on the public list. Now a doctor has two lists to manage with an economic incentive to attend to the private list faster.

Day likes to point to European models of two-tier health care for support. However, these jurisdictions do not keep data on wait times, so it is impossible to measure. And in Germany, one of his favourite examples, the private tier requires people and doctors to permanently opt out of the public system. There is no double billing and about 90% of Germans are covered by the public system. It is worth noting that Day

and his patients have that freedom in BC right now as well. They couldn't bill the public system or buy private coverage but they are free to opt out of the public system.

Q. Isn't this the same as the Chaouli case were the court ruled in favour of a patient's right to seek private care?

A. In the Chaouli case, it was argued that the ban on private insurance contravened both the Quebec Charter and the Canadian Charter. Unlike Chaouli, Day is also seeking to have the ban on extra billing lifted. The Chaouli case was more specifically about wait times in Quebec and the public system's failure to provide access to timely care. The ruling applied only to Quebec as Quebec was found in violation of its Charter of rights. It allowed that individuals could seek private care when the "Public system fails to deliver reasonable services. There was no final ruling on the Canadian Charter.

Q. But wait times are a problem all across Canada. What is the solution?

A. Wait times are problem for some procedures and diagnostic tests. There are public, practical, evidence based solutions that require we make more effective use of all health professionals, better operating room management and investment in services, particularly primary care. These types of solutions have worked to reduce wait times in BC from 20 months to 5 for hip and knee surgeries.