

CANADIAN MEDICARE ON TRIAL:

How a B.C. court case could change the Canadian health care system

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A trial in the Supreme Court of British Columbia is deciding whether B.C.'s law – the [Medicare Protection Act](#) – infringes on our [constitutional rights](#) not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice. It could have far reaching consequences for Canada's publicly funded health care system.

The trial began Sept 6, 2016 and ended February 28, 2020, with the court's decision expected to take at least several months before it is released.

WHAT'S AT STAKE?

Fair and equitable access to health care for all Canadians is [under threat](#).

Plaintiffs in the B.C. case want the court to overturn three key provisions of B.C.'s Medicare Protection Act (MPA) that protect fair access to care for all patients. Instead they want the court to allow:

● **Extra billing and user fees**

- Doctors would be allowed to charge patients more than the public plan (MSP) pays them now.

● **Private duplicate insurance**

- Doctors would be allowed to bill private insurers for patients who want faster access to hospital and physician care. Only patients who could afford private "queue jumping" insurance, and who are healthy and wealthy enough to qualify for it, would get faster access.
- Patients who couldn't afford (or qualify for) private insurance could pay out-of-pocket for faster access. Those without private insurance and who couldn't pay would wait longer for publicly-funded care until those same doctors could fit them in between their private pay patients.

● **Dual practice**

- Doctors enrolled in the public plan (MSP) could

choose whether to bill (1) only MSP; (2) only the patient (or private insurer); or (3) both MSP and the patient (or private insurer), for any service covered by MSP. This would mean that doctors would have a financial incentive to give preferential access to patients who had private insurance or who could afford to pay out-of-pocket.

WHAT DOES THE B.C. LAW ALLOW NOW?

[Doctors in B.C.](#) can choose not to enrol in MSP, in which case they can't be paid by public funds. Those who are not enrolled in MSP can already charge patients directly for whatever fees the market will bear (including for faster access to necessary medical care), so long as they only treat patients in private clinics and not in hospitals or community care facilities. Nothing in the law prevents this kind of "two-tier" health care.





WHAT WOULD HAPPEN IF THE COURT OVERTURNS THESE THREE KEY PROVISIONS OF B.C.'S LAW?

Evidence from around the world shows:

- **Waits are likely to increase for those who can't afford to pay.**
 - ▲ Since doctors, nurses, and other clinicians can only treat one patient at a time, **they may work more** in the lucrative private pay system and less in the public pay system.
 - ▲ Patients who can't afford, or don't qualify for, private insurance may wait longer for care because doctors will treat those who can pay before those who can't.
- **Waits are still a problem in countries that allow private pay.**
 - ▲ Private insurance and out-of-pocket pay have not eliminated waits in countries like France, **Ireland**, **Australia** or the U.S.



- ▲ Every health system struggles with wait times and **no system can ever be perfect.**
- **If private pay and dual practice are allowed it will be hard to regulate doctors' behaviour to protect fair access for everyone.**
 - ▲ In the UK, Ireland and Australia, despite decades-long attempts at regulation, specialists may **cheat** on their public system obligations to spend more time in private pay clinics.
- **If private pay and extra billing are permitted, total health care system costs will increase.**
 - ▲ **Multi-payer systems cost more** than Canada's single-payer system, including in Switzerland, Germany, Sweden, Austria, Netherlands, France and the U.S.



HOW WOULD B.C.'S DECISION AFFECT THE REST OF CANADA?

- If parts of B.C.'s law are found to be unconstitutional, there would be implications for similar legislation in other provinces and territories. Additionally, since B.C.'s Medicare Protection Act parallels the federal Canada Health Act (CHA), implications for the CHA are unclear. If the CHA becomes unenforceable, there would be profound implications for the rest of Canada.

WHAT WOULD IMPROVE OUR HEALTH CARE SYSTEM AND REDUCE WAITS?

- Better organization and coordination of **how we provide care**, not changes in how we pay for it, will **improve access** for everyone, not just those who can afford to pay.