

**Association canadienne des enseignantes et des enseignants retraités**

**Canadian Association of Retired Teachers**

Brian Day -The Trial Continues

Today is May 15, 2019 and Twitter is ablaze. Scores of tweets are expressing alarm as Premier Doug Ford announces further cuts to public health portending the privatization of health services; others are similarly anxious as Premier Jason Kenney in Alberta reduces what is already among the lowest of corporate tax rates in the country – provincial revenues to be replaced, as hinted, by similar cuts to health care delivery and possible privatization?

It is true that in our country, more than ever in recent years, privatization has been inching its way into the health care system: in 2017, “88 private clinics across Canada illegally billing patients”; in Ontario and Alberta, the existential threats of privatization to cut health care costs; in Saskatchewan and Manitoba, for-profit diagnostic imaging centres; again in Saskatchewan but also in New Brunswick, for-profit plasma collection centres; in Quebec, extra billing for eye drops, IUDs, and colonoscopy instruments and medications; in large Canadian cities, boutique medical clinics; in British Columbia, a decade-long legal battle waged by Dr. Brian Day against publicly-funded, single-payer delivery of health care in Canada.

It is the latter, the lawsuit in British Columbia, considered one of the most significant constitutional cases in Canadian history, that poses the greatest threat to our current public health care system. If Day wins, the way will be paved toward a system where wealthy patients will be able to jump to the front of the line by paying for medical services, where private for-profit health insurance plans can be offered to employees, where some Canadians will wait longer for services, pay out of their own pockets or be unable to afford health care. Such a system violates the Canada Health Act which guarantees access to doctor and hospital services regardless of one’s ability to pay.

In April, 2018 the Federal Government withheld $15.9M in health transfer payments to BC because of extra billing, as perpetrated by private clinics in the province including Dr. Day’s Cambie Clinic. The BC health minister then announced that to prevent future reductions in the transfer, the provincial government starting in October of that year would begin enforcing provisions in the Medicare Protection Act, first passed but not enforced by the former government.

Dr. Day immediately filed an injunction against such action, and on November 23, 2018 Supreme Court Justice Janet Winteringham stopped the province from enforcing the provisions of the act until June 1 or “further order of the court pending final determination of the constitutional issues raised by the trial over restrictions on access to private care.” On January 24, 2019, BC Court of Appeal Justice Mary Newbury dismissed an appeal application by the province, saying that it was time for counsel and the parties to “focus on the completion of the trial process.” Both of these judgments were victories for Dr. Brian Day and the plaintiffs who claim that closing the private clinics would “deny the individual the right to protect one’s body (Sections 7 & 15 of the Canadian Charter of Rights and Freedoms).

The Canadian Health Coalition states that “this case is about profit: profit for doctors, profit for private clinics and profit for the insurance companies.”

Bob Hepburn, Toronto Star columnist, reported on January 9th of this year that “major financial interests in Toronto are quietly supporting [the] controversial lawsuit . . . ramping up an $8-million war chest to help fund Day’s court cases” and pave the way for increased privatization health care.

The long trial at the heart of the battle by Dr. Brian Day for a two-tiered health care system has at times been beset by repeated delays, testy and bitter argument and innumerable hard-fought evidentiary disputes – Justice John Steeves has made at least 45 formal rulings and at least five trips to the high bench. Both sides have many witnesses each of whom need time to be examined and cross-examined.

On Monday, May 13, 2019, after months of testimony from Dr. Day’s side, the Defence was able to begin introducing their witnesses. The first witness was Marie-Claude Prémont, a well-respected Professor of Law at the École Nationale d'Administration Publique. She was to present evidence on how Chaoulli v. Quebec, a court decision in Quebec that put restraints on medicare, has made it harder for patients in that province to get the care they need. A spokesperson for the BC Health Coalition, an intervenor in the case, said “Prémont’s evidence is critical for the court to hear because the changes to our health care system that Day is seeking go far beyond the Chaoulli case. Day wants to change the rules so that any doctor can charge patients unlimited amounts for all procedures and services, and to introduce an American-style system of parallel private care and insurance.”

On June 21st, the second witness for the Defence, Prof. David Himmelstein, an expert on the U.S. private health insurance industry and how it compares with Canada, will be on the stand.

As Albertans headed to the polls in April the Canadian Doctors for Medicare said, “The trial outcome could have implications across Canada, including Alberta. If the court rules that B.C.’s health care law is unconstitutional, then parts of the Canada Health Act would become unenforceable, which would affect all other provinces.”

“Cambie Case (ongoing) CHC (<http://www.healthcoalition.ca/ttols> and resources/)

Hepburn, Bob. “The secret Moves to Increase Private Health Care”. Toronto Star. 2019.01.09.

Kane, Laura. “Private medical clinics win injunction against BC law that banned them” Canadian Press. *Nanaimo News*. 2018.11.23

http://www.canadiandoctorsformedicare.ca/Commentary/kenney-s-platform-puts-private-profits-over-public-interest.html