



JUSTICE

Understanding the Current Legal Challenge to Medicare: Cambie Surgeries et al. v. the Attorney General of British Columbia

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Department of Justice
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What's the case about?

Constitutional challenge to certain provisions in the provincial *Medicare Protection Act*

- Prohibition on Duplicative Private Insurance
- Prohibition on Extra-Billing and User Charges
- *De Facto* Prohibition on Dual Practice



Who are the players?

- The Corporate Plaintiffs:
 - Cambie Surgeries Corporation
 - Specialist Referral Clinic
- The Individual Plaintiffs



Who are the players?

The Defendants:

- The Attorney General of British Columbia
- The Attorney General of Canada



Who are the players

The Interveners:

- BC Anesthesiologists' Society
- Patient Interveners
- Coalition Interveners





What are the legal arguments?

The Plaintiffs' Case:

- Section 7 of the *Canadian Charter of Rights and Freedoms (Charter)* – “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”
 - Arbitrariness
 - Overbreadth



What are the legal arguments

The Plaintiffs' Case Continued:

- Section 15 of the *Charter* – “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”



What are the legal arguments?

The Plaintiffs' Case Continued:

- Section 1 of the *Charter* – “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”



What are the legal arguments?

The Defendants' Response

- Section 7
 - The legislative provisions have not harmed the plaintiffs
 - The legislative provisions are rationally connected to the objectives of the *Medicare Protection Act* and the *Canada Health Act*
- Section 15
 - The legislative provisions do not create a distinction between classes of individuals
 - Even if there was a distinction, there is no discrimination
- Section 1
 - To the extent any rights have been infringed, they can be justified

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What is the evidence?

Lay evidence:

- Patients
- Physicians
- Corporate representatives
- Government witnesses



What is the evidence?

Expert Evidence:

- Health care policy and economics
- International comparative evidence
- Medical effects of waiting



What to expect?

- The timing of the decision
- Appeals



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