



Cambie Surgeries Corp. v. British Columbia (Medical Services Commission)

2010 BCCA 396

Country: Canada

Region:

Year: 2010

Court: Court of Appeal for British Columbia

Health Topics: Health systems and financing

Facts

In British Columbia ("BC"), the Medical Protections Act ("MPA") prevents physicians who have opted out of BC's public health care scheme from charging patients more than the amount charged for services under the public fee schedule. The Cambie Surgeries Corporation ("Cambie") faced complaints of overbilling patients and "double dipping" - billing both the patient and the public health care system. The government launched an audit of Cambie. The claimants challenged four provisions of the MPA that prevented:

- (1) Doctors enrolled in medicare from billing both patients and the medical plan for the same service;
- (2) Extra billing above the fees established by the medical association; and
- (3) Charging private insurers for services covered by the MSP Plan.

Cambie argued that these provisions violated Section 7 (the right to life, liberty, and security of the person) and Section 15 (every individual is equal before and under the law) of the Canadian Charter of Rights and Freedoms.

A lower court ordered an audit of Cambie's practice. It granted an injunction requiring Cambie's medical clinics to allow inspectors from the Medical Services Commission ("Commission") access to their premises and records in order to perform audits under section 36 of the MPA.

Decision and Reasoning

The Court of Appeal temporarily stayed the audit of Cambie Surgeries Corporation.

The Court accepted the respondent's argument that the court did not need to consider the constitutionality of the challenged provisions of the MPA. The Commission's right to perform an audit did not depend on there being any violation of the Act. However, the court set the injunction aside, holding that there were adequate statutory remedies available. The Court reasoned that the MPA allowed the Commission to seek a warrant to enter a building in order to obtain information.

Decision Excerpts

"They say that because the audits are sought for the purpose of determining the extent of violations of ss. 17 and 18 of the Medicare Protection Act, the judge was required, at the first stage of the test, to reach a conclusion as to whether, on the balance of probabilities, those statutory provisions are constitutional. As the judge found that "[n]o conclusion can be reached as to the likely outcome of the challenge to the legislation", she ought not to have granted the injunction." Para. 21.

"If the appellants consider that an audit should not take place pending determination of their constitutional challenge, they are entitled to apply to a judge of the Supreme Court for an order exempting them from the relevant provisions of the Medicare Protection Act pending the determination of their challenge." Para. 46.