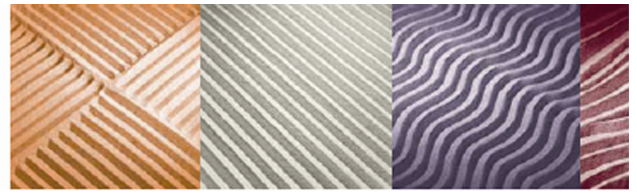


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CHAULLI-LIKE CHALLENGE TO PRIVATE HEALTH CARE COMES TO BRITISH COLUMBIA

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British Columbia is now the latest province to see a *Chaoulli*-like challenge to government prohibitions on private health care.

In *Canadian Independent Medical Clinics Association v. Medical Services Commission of British Columbia*, the Plaintiffs seek a declaration that the provisions in the *Medicare Protection Act* that directly or indirectly prohibit or impede access to private health care and patient choice in primary health care are in violation of sections 7 and 15 of the *Charter*. Alternatively, they seek a declaration pursuant to section 52(1) of the *Constitution Act 1982* that sections 14, 17, 18 and 45 of the *Medicare Protection Act* are inconsistent with section 7 of the *Charter* and are of no force and effect (with a suspension of the declaration on the condition that the Province table regulations that bring the Act in compliance with the *Charter* within 6 months).

The BC Government has responded with a Statement of Defence denying the allegations that patients have a constitutional guarantee of access to medical care in the private or public systems. In contending that the *Charter* does not protect patients who wait long periods for care, they claim "there is no freestanding constitutional right to health care".

The Government has also brought a counterclaim against Plaintiff, Cambie Surgery Centre, saying that they have reason to believe that patients have paid doctors directly for insured services (in violation of the *Medicare Protection Act*). They allege that Cambie has refused inspectors of the Medical Services Commission access to information for an audit. The Government is asking the court for a warrant authorizing its inspectors to enter the centres and for an injunction from them "hindering, molesting or interfering" with the inspectors.

At the same time, a proposed class action has also been brought against a number of private surgical centres on behalf of all *Medicare Protection Act* beneficiaries who attended the facilities in *Schooff v. False Creek Surgical Centre*. The Writ of Summons seeks "repayment of unlawful charges" that the private surgical centres allegedly charged the Plaintiffs in violation of the *Medicare Protection Act*.

Miller Thomson's health industry group is continuing to follow developments in this area and is pleased to provide assistance and advice to health industry clients about the implications of these cases for British Columbia and across Canada.

About the Author:

Ryan is an insurance defence litigation and health law associate in Miller Thomson's Vancouver office. His experience and personal interest in healthcare is in the law surrounding private healthcare, including private insurance, service delivery, funding models and *Canada Health Act* and *Medicare Protection Act* interpretation/analysis.

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