NEWS RELEASE

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Illegal medicare billing: Nurses win significant victory in case against provincial government

In a 27-page judgement, the BC Supreme Court refuses the Attorney-General's application to dismiss the BC Nurses' Union legal action

The BC Nurses' Union has won a key victory and some substantial legal breakthroughs at BC Supreme Court in its on-going action against the provincial government for failing to enforce the laws of medicare.

The union contends that by turning a blind eye to so-called facility fees charged by private clinics, the government is neglecting its legal responsibility to protect patients from user fees and extra billing for medicare-insured services.

In a ruling that dismissed most of the government's technical objections to the union's case, Mr. Justice Kelleher found that the union has raised a serious legal issue about the Medical Service Commission's failure to enforce the BC Medicare Protection Act, that the Commission has no discretion whether or not to enforce its prohibition against extra billing and user fees, that the union has the capacity to raise issues of health care policy that go beyond those narrowly defined as labour relations, and that the union has a genuine interest on behalf of its members' own interests to pursue the case.

The Court ruled *"there is no doubt that the petition raises a serious issue."*

The judge did agree with the Attorney General's argument that the union could not advance the case on behalf of patients in the public interest. Instead, both individual patients and the union would have to proceed arguing their direct, personal interest in the case.

The union is considering its next steps in the case, which it launched originally in April 2005, refiling the petition along with affidavits from affected patients in December 2006. The government's objections were heard last October.

BCNU president Debra McPherson says she is extremely encouraged by Mr. Justice Kelleher's ruling. "He has substantially broadened the rights of unions to bring actions before the courts on matters of broad public interest and turned aside the government's attempt to restrict us to narrow labour relations matters.

"Most significantly, he has recognized that our union has brought serious legal issues before the court. The government has a duty and responsibility to live up to the principles of medicare that stipulate patients have a right to timely access to medically-necessary services from physicians who are enrolled in medicare without having to pay thousands of dollars in extra fees to pad the pockets of those who own private medical facilities.

"The Supreme Court has confirmed that the government does not have the right to violate the principles of medicare or make up new ones for political or financial expediency as they go along."

For more information contact: Debra McPherson, BCNU President 604-209-4253
Art Moses, Communications Coordinator 604-868-4259