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The Court's arrogant judgment on Medicare

EDITORIAL

The Supreme Court of Canada's medicare ruling last week is a landmark in this country's legal history. It may be the most blatantly political ruling in the post-1982 constitutional era. The court has said, in effect, that it reserves the right to reject the nation's social policies if they are taken on the basis of emotion or a "sociopolitical philosophy."

The decision is that high-handed. The judges review health systems around the world, as so many national and provincial inquiries have done in the past decade, and substitute their judgment for that of government. Their judgment may be correct. The court was right to conclude that it is unfair to prevent an ailing person from paying for private treatment if the public health system won't treat him or her in a timely fashion. But should judges really be making calls like that, with all their potential social and political and financial effects? It's as if the court thinks that the public's elected representatives can no longer be trusted on this important issue.

"The debate about the effectiveness of public health care has become an emotional one," wrote Madam Justice Marie Deschamps for the 4-3 majority, which struck down medicare's restriction against private insurance for essential health care already provided by the public system. (For the moment, the ruling applies only to Quebec.) "The Romanow Report [on the health system] stated that the Canada Health Act has achieved an iconic status that makes it untouchable by politicians."

Even the two judges who co-wrote the minority opinion were prone to this same weakness, she said. "The tone adopted by my colleagues [Mr. Justice Ian Binnie and Mr. Justice Louis LeBel] is indicative of this type of emotional reaction."

Why does she show such disdain for emotion? Because to make her argument a legal one, rather than a simple policy choice, she needs to show that no one is doing anything about the problem of waiting lists. Emotion is preventing action.

"Governments have promised on numerous occasions to find a solution to the problem of waiting lists," Judge Deschamps wrote. "Given the tendency to focus the debate on a sociopolitical philosophy, it seems that governments have lost sight of the urgency of taking concrete action. The courts are therefore the last line of defence for citizens."

Hold on. Didn't the Paul Martin government sign an agreement with the provincial and territorial leaders last fall to inject an extra \$41-billion into the health system over the next 10 years? Isn't the Health Council of Canada, as part of that agreement, developing benchmarks for reasonable wait times? Aren't the provinces required to report on whether they are meeting those times?

This is not to say the system is flawless. Far from it. And Mr. Martin's \$41-billion plan doesn't require the provinces to meet those benchmarks. Also, it is true that Mr. Martin's insistence on demonizing the private delivery of publicly-financed care is silly and counterproductive. But such innovations in delivery are up to the provinces anyway, and nothing in the Canada Health Act forbids them.

Until the ruling, medicare had one publicly funded tier for essential care. The core principle was that everyone was entitled to equal access to this care, regardless of income or status. But Judge Deschamps called this one-tier principle "arbitrary," because in her view the public system would survive if the bar to using private insurance for essential care were lifted. And it well might -- though that call is properly a political one. Worse, she simply ignored how medicare's core value of equality is reflected in the health system's design. The system is bogged down and needs a great deal of improvement. But arbitrary it is not.

Judge Deschamps cites the court's 1993 judgment in the Sue Rodriguez case, on the need to protect Canadians' physical integrity from state interference. Ms. Rodriguez was dying from amyotrophic lateral sclerosis, and was seeking the right to an assisted suicide. But what Judge Deschamps fails to note is the ruling's deference to Parliament -- the court ruled 5-4 against Ms. Rodriguez's compelling claim for court intervention. "In dealing with this contentious, complex and morally laden issue, Parliament must be accorded some flexibility," the late John Sopinka wrote for the majority.

Contentious, complex and morally laden. Those words describe very well Canada's public health system. Heaven forbid that some emotion or sociopolitical philosophy enters the debate. The Supreme Court was wrong to substitute its judgment for that of the elected government.

THE END

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1. _____

The Globe and Mail (June 15, 2005)
A handful of judges can change anything now
By JEFFREY SIMPSON

We can be reasonably sure that the Supreme Court, having waded into health-care policy, will be summoned again into that most complicated, expensive, even existential, of all social policies.

After all, the four judges who formed the majority in last week's ruling argued that the court had to intervene to uphold a constitutional right for citizens to receive from public health care a "reasonable standard within a reasonable time."

Okay, so what is "reasonable"? Who is to define a "reasonable standard"? Clearly, the court majority doesn't think governments are up to the task, or it would not have ruled as it did. No, the logic of the majority decision leaves only one conclusion: The judges themselves will do the defining. Or at least they will hold themselves ready for citizen appeals against what governments might think is "reasonable."

The three judges who dissented last week understood the logic. "How short a waiting list is short enough?" asked Mr. Justice Ian Binnie and two colleagues. "How many MRIs does the Constitution require? The majority does not tell us. The majority lays down no manageable constitutional standard."

People who want private medicine hailed the decision; those opposed decried it. But not many people asked the more profound question: Are judges really capable of making these sorts of social policy decisions; and even if they are capable, are they wise to do so? Do the courts, in other words, have the expertise, legitimacy and understanding of the country's most extensive social policy to render judgment on it?

The dissidents answered this question negatively. The public health system, they wrote, has "serious and persistent problems. This does not mean that the courts are well-placed to perform the required surgery. The resolution of such a complex, fact-laden policy debate does not fit easily within the institutional competence or procedures of courts of law."

Those who want changes to Quebec's health-care laws (and, by extension, health care elsewhere) have every democratic right to seek them. But, said the dissidents, "the proper forum to determine the social policy of Quebec in this matter is the National Assembly."

The dissidents offered something else to ponder, as we imagine the Supreme Court branching out into other areas of social policy (university fees? university admissions? primary education?): "The issue here, as it is so often in social policy debates, is where to draw the line. One can rarely say in such matters that one side of a line is 'right' and the other side of a line is 'wrong.' . . . Drawing the line around social programs properly falls within the legitimate exercise of the democratic mandates of people elected for such purposes, preferably after a public debate."

Well, Canadians had a public debate about health care, a very long public debate. Even those of us who dissented from the consensus (believing there must be experiments with private delivery of publicly financed and regulated services) had to acknowledge that there had been a national debate. And we were

reasonably sure that, in time, pressures of public finance and the experience of other countries would bring about what we considered desirable changes in Canadian medicare.

But public health care is the public's business, and the public's business means democratic debate, argument, compromise, experimentation, error, a certain messiness and, in due course, change in one or more directions. None of this appeals to judges who dislike this messiness, don't credit politicians with much intelligence to do the right thing in a timely fashion, and so stretch legal principles to the limit in order to squeeze essentially social policy questions into the shape of legal ones.

That is why this Supreme Court decision is of such consequence. It demonstrates that there is now almost no conceivable public policy issue, health care having been breached, that a handful of judges will not define as constitutional tests, thereby allowing themselves to substitute their putative wisdom, preferred prisms and narrow way of reasoning, for that of anybody else, including experts with whom they disagree, lower court judges who heard evidence and concluded differently, commissions and task forces and, of course, the poor slob that citizens rather foolishly thought they had sent to legislatures to do the public's business.

2. _____

Ottawa Citizen (June 15, 2005)
Ruling won't improve health care
By Sam Shortt

With the recent Chaoulli decision, the Supreme Court has thrown the privatization cat among the medicare pigeons. Private-option enthusiasts have been stalking medicare for years, while the dismal performance of sectors of the public system has made it vulnerable.

The fundamental question Canadians should ask about the Court's decision is this: Will it contribute to a resolution of the problem upon which the Chaoulli case focused, that is, tardy access to necessary care?

Private care would allow those with the required financial resources or insurance coverage to receive some services more rapidly. But for the majority of Canadians who continue to use the public system, waits would doubtless increase.

Among the principal reasons for this are: the current system already has too few physicians and other providers, and any leakage to a private sector would further diminish existing capacity; to be profitable, a private system would necessarily focus on the least difficult cases, leaving the public sector crowded with more costly and time-consuming patients; and finally, when complications arise in the private system, it is likely they will be referred back to the public system.

The sicker and less affluent Canadians who remain in the public system would in all likelihood be joined by some of their better-off neighbours, shocked to discover the realities of the insurance world.

The insurance industry "bets" on enrollees remaining healthy: it wisely won't insure for "pre-existing" conditions. Thus, an individual who has known osteoarthritis of the hip, a common problem associated with age-related wear and tear, would be unlikely to find a company willing to provide coverage for certain hip replacement in the future.

Ironically, the Chaoulli decision comes at a time when provincial governments are at last giving waiting issues the serious attention they deserve. Following federal-provincial accords, data are becoming available on current wait times for key procedures and clinically justifiable benchmarks are being set.

The next step will be to allocate system funding to enhance those areas in which performance fails to meet agreed-upon standards. Achieving this goal of timely care may well be sufficient in itself for the public system to deflect the court's judgment.

The current system in Canada is infuriatingly resistant to change and riddled with unnecessarily inadequate performance. But its deficiencies are outweighed by its merits.

First, as the National Forum on Health and later the Romanow Commission demonstrated, medicare is consistent with the values and preferences of Canadians -- the hallmark, one might argue, of a democracy. Secondly, such outcomes as we can document compare favourably with our peers. Third, whatever its tardy behaviour, the system generally allocates care according to medical need rather than patient socio-economic status.

Finally, Canadian medicare transcends health to become an integral part of the social safety net. It is a wealth-transfer mechanism under which the affluent pay for the system, while the disadvantaged use most of the care.

So what's to become of medicare? The court's decision on private care currently only has force in Quebec, where the Parti Quebecois has called for use of the notwithstanding clause. When, inevitably, new suits are brought from other provinces, the same clause in the Canadian Charter might be invoked, a pledge that a scandal-ridden Liberal government might carry into the next election.

There are, of course, less dramatic regulatory mechanisms. Insurance falls under provincial jurisdiction, and the purchase of insurance could be heavily taxed. Physicians working in the private sector could be prohibited from receiving any public system income and compelled to reimburse government for the full cost of their medical education. They could also be barred from using public health-care facilities and private equivalents could be subjected to stringent regulation and monitoring.

In other words, governments have the capacity to make the growth of a private system prohibitively complex and costly.

But such bureaucratic tactics would ignore the heart of the issue: The evidence on administrative costs and quality is overwhelmingly in favour of public payment. One can only hope that the next panel of the Supreme Court to hear a Chaoulli-like case will stop the drift toward a private system.

Sam Shortt is director of the Centre for Health Services and Policy Research at Queen's University.

3. _____

Ottawa Citizen (June 10, 2005)

Medicare shockwave felt south of border:

U.S. advocates who had called for a Canadian-style system bemoan ruling as 'terrible'

By Aron Heller

The shockwave from yesterday's Supreme Court of Canada decision on health care spread south of the border to those Americans who viewed Canada's universal medicare system as an ideal their own country should emulate.

"I think it's a terrible decision that your Supreme Court has made. It's extremely important for a public system to ban competing private insurance," said Stephanie Woolhandler, an associate professor of medicine at Harvard Medical School and a primary care physician in Cambridge, Massachusetts.

"It's the beginning of creating a two-tiered system where rich people can buy their way to the front of the queue."

Free health care has become one of the most frequently mentioned differences between Canada and the United States. Around 45 million Americans are uninsured, and the dire state of the health care system has consistently been a focus of debate in recent U.S. elections.

Many economists, such as New York Times columnist Paul Krugman, and politicians, such as Senator Hillary Rodham Clinton of New York, view the Canadian universal system as a model that the United States should strive to copy.

On the other hand, critics of the Canadian system point to the long waiting lists for some procedures that have led many Canadians to head south of the border where health care is available on demand -- for a price.

"The effect of this decision is going to be very bad for Canadians," noted Dr. Arnold Relman, professor emeritus of medicine and social medicine at Harvard Medical School and a former editor-in-chief of the New England Journal of Medicine.

He has long been a fan of the Canadian system and a vociferous critic of the U.S. one, appearing before a Senate committee studying health care in February 2002.

Dr. Relman just returned to Boston from Regina, where he spoke at the Canadian Federation of Nurses Unions biennial convention Sunday.

There, he called the Canadian system "a model we all need to follow," and categorized the U.S. program as a "crazy, terrible, unfair system."

In 2002, the latest year for which comparable data are available, the United States spent \$5,267 on health care for each citizen, according to a recent New York Times article by Mr. Krugman.

Of this, \$2,364, or 45 per cent, was government spending. Canada, meanwhile, spent \$2,931 per person, of which \$2,048 came from the government.

Dr. Relman was obviously upset over the latest developments in Canada. "Unless there is a strong public reaction, the strength of the Canadian medicare system is going to be undermined," he said.

"In my humble opinion, the Canadian system was the right idea, the right principles, but was not quite adequately funded. It needed a little more money," he continued.

"Our system is terrible. We don't have a national health care system and we spend much more money than you do and we get much less value."

Ms. Woolhandler concurred, saying the current Canadian system was sound, but underfunded.

"We advocate a Canadian-style system and one of the things we really like about it is that you include all different social classes in the same system," said Ms. Woolhandler, who is also a co-founder of Physicians for a National Public Health Program, a non-profit organization representing 14,000 U.S. physicians.

"If you have a program where the poor people are segregated into the public program and the affluent people can buy their way out, then you don't have the political power to maintain the funding." She predicted the ruling would result in higher administrative costs for all Canadians.

"You'll end up wasting a lot of money and you're going to find your public system weakened politically," she said, noting that Britain went through a similar process that ultimately proved unsuccessful.

Dr. Relman bemoaned the fact that, instead of the U.S. system becoming more like the Canadian one, yesterday's ruling was leading to the opposite effect.

"This will break the solidarity of the country's commitment to medicare and will lead to impoverishment and weakening of medicare," he said.

"What impresses me about your country is that there is a widespread feeling that we are all in this together and we are all responsible for each other and every Canadian has the right to good health care and our system should ensure that. If this ruling holds, I think the system won't be as good as it is now."

4. _____

Globe and Mail (June 10, 2005)

Now is the time to stand up for Medicare

By ROY ROMANOW

Canadians should be optimistic that the nation-building values of Canada's public health system were reaffirmed by yesterday's Supreme Court ruling, with all of the court's contributing members recognizing the need to maintain the integrity of our public medicare plan.

That said, the decision certainly creates the appearance that the slide to privatization has increased in the province of Quebec. It is also fair to say that evidence of creeping commercialization is showing up in other parts of our country as well.

All of this means that the not-for-profit/profit debate that has been around since the beginning of medicare has picked up impetus once again.

There are those who have already seized on aspects of the court's decision to claim victory for selling something old as something new. They advocate for a return to premedicare days and, with their strong advocacy for a pure market approach to health care, they have gleefully proclaimed the death of medicare, just as they have done in the past.

Not so fast.

The evidence is overwhelming and clear: The two-tiering of health care represents a march backward in time, to when good health care depended on the size of one's wallet -- to a situation like that which currently prevails in the United States, where last year, more than 50 per cent of all personal bankruptcies were due to health care expenses. If anyone doubts the impact of the U.S. approach, talk to the directors of General Motors. They just eliminated 25,000 jobs in the United States, largely due to the company's burden of health-care costs.

Cherry-picking great examples of American health-care practices while ignoring the millions of the uninsured who get sick just worrying about getting sick does not make the case. It is a false economy to advocate for transferring the costs of health care from the public purse to the private purse. We will pay one way or the other.

The simple fact is that the yearly percentage of GDP spent on total health care in Canada is about 9.6 per cent as compared to nearly 15 per cent in the United States. That's more spending in the United States, yet the result is less coverage and worse health outcomes. And don't forget the millions whose coverage is totally inadequate.

Because the U.S. model is so unacceptable to Canadians, modern-day advocates of privatization are now cherry-picking various bits and pieces from Europe. But their concocting European/Canadian hybrids are just the latest Trojan Horse for treating health care as a commodity.

The Supreme Court has provided a wakeup call to all of us, especially those charged with fixing our single-tier medicare program. This judgment must serve to hasten the progress of real reform. As a result of last September's first ministers' health-care deal, money is no longer an excuse.

Many elected officials say that they are "standing up for medicare." They understand the clear evidence regarding the cost-effectiveness of a public-good approach over the market alternative. And perhaps some leaders also publicly extol the virtues of our single-tier approach because they know that's what an overwhelming number of Canadians want. Either way, the rhetoric must be backed up by more urgent and tangible progress.

The blueprint for change is there -- it's just waiting to be put into practice. But we must apply the entire blueprint: An integrated approach is critical. To take on the problem of wait times in an isolated way, without implementing reforms to primary and home care, will not work over the long haul. Dealing with some wait times may pay dividends, but other serious problems, such as acute care, will keep popping up if an ad hoc style rules over an integrated approach. What's vital to real progress is investing more money in health promotion, increasing the role of nurses and other health professionals, and committing to the kind of rigorous and transparent accountability that remains elusive.

Medicare needs fixing, not scrapping. Canadians overwhelmingly favour this approach over one (however disguised) that allows those with wealth to purchase health care, draw off doctors from our universal system and, at the same time, does nothing to reform, strengthen, and sustain the system for all Canadians.

The progress and pace of health-care reform will either prevent or fuel a myriad of further court challenges. It will take strong, determined, and visionary leadership to achieve a modernized medicare system and, in doing so, a better nation. This is one of those moments when the Canadian people must stand up for medicare and declare that reports of its death have been greatly exaggerated.

5. _____

Toronto Star (June 10, 2005)
Striking at the heart of medicare
By Thomas Walkom

The Supreme Court has delivered a hammer-blow to medicare. Technically, yesterday's 4-3 decision to allow full-scale private health insurance in Quebec affects only one province. But the implications are grave for a medicare scheme that - thanks in large part to years of government cuts and years more of federal inaction - is still badly strained.

The reason, simply put, is that Canada's medicare system is built around insurance. That's how it was designed. That is what makes it work.

In some countries, public medicare schemes were constructed through direct government intervention, often by putting participating physicians on salary.

But the Canadian version, pioneered in Saskatchewan and exported in the late '60s to the rest of the country, was more subtle, more flexible and in important ways more successful.

Rather than have the federal government intimately involve itself in the provision of health care, Canadian medicare focused on the money.

It was a dramatically new kind of health insurance plan, one that would cover everyone - at least for so-called medically necessary procedures involving physicians and hospitals - and that would be paid for mainly from taxes.

To make it affordable, medicare's designers figured, this universal scheme had to operate as an insurance monopoly.

If everyone were covered, then everyone would have to pay in. And by creating the widest possible pool of contributors, one that included the healthy as well as the sick, costs for all would be kept down.

Overall, the scheme worked. Costs were low and quality good. Canada still spends far less on health care per capita than the U.S. and yet Canadians are, by normal scientific measures, significantly healthier.

But it worked only because it was sustained by a delicate balancing act between federal and provincial governments, all backed by a supportive public.

The federal government set overall conditions for medicare through its Canada Health Act. But it left individual provinces to decide how to keep enough doctors engaged in the system and how to maintain the all-important public insurance monopoly.

In practical terms, insurance was an issue for only the bigger provinces. Private insurers weren't much interested in small provinces like Newfoundland so most of these didn't bother enforcing the public monopoly.

But in the larger provinces of Ontario, Quebec, British Columbia and Alberta, where private firms were interested in offering coverage, governments formally banned private insurance in areas covered by medicare.

This control over insurance was linked to another key element - the supply of physicians available for the public system.

In theory, all provinces allow doctors to opt out of medicare. But at the same time, most have rules designed to make sure that opting out won't be so widespread as to ruin the overall public system.

Ontario, for instance, allows doctors to opt out of medicare but won't let them charge more than they receive under the public system. So few bother.

Quebec allows opted-out doctors to charge patients whatever they wish. And in a few high-profile situations, some have done so.

But at the same time, Quebec has kept a lid on the number of opted-out doctors by refusing to let patients buy private insurance to cover these hefty fees.

With yesterday's decision, that counterweight is gone. The balance is disrupted.

Now, in Quebec at least, the potential for doctors to opt out of medicare profitably has increased dramatically.

So far, Prime Minister Paul Martin and other government ministers are putting a brave face on the court decision.

They note, correctly, that the court did not rule that Canadian medicare contravenes the Constitution's Charter of Rights and Freedoms.

Rather, it made a much more limited decision - that one specific aspect of medicare in one province contravenes that province's laws.

But the court also served warning that it may not be as forbearing the next time.

Of the seven justices hearing this case, three - including Chief Justice Beverley McLachlin - argued that the ban on private insurance contravened the Canadian Constitution itself.

As dissenting justices Ian Binnie and Louis LeBel noted, some of the threesome's specific arguments are naive - particularly when they compare the Canadian system to European medicare schemes that are profoundly different.

Still, the McLachlin trio was on to something. There is an unspoken political deal around medicare.

The public is willing to support the idea of a public health insurance monopoly as long as it delivers the goods.

But for too long, governments - and the federal government in particular - have failed to deliver.

As prime minister, Martin claims credit for putting billions back into health care. But it was this same Martin, as finance minister, who oversaw its gutting in the mid-'90s.

So now, the worst of all possible worlds is at our doorstep. An activist court is threatening to take apart medicare piecemeal. Meanwhile, in Ottawa, politicians spend their time squabbling over which of them is the most corrupt.

Yesterday, former federal health commissioner Roy Romanow called the court decision a wake-up call for Canada's dilatory political elite.

We can only hope.

6. _____

L.A. Times (June 10, 2005)

Ruling May Threaten Canada's Healthcare System

Citing patients' long waits for treatment and a shortage of doctors, the Supreme Court voids a provincial ban on private insurance

By Christopher Guly and Maggie Farley, Special to The Times

OTTAWA — Canada's Supreme Court struck down a Quebec law banning private health insurance Thursday, a landmark decision that could jeopardize the nation's universal healthcare system, once regarded by some advocates as a model for the United States.

The high court ruled that the long delays for patients, lack of doctors and other problems have put Canadians' health at risk and that the government could not ban citizens from seeking private care if it could not guarantee treatment in a timely and reliable way. The decision will allow patients to seek private care outside the national system, stirring fears that doctors will leave the national plan to go into more lucrative private practice and create a two-tier system that benefits the rich.

The decision takes effect immediately, but the Quebec province's government said it planned to ask the high court to grant it a stay of up to two years to implement the new policy to avoid upsetting the delivery of medical services. The ruling may spark legal challenges to universal healthcare in other provinces, legal experts said.

Canada's free healthcare and low-cost drugs have bolstered the country's image as being different and superior to its neighbor to the south. During periodic attempts to revamp the U.S. healthcare system, which has left an estimated 45 million Americans uninsured, Canada has often been held up as a model.

Critics said the court's action threatened a widely popular program that is part of Canada's national identity. But delays have cost the system some of its luster, and some said Thursday that the Supreme Court ruling was a vindication for free-market healthcare.

Montreal physician Jacques Chaoulli, an advocate for private care, and a patient, 73-year-old businessman George Zeliotis, launched the legal challenge in 1997 after Zeliotis had waited a year for hip-replacement surgery. Two Quebec courts had upheld the prohibition on private insurance.

Chaoulli represented himself before the Supreme Court and argued that the province violated his patient's constitutional rights by denying him timely treatment and refusing him the option of private care. Patients who were willing to pay for expedited treatment were not legally allowed to do so.

After considering the case for a year, the Supreme Court largely agreed, noting in a 4-3 decision that patients had died because of the delays. But it stopped short of declaring that it was unconstitutional to ban private healthcare or that the universal healthcare system violated patients' rights to "liberty, safety and security" under the country's charter.

"In the case of certain surgical procedures, the delays that are the necessary result of waiting lists increase the patient's risk of mortality or the risk that his or her injuries will become irreparable," Justice Marie Deschamps wrote for the majority. "Many patients on non-urgent waiting lists are in pain and cannot fully enjoy any real quality of life. The right to life and to personal inviolability is therefore affected by the waiting times."

The Supreme Court dismissed the argument that "an absolute prohibition on private insurance is necessary to protect the integrity of the public plan."

Its decision could allow Canada to follow the example of other countries, including Britain, Germany, France, Sweden and Australia, which allow a parallel private system alongside the public system.

Prime Minister Paul Martin tried to soothe fears that the universal healthcare system, known as Medicare, would devolve into a system that left the less wealthy behind.

"We're not going to have a two-tier healthcare system in this country," Martin told reporters in Ottawa. "What we want to do is strengthen the public healthcare system."

He promised that a 10-year, \$33-billion healthcare accord hammered out with Canada's 10 provinces and three territories in September would shorten waiting times while preserving the system.

Michael McBane, national coordinator of the Ottawa-based Canadian Health Coalition, which supports the universal healthcare system, called the high court ruling a "contradiction of core Canadian values that everyone should have access to healthcare on equal terms without financial barriers."

He said the ruling of the four judges, which included Chief Justice Beverley McLachlin, suggested that if Canadians had "money to pay for it," they could have quick access to medical care.

Although the ruling applies only to Quebec province, there are worries of a domino effect. Martha Jackman, a constitutional law professor at the University of Ottawa who intervened in the Supreme Court case on behalf of the Canadian Health Coalition, said Canadian leaders at all levels should affirm their commitment to universal healthcare.

"If they don't want to do that, the Supreme Court has given them some excuses. The question is, what happens now in the rest of Canada," she said.

Despite the government's opposition to the privatization of healthcare, new private health clinics are quietly opening in British Columbia, for-profit hospitals are open in Alberta and for-profit MRIs are expanding in Nova Scotia. Their existence has caused friction between provinces and the federal government, which has threatened to cut healthcare funding to those provinces if the programs are not shut down.

John Williamson, federal director of the Ottawa-based Canadian Taxpayers Federation, called Thursday a "good day for patient rights" in Canada. "No longer can people who are seeking healthcare services be tied up or held back by governments, at least in Quebec," he said.

7. _____

Ottawa Sun (June 10, 2005)

Ontario committed to universal care, premier says

By Antonella Artuso, Queen's Park Bureau

TORONTO -- Ontario remains committed to a single-tier public health-care system, Premier Dalton McGuinty said after yesterday's Supreme Court ruling that struck down Quebec's ban on private health insurance.

"What I want to offer today to the people of Ontario is reassurance that ... we have a government that's committed to universal public medicare," McGuinty said.

Extensive wait times were at the heart of the Quebec case. Ontario Health Minister George Smitherman acknowledged that the province has its own wait time "challenges."

Smitherman also said hundreds of thousands of Ontarians get prompt health care daily, adding the government is working to decrease wait times in key areas such as hip and knee replacement.

Smitherman said he could not support patients buying medically necessary health care or travelling in large numbers to other jurisdictions to avoid lengthy wait times.

Ontario Medical Association president Dr. Greg Flynn said the Quebec ruling is a clear message to all governments that long wait times for tests and treatments are unacceptable.

The Registered Nurses Association of Ontario called the ruling "deeply disturbing" and called for a halt to expanding two-tier health care.

8. _____

Globe and Mail (June 10, 2005)

The new face of medicare

Supreme Court narrowly opens door to private health insurance

By JEFFREY SIMPSON

Canadian medicare will never be the same.

The sacred trust -- or sacred cow -- of public-only medicine is finished. Forget what gum-flapping politicians said yesterday in Ottawa.

Forget Prime Minister Paul Martin's declaration that "we're not going to have a two-tier health system in this country. Nobody wants that."

He's wrong. Canada will have more private health-care delivery. The only questions are when, where and how much.

Why? Because four judges of the Supreme Court, enough for a 4-3 majority, accepted private medical delivery and financing as constitutional, because long waiting lists imperil patients' Charter right to "security of the person." And what the Supreme Court says, not what prime ministers want, is the law of the land. Such is the nature of contemporary Canada, like it or not.

True, the 4-3 decision technically applied only to Quebec. But its premises extend across the country. Any clinic, doctor or patient seeking privately delivered medicine can use this decision to beat off any government.

When Alberta begins in the next year to expand private health-care delivery, it will use yesterday's decision as defence. If more private operators expand in Quebec, or install themselves elsewhere, they, too, will use the decision.

It will take time for the decision's impact to spread. It won't happen overnight. It will take time to organize facilities, hire physicians and nurses, rent space, find patients. But make no mistake: The door is legally open to more private delivery and financing.

It is possible that with two new justices (Rosalie Abella and Louise Charron), who did not hear the case judged yesterday, that the court majority might flip-flop if faced with another medicare case. But for now, the court has ruled that in Quebec -- and almost certainly by extension everywhere else

-- any ban on private delivery and purchase is unconstitutional.

The ruling was altogether breathtaking; indeed, it is certainly one of the two or three most consequential yet issued by the Supreme Court since the inception of the Charter.

That the court would even hear the case was surprising enough. After all, two lower courts in Quebec had rejected the plaintiffs' arguments that their Charter rights had been violated. They heard a mountain of testimony and concluded that the ban on private medicine was a justified limitation on individual rights because it helped ensure the collective objective of sustaining a public system.

The Supreme Court in a 2002 case had admonished appeal courts from retrying fact and evidence. That didn't stop the Supreme Court in this case. The judges reviewed and rehashed all kinds of studies and evidence that had been thoroughly reviewed at trial.

Similarly stunning was the court's willingness to challenge the holiest of secular holies in Canada: medicare, the most cherished, politically sensitive and expensive program in Canada.

Medicare had been at the heart of four provincial task forces, a five-volume Senate study, a national commission, two federal elections, various provincial ones, and a federal-provincial agreement that produced a \$41-billion injection of federal cash into medicare for the next 10 years, \$4.5-billion of which is specifically dedicated to rectifying the problem that bothered the court, waiting times.

Every study, every commission and every political party, federal and provincial, opposed the position taken by four judges yesterday. Madam Justice Marie Deschamps was unimpressed by all this.

Judges, she insisted, are quite capable of analyzing public-policy questions, including health-care policy. "Deference cannot lead the judicial branch to abdicate its role in favour of the legislative branch or the executive branch," she asserted.

How painfully ironic, therefore, the judgment must be to the Charter-adoring law professors, social-action groups and proponents of judicial activism. They, who see activism as a key to unlock socially progressive policies, now must acknowledge that this kind of activism has opened the door to undermining the country's most cherished social program.

This looked like a legal decision. It had all the trappings of one: Charter references, citations, learned language about precedents.

Except it was essentially a political decision. The judges argued medicare just about the way any other group of Canadians would, except they used fancier, technical language.

At heart was a political or policy question: Would the existence of a private-delivery system weaken public medicare? Most of the intervenors at trial had said yes it would. So did all those provincial and national studies. So did the trial judge and the appeal court.

The four judges disagreed. Said Judge Deschamps: "The prohibition of private delivery is not necessary to guarantee the integrity of the public plan." Added the pithy Chief Justice Beverley McLachlin: "When we look to the evidence rather than to assumptions, the connection between prohibiting private insurance and maintaining quality public health care vanishes." Those are political statements, not legal analyses.

Other countries, she correctly noted, do not insist exclusively on public delivery and financing. So why Canada? The "experience of these countries suggests that there is no real connection in fact between prohibition of health insurance and the goal of a quality public health system," she said.

Health commissioner Roy Romanow would strongly disagree with that observation, but the majority of judges didn't even refer to his report. Nor did they give any credence to the \$41-billion federal-provincial agreement, because they didn't refer to it, either.

They asserted in yet another political statement that the public system is failing to deliver reasonable services. So, hello, private delivery.

And they arrived at that controversial decision because, as judges and Charter activists are wont to do, they took a series of essentially political/social questions, with large fiscal implications, squeezed them into a legal framework, viewed them as "rights" issues, and thereby ended medicare as we have known it.

Medicare was under siege anyway. The \$41-billion federal-provincial commitment, the new premiums in Ontario, the higher sales tax in Saskatchewan, the cuts in non-health-related spending in every province to make room for more health-care money -- these were all policies sold publicly as the answer to medicare's woes but privately admitted by most of their architects to be stopgaps.

The biggest single public-policy challenge faced by provincial governments is how to slow down the increase in health-care spending that is ravaging their budgets. None knows how. But some were going to experiment soon with private delivery of publicly financed services. Now, they will face demands for private delivery of privately financed services, and they will be legally ill equipped to prevent them.

Private clinics had already arrived in Ontario, Alberta, British Columbia and Quebec. They weren't going away, because there was a demand for their services and governments did not want to assume the burden of providing the services they offered. The federal government snorted and threatened, but did nothing effective to penalize provinces that allowed them.

In this sense, yesterday's ruling sanctioned what is already occurring and will encourage more of it, which means, notwithstanding the grandstanding of politicians yesterday, the slow end of medicare as we have known it.

9. _____

Reuters Canada (June 9, 2005)
Canada ruling may herald more private health care
By Randall Palmer

OTTAWA (Reuters) - The Supreme Court of Canada on Thursday overruled a Quebec law that banned use of private health insurance to pay for procedures normally covered by medicare, a decision that could pave the way to wider use of private medical facilities.

Ending the ban means that residents of the province of Quebec will be able to take out insurance to pay for medical services provided by private clinics, even if these services are also available from the state-funded health care system.

All Canadians have the right to free medical treatment, but there are often long waiting lists for heart surgery, hip replacements, cancer scans and other procedures.

"Access to a waiting list is not access to health care," Chief Justice Beverley McLachlin and Justice John Major wrote in the closely watched decision.

"There is unchallenged evidence that in some serious cases, patients can die as a result of waiting lists for public health care," they added.

The initial application of the decision is only in Quebec, but the ruling was expected to spawn challenges of restrictions on private care across Canada.

"How could you accept that Quebecers may live and English Canadians have to die?" asked Jacques Chaoulli, the Quebec doctor who launched the court challenge along with a man who had waited for a hip replacement.

Free health care is one of the most frequently mentioned characteristics distinguishing Canada from the United States.

Proponents point to the tens of millions of uninsured Americans, while detractors point to waiting lists of as long as two years for some procedures in Canada and note that many Canadians end up going to the United States for timely treatment.

Private medical facilities have already sprung up in various parts of Canada, but they are controversial, with the federal Liberal government threatening at times to cut off funds to the provinces if they were allowed to continue.

Health care is administered by Canada's provincial governments although partly funded by the federal government.

The issue of private health care is also such a hot potato politically that no major party has dared to publicly call for a two-tiered health system.

Following the Supreme Court decision, the federal government pointed to the C\$41 billion (\$33 billion) in extra money it has pledged to put into the health system over 10 years.

"We're not going to have a two-tier health care system in this country," Prime Minister Paul Martin told reporters. "What we want to do is to strengthen the public health care system."

Thursday's court decision to strike down the Quebec law was by a vote of 4-3. The majority said it violated the Quebec Charter of Human Rights and Freedoms.

On the question of whether the law also violated the Canadian constitution's guarantees of life and the "security of the person," the supreme court justices split 3-3, with one justice offering no opinion.

10. _____

Camadian Press (June 13, 2005)

Federal promise to protect universal medicare conflicts with facts on the ground

BY DENNIS BUECKERT

OTTAWA (CP) - Last week's Supreme Court ruling on medicare has unleashed a torrent of federal government promises that two-tier health care won't happen in Canada - but is it already too late?

Experts say there is nothing irreversible about the judgment striking down Quebec's ban on private health insurance. Quebec could simply invoke the notwithstanding clause in its own charter of rights. There would be no need to invoke the notwithstanding clause in the federal constitution.

The question is whether politicians, either in Quebec or Ottawa, really want to prevent two-tier health care, where those with the ability to pay can get faster and better service.

On the face of it, the federal position is clear. "We're not going to have a two-tier health care system," said Prime Minister Paul Martin after the ruling came down.

But a two-tier system has been taking root and growing for years, and the federal government has taken no effective action to stop it.

Martin's own doctor, Sheldon Elman, is the founder and CEO of the Medisys Health Group, which operates a chain of private MRI clinics.

The Prime Minister's Office has stated repeatedly that Martin uses his public health card, not his own money, to cover any services he receives.

All the same, it's estimated there are more than 90 private clinics in Quebec. Many of them offer diagnostic imaging, vital for the early detection of tumours and cancer. Some offer surgery at fees which run into the thousands of dollars.

The most aggressive private clinics operate in British Columbia, home province to Health Minister Ujjal Dosanjh.

The Cambie Surgery Centre in Vancouver describes itself as "the largest and most technologically advanced private surgical facility in Canada" with six state-of-the-art operating rooms.

The centre's web site says it offers general surgery, laparoscopic surgery, gynecology, vascular surgery, neurosurgery, ophthalmology and other services.

Earlier this month the Copeland Healthcare Centre, also in Vancouver, announced it will provide clients with "unparalleled levels of patient care" for a \$2,300 annual fee.

Facility fees are banned under the Canada Health Act. When asked Friday why he has not cracked down on the private clinics, Dosanjh said:

"On the issue of the private clinics, the Canada Health Act violations, you know, I wrote to all the provinces, I received a response from one or two, I haven't thoroughly reviewed those letters, we're awaiting response from others, we're talking to officials."

Health is a matter of provincial jurisdiction, but under the federal-provincial agreement that is the foundation of medicare, provinces agreed to abide by the principles of the Canada Health Act in return for federal health funding.

Critics say that agreement was shaken to its foundations when Ottawa unilaterally slashed its funding for health care during the 1990s, in its drive to eliminate the deficit.

The federal government has been reinvesting since then, and it went into last year's election having negotiated a deal with the provinces it said would fix health care for a generation.

The dollar figures in the agreement were impressive: \$41 billion over 10 years. But there's no mechanism in the agreement to determine how the money is actually spent.

Despite talk of accountability, Ottawa and the provinces haven't even agreed on how to measure waiting lists. They are trying to work out "benchmarks" but currently there's no way to know whether wait times are being reduced.

The Canada Health Act states that health care provided by doctors in hospitals must be publicly administered, comprehensive, universal and accessible to all.

The federal government has never taken a province to court for failing to enforce those principles. Fines have been applied, but they have not deterred some provinces from pursuing the for-profit model.

Canada is the only country in the world that - on paper at least - guarantees single-tier health care, with equal treatment for all.

Some say the guarantee is a farce given that 30 per cent of Canadian health care is already provided privately. But the great majority of the private care is in pharmaceuticals, long-term care and diagnostic imaging.

Acute care provided by doctors in hospitals remains overwhelmingly a single-tier service, just as medicare founder Tommy Douglas envisioned.

The question is whether the thin edge of the wedge will be used as a reason to throw the door wide open.

11. _____

Globe and Mail (June 10, 2005)

Private health care already a thriving affair

Doctor sees ruling as possible first step to system melding
public, private delivery

By LISA PRIEST

Brian Day performed two knee surgeries and one shoulder operation at his private Vancouver clinic yesterday; there's no shortage of people willing to pay for timely access to medical care.

And on no other day did it seem more fitting: The Supreme Court of Canada's ruling that government bans on private health insurance have increased the risk to the life and health of Canadians is a sentiment the orthopedic surgeon shares.

The ruling struck down Quebec laws that guarantee a virtual monopoly on medically necessary treatment in the public health system. But Dr. Day, medical director of Cambie Surgery Centre, sees it as essentially legalizing private health care across Canada.

"I think that this is much bigger than private clinics and private hospitals," he said in a telephone interview from Vancouver yesterday. "We may end up with a mix of public and private delivery like they have in some European countries."

It's not as if private health care hasn't already made a splash in Canada.

Dr. Day operates in a province that has 14 private clinics. An estimated 50,000 British Columbians chose to expedite their surgery by paying a facility fee last year. And he works in a country that has 39 private diagnostic MRI machines, CT scanners and PET scanners, the first of which opened in Montreal in 1992.

According to the Canadian Institute for Health Information, 30 per cent, or \$39.2-billion, out of \$130.3-billion of this country's health care was paid for out of pocket last year, mostly by patients or their insurers.

And they do so to get treatment quicker, something, Dr. Nicolas Duval of the Duval Orthopedic Clinic facility in Laval, Que., knows well.

His 3½-year-old practice is essentially a hospital on two sites. In Montreal, he operates in a private cosmetic-surgery facility and, in Laval, patients recover in a convalescent centre. The price for a hip replacement, hospital stay and rehabilitation is \$12,000 to \$18,000.

Half of the patients are from Quebec; the rest are from Ontario, British Columbia, Alberta and Saskatchewan.

"I'm close to the limit of what I can [physically] do in a year," said Dr. Duval, an orthopedic surgeon who performs 400 operations a year. "I may have to look for a colleague to join me."

Dr. Duval can perform private operations in Quebec because he opted out of the public health-care system. So while his counterparts often get only one day a week to operate on patients in public hospitals, he does surgery three to four days a week.

But the orthopedic surgeon is busy because some of the longest waits Canadians face involve hip and knee replacements, with many languishing on long queues, in some cases a year or more.

And that is where this whole story began, ending in the Supreme Court of Canada.

George Zeliotis was a Montreal patient who waited nearly a year for hip replacement surgery in the mid-1990s. His lawyer argued that the waiting lists in the publicly funded system are so long they violate the Charter of Rights guarantee to life, liberty and security of the person. Some seven years later, the Supreme Court agreed.

"I see people like Mr. Zeliotis every day," said Dr. Albert Schumacher, Canadian Medical Association president.

"Some [patients] can afford to get small things done, like a CT scan or MRI but can't afford a total joint replacement in the U.S. for \$20,000 or \$30,000."

Although some call this decision the end of medicare, Dr. Schumacher disagrees.

"I don't think this is going to cause medicare to fall apart," he said. "My fellow doctors, we're going to continue to do the best under the principles of the Canada Health Act. No one who needs care is going to be turned away as a result of this."

But Normand Laberge, chief executive officer of the Canadian Association of Radiologists, likened the ruling to an "atomic bomb on the health-care system."

He said some private clinics might open, which will propel governments to launch legal action. And he predicted that frustrated patients, waiting in lengthy queues for medical care, would commence their own lawsuits.

"What it is doing is sending a very strong signal to governments to get their act together or else the health-care system is gone," Mr. Laberge said.

Indeed, some worry that it may be going already.

While Maude Barlow, national chairwoman of the Council of Canadians, agrees that the long waits are unacceptable, she is concerned that the Supreme Court of Canada decision opens the door to large, U.S. health insurers to set up shop in Canada.

"The only way we maintain our exemption from health care under the North American free-trade agreement is if it's done in the not-for-profit sector by government or a government agency," Ms. Barlow said. "Once you have privatized, you cannot say to an American chain that you'll only allow Canadians."

12. _____

Toronto Star (June 12, 2005)

As public system declines, it will serve only the poor

By Linda McQuaig

The debate over private health care often seems lopsided.

On one side are abstract notions about equality; on the other are compelling anecdotes about people in pain waiting for treatment.

It's hard not to side with the people in pain. Why shouldn't they go to a private clinic and get that new hip now?

They're allowed to spend all they want on clothes, wine or any other indulgence.

Why do we stop them from spending on worthy projects like pain relief or body-part replacement?

Denying someone this opportunity does seem like an infringement of that person's rights.

But that person isn't the only one with rights.

The real question is whether allowing that person access to a private system — allowing him or her to jump to the head of the line — would ultimately hurt the health care of millions of other Canadians.

A majority of judges on the Supreme Court concluded last week that it wouldn't.

Their decision is at odds with the findings of two lower courts and numerous studies, including the exhaustive inquiry into health care headed by Roy Romanow.

The judges note that other countries allow private health care and also have good public health-care systems.

But in a powerful dissent, three Supreme Court judges questioned such comparisons: "(I)t is particularly dangerous to venture selectively into aspects of foreign health-care systems."

The Supreme Court majority relied heavily on a survey of foreign health-care systems prepared by Michael Kirby, who headed a 2002 Senate investigation into health care.

But Kirby's foreign survey actually points to some problems in other countries where the wealthy are allowed to buy their way to faster treatment.

In his final report, Kirby rejected the idea of allowing this in Canada, arguing that it would violate the principle of equal access.

Certainly, evidence from countries like Australia is not encouraging.

Dr. Joel Lexchin, an emergency room doctor who teaches health-care policy at York University, spent six months working at a hospital in Australia.

He says that Australian doctors have gravitated toward the more lucrative private system and in some specialties — particularly surgical ones — many doctors no longer take patients who can't pay extra.

This is an all-too-familiar problem.

Once the rich start buying their services outside the public system, they resent paying taxes to support it.

They press for, and usually win, tax reductions, leaving inadequate funds for the public system.

As the public system deteriorates, it ends up serving only the poor — who have little clout with governments.

Politicians don't mind letting the poor sleep on the street, so they aren't likely to mind if the poor lack timely access to hip replacements.

The Supreme Court has breathed new life into the privatization campaigns of right-wing think tanks.

Expect to hear lots more from the Fraser Institute, whose ideas are just as unpopular with Canadians today as they were a week ago, but who now have four judges backing their cause.

13. _____

CBC's The National (June 9, 2005)

Second opinion, not to mention third and fourth:

Experts are divided over today's ruling predicting everything from the death of medicare to the rebirth of a sick system.

A feature report by Leslie MacKinnon

PETER MANSBRIDGE (HOST) :

- Second opinion, not to mention third and fourth: Experts are divided over today's ruling predicting everything from the death of medicare to the rebirth of a sick system.

MIKE MCBANE (CANADIAN HEALTH COALITION) :

It really is a perversion of the values of the Charter.

AMIR ATTERAN (LAWYER AND IMMUNIOLOGIST, U. OF OTTAWA) :

This judgment will not make an American nightmare system.

PETER MANSBRIDGE (HOST) :

Where are we heading? A feature report by Leslie MacKinnon. -

PETER MANSBRIDGE (HOST) :

Disturbing, a bombshell, a slippery slope. Those are words from one side of today's heated health care debate. The other side, it's calling the ruling a victory for patients. Not every day does a Supreme Court ruling polarize opinion this way. Hard to know quite what to believe, especially given the complexity of this decision. In a moment, our "At Issue" panel, but first, the CBC's Leslie MacKinnon has spent the day sifting through the expert opinion trying to determine what this ruling could actually mean for you.

LESLIE MACKINNON (REPORTER) :

For some, what happened at the Supreme Court of Canada this morning was the end of medicare.

MIKE MCBANE (CANADIAN HEALTH COALITION) :

It comes down to Tommy Douglas's values. We want to care for each other versus the other side that thinks, well, money should buy you anything you want. And that's just not the way Canada was built.

LESLIE MACKINNON (REPORTER) :

Mike McBane is with the Canadian Health Coalition, a group that acts as a watchdog over medicare.

MIKE MCBANE (CANADIAN HEALTH COALITION) :

What Canadians need to be aware of is that private health care and access to a separate parallel system is something the Americans have right now and they're desperately trying to get rid of, and the two-tier system is much more expensive and much more inefficient. It's costing almost twice as much for the Americans to fund that health care system and still, there's 45 million Americans that have no access because they don't have health insurance. And so opening up a private tier of health care would be to go back to life before medicare in Canada.

LESLIE MACKINNON (REPORTER) :

That prediction is because the Supreme Court ruled that people in Quebec and Quebec alone so far now have the right in order to avoid the pain and suffering of long waiting times to pay for private insurance to buy, for instance, an MRI at a private clinic in Hull right across the river from here.

MRI TECHNICIAN :

Okay, first set of pictures is going to go about 30 seconds now.

LESLIE MACKINNON (REPORTER) :

Before today, a patient could pay only out of his or her own pocket, over \$700 per body part for an MRI here. Amir Atteran is a lawyer and immunologist at the University of Ottawa.

AMIR ATTERAN (LAWYER AND IMMUNIOLOGIST, U. OF OTTAWA) :

If you're super rich and you can afford private care without insurance because you have \$100,000 in the bank, you can get private care in Quebec today. Private care is not illegal. Insurance is. So actually, the current rules foreclose the middle class who could afford insurance but who don't have \$100,000 in the bank to pay for private services outright from accessing those private services right now. There is an inequality already in place. It's an interesting question whether the new inequality that comes out of this is better or worse.

LESLIE MACKINNON (REPORTER) :

The Supreme Court decision likely means more litigation in other provinces. Private clinics could spring up across the country. At the court, the private sector was well represented.

MIKE MCBANE (CANADIAN HEALTH COALITION) :

We saw a number of private orthopedic surgeons and private surgical centres, mostly limited to the province of British Columbia. Several companies intervened from British Columbia, some of them numbered companies, and we

found out that they were orthopedic surgeons operating private clinics, and so that kind of says that, well, there's some economic stake here.

LESLIE MACKINNON (REPORTER) :

One of them was this man, Dr. Brian Day of the private Cambie Surgical Centre in Vancouver.

DR. BRIAN DAY (CAMBIE SURGERY CENTRE) :

Well, I'd sooner be called Dr. Profit than Dr. Loser.

LESLIE MACKINNON (REPORTER) :

Day's clinic now employs 23 private surgeons. He predicts 10 to \$40 billion in private health care investment in Canada as a result of today's Supreme Court decision.

DR. BRIAN DAY (CAMBIE SURGERY CENTRE) :

I see eventually entities like the Mayo Clinic moving into the large cities in Canada bringing in funding, research, expertise, new technologies that Canadians are presently denied access to, and it's going to be competition for the existing public hospitals who will have to respond by becoming more efficient, and that's what happens. That's what's happened where this has gone on in other countries.

LESLIE MACKINNON (REPORTER) :

But Carol Kushner, an independent health care policy analyst, says the public system will suffer.

CAROL KUSHNER (HEALTH CARE POLICY ANALYST) :

You still have the same number of doctors and nurses. If you take those doctors and nurses and expect them to work in the private system, they're not going to be available to work in the public system. We've seen this again and again and again in both the United States and in those pockets of Canada where certain private for-profit provision has drained off providers from the public tier. So, for example, the longest waiting lists for cataract surgery in the 1990s were in Calgary where all cataract surgery was done in for-profit clinics.

LESLIE MACKINNON (REPORTER) :

The federal government and the provinces are trying to fix the wait time backlog. At the first ministers conference in the fall, reduced wait lists were proclaimed as the number one goal. Now a court has dictated its own solution. Amir Atteran thinks there's one way the Quebec government could avoid the court.

AMIR ATTERAN (LAWYER AND IMMUNIOLOGIST, U. OF OTTAWA) :

If Quebec can pare those long waiting lists within the public system, it doesn't need the private system. The court allowed it that way out. So now we're all waiting to see what Quebec does.

LESLIE MACKINNON (REPORTER) :

But this decision takes effect immediately?

AMIR ATTERAN (LAWYER AND IMMUNIOLOGIST, U. OF OTTAWA) :

Yes.

LESLIE MACKINNON (REPORTER) :

So the Quebec government doesn't really have time to fix waiting lists, does it?

AMIR ATTERAN (LAWYER AND IMMUNIOLOGIST, U. OF OTTAWA) :

Well, it will take time for people to set up private insurance schemes if they want to and it will take time for them to get those approved just as it will take time to build up and restore Quebec's public system to a deserving place.

LESLIE MACKINNON (REPORTER) :

Dr. Brian Day says this will never happen.

DR. BRIAN DAY (CAMBIE SURGERY CENTRE) :

Wait lists in the last year have risen dramatically, and if you look at a ten-year span... Remember this case we're talking about was in 1996, and things have gotten a lot worse since then. In that ten years since then, there's been a 75% increase in inflation corrected dollars put into health care and yet wait lists have gone up by over 25%.

LESLIE MACKINNON (REPORTER) :

So Canadians may be in for something new, buying health insurance for private doctors, private hospitals for visits to private emergency rooms.

AMIR ATTERAN (LAWYER AND IMMUNIOLOGIST, U. OF OTTAWA) :

My insurance in the States, and I got a good deal, was about \$2,000 a year, and I'm young and relatively healthy.

LESLIE MACKINNON (REPORTER) :

Did you mind paying \$2,000 a year?

AMIR ATTERAN (LAWYER AND IMMUNIOLOGIST, U. OF OTTAWA) :

I would much rather be paying my taxes in Canada and getting my health care provided for me by my government and it's a large part of the reason why having two passports, I actually choose to live in Canada, but I also don't believe the dogmatism over the public care system and holding it absolutely fast line against private care is necessarily correct.

LESLIE MACKINNON (REPORTER) :

But there is a group of people not covered by the court's decision, the poor. Particularly the elderly poor with their great needs, the low wage earners, the unemployed, the homeless.

MIKE MCBANE (CANADIAN HEALTH COALITION) :

It's a political crisis. For the court to have struck down the constitution of Canada's medicare laws, we are in a political crisis, and I would see this as a major election issue. This would be the central election issue for the government of Canada because they intervened to protect medicare, and they've been overruled by the Supreme Court. So now we have a democratic issue in front of us. Who decides the future of medicare?

LESLIE MACKINNON (REPORTER) :

Rather than scandals, the ballot box issue in the next election could be the future of health care. For "The National," I'm Leslie MacKinnon in Ottawa.

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CBC News and Current Affairs
Time: 22:00 EDT

14. _____

Globe and Mail (June 10, 2005)
The best treatment money can buy
By OLIVER MOORE

TORONTO -- Barbara Hogan would be dead today if she hadn't gone to a private U.S. clinic for treatment of her breast cancer.

She couldn't get seen fast enough in Canada and found out only after surgery in New York State just how quickly her cancer was spreading. She said yesterday that private care saved her life, the money spent worth "every penny."

It was on a Wednesday that her oncologist ran out of Canadian options and phoned the Mayo Clinic in Rochester, N.Y. She was operated on the following Tuesday and discharged less than a week later. A follow-up visit a year later confirmed that she was cancer-free.

Eleven years on she remains cancer free.

Ms. Hogan, who is semi-retired from her financial career in Winnipeg, said the Supreme Court ruling on private health care is wonderful and long overdue. "I'm certainly glad to see that someone has a rational approach," she said by telephone.

Yesterday the court struck down Quebec laws that guarantee a monopoly on medically necessary treatment in the public health system, saying that government bans on private health insurance have increased the risk to the life and health of Canadians.

Now, any Quebecker can potentially purchase health insurance for private health services immediately. Other provinces that have prohibitions on private health insurance are expected to either pro-actively drop these barriers, or anticipate being taken to court by someone waving yesterday's ruling.

The decision brought out critics who said the court has paved the way for two-tier medicine, and advocates of a system where Canadians who can afford it will have access to treatment more quickly.

There were also concerns raised that some of the best doctors would choose to opt out of medicare in favour of setting up private clinics.

But some doctors said yesterday that members of the medical profession in Canada would not completely abandon the principles of the Canada Health Act and never turn away someone in need.

The president of the Canadian Medical Association said that, while the ruling affects only Quebecers directly, Canadians elsewhere will immediately start to question why these new rules don't apply to them.

"My patients in Windsor, Ont., are going to wonder why they're still going across the border for their CT scans . . . and will look at Quebec," Albert Schumacher said.

Dr. Schumacher said the ruling probably represents the first step in bringing the Canadian system more in line with the European Union, where there is a mix of public and private care.

"That's our peer comparison -- it's not the U.S.," he said. "When you look at all those models in all those countries, . . . you have a safety net."

In Britain, where about 12 per cent of the population has private health insurance, people can jump the public queue for operations like hip replacements and other elective procedures by going to private clinics and hospitals.

Parallel private and public systems also exist in Spain, Germany and New Zealand.

Cancer survivor Joe Witalis, who moved to Canada from New York in the 1960s, said yesterday he was cured in the Canadian health-care system and worries that private-care advocates might "throw the baby out with the bathwater."

Mr. Witalis, who has experienced two-tier health-care systems in both the United States and Barbados, worries that moving that way in Canada would encourage doctors to favour paying customers, and ultimately drain the public system of talented physicians.

When his cancer resurfaced in 1996, he received a transplant he says gave him his health today. His confidence in the health-care system never faltered despite a four-month wait for the surgery.

"I wouldn't want to dismantle the single-tier system that we have in order to have a quick fix to the hip surgery problem, for example," he said.

"I understand it's a problem, I understand people shouldn't wait, but is the best solution to destroy the single-tier system? I don't think so. I waited."

An official with the Ontario Health Coalition, which is dedicated to preserving universal access, said that her organization is "deeply concerned" by the ruling but stressed that it "doesn't change anything" for residents of most of the country.

Natalie Mehra said her organization expects the court ruling to have a ripple effect and is prepared to fight in every province. "We will have to be prepared for challenges in every province and we'll fight them in every province."

She said that Canadians are rightly wary of privatization and right-wing politicians recognize that it is a vote-loser. Ms. Mehra also warned that any moves that undermine the public system threaten access to millions of people.

But, in a sign of how quickly that battle could grow, Dr. Schumacher noted that five provinces -- Ontario, Manitoba, Alberta, British Columbia and Prince Edward Island -- have bans very similar to the one struck down yesterday in Quebec.

Manitoba is where Ms. Hogan began her contact with the medical system. Unable to get timely attention there she paid her own way to treatment in New York State, at a cost of less than \$20,000 (U.S.).

"My family doctor said: 'You're going, even if you have to mortgage your house you're going,' " she said.

The experience left her a strong advocate of opening up the health-care system to more choices.

She said that she hoped people keep an open mind as they watch Quebecers develop a new model for health care.

"People have literally been brainwashed into thinking that the current system will be irrevocably destroyed if changes are made," she said. "People seem to be petrified of change and this seems to be one the holy grails of Canadian life."

The experience left her a strong advocate of opening up the health-care system to more choices. But she half-wishes that it wasn't a Quebec case the court ruled on.

"They seem to have a much more futuristic approach than the rest of the country," she said. "If it was somewhere like Ontario, the rest of the country would sit up and take notice."

She said that she hoped people keep an open mind as they watch Quebecers develop a new model for health care.

But she fears that the medicare orthodoxy has been too firmly ingrained over the last generation.

15. _____

Montreal Gazette (June 11, 2005)

Shot in arm for private hospitals

High court ruling a 'Pandora's box' Ban on insurance for hospital service also overturned

BY AARON DERFEL

Private for-profit hospitals could well open in Quebec as a result of Thursday's Supreme Court ruling on health insurance, experts warned yesterday.

As politicians in the National Assembly waged a fierce debate on what to do about the historic judgment, scholars and doctors began to grasp its full impact.

The Supreme Court not only struck down the Quebec prohibition on private medical insurance for care in clinics and doctors' offices, it also overturned a ban on Quebecers purchasing insurance for hospital stays and medical services delivered in hospitals.

This precedent, experts said, could open the door to the establishment of hospitals that charge patients for everything from orthopedic surgery to hernia repairs.

"I don't think the justices know how big the Pandora's box is that they're opening," said Antonia Maioni, a health-policy expert at McGill University.

Maioni suggested the ruling gives private health providers the legal justification to open commercial hospitals. But she cautioned that much depends on how the Quebec government will react.

Still, the owner of the Duval Orthopedic Clinic in Laval - arguably Canada's first pay-as-you-go private hospital for knee and hip surgery - said the ruling legalizes what he admitted has been a "gray zone" facility.

"Business has been booming," said Nicolas Duval, adding that he has recruited two surgeons to perform \$12,000 operations on patients from outside the province. A fourth surgeon, Marc Beauchamp, will opt out of the Quebec medicare regime in August to do shoulder surgery at the hospital, where patients stay for up to 10 days.

In the ruling, the court sided with Jacques Chaoulli, a Montreal physician who had tried in vain "to obtain a licence to operate an independent private hospital," Justice Marie Deschamps wrote.

The court quashed Article 11 of the Quebec Hospital Insurance Act, which prevents Quebecers from acquiring insurance "to be reimbursed for the cost of any hospital service."

Christopher Manfredi, chairperson of the McGill department of political science, predicted that more hospitals like Duval's will open in Quebec.

"Once you allow people private insurance, it automatically creates a market that providers are going to fill," he explained.

"Someone's going to come in and say there's a whole bunch of Quebecers who have insurance to cover hospital stays, so it may be financially feasible for me to set up a hospital that provides those services. It may not be a comprehensive hospital, but a specialized orthopedic hospital or ... one just for hernias or a hospital just for heart operations."

He added that the judges did not acknowledge that scenario explicitly, "but I think they understand that's a possibility."

During a debate in the National Assembly, Quebec Health Minister Philippe Couillard did not address the ruling's potential impact on private hospitals. An aide to Couillard did not return a reporter's phone calls last night.

Lina Bonamie, president of the Quebec Federation of Nurses, expressed concern that more doctors and nurses will leave the public system to work in the private sector.

"The Supreme Court has established that not only can you open private clinics but even build private hospitals in Quebec," Bonamie said. "This is going to lead to longer waiting times in the public system as more doctors go private."

Neither the Canada Health Act nor provincial legislation expressly prohibits private health care, the Supreme Court noted. However, provincial governments, including Quebec, have made it very difficult.

Under Quebec law, doctors are not allowed to charge patients directly unless they opt out of medicare. Until the Supreme Court ruling, another provincial law prohibited Quebecers from purchasing private insurance for core medical services, thus depriving doctors who have opted out of a viable market.

Since Duval opened his facility two years ago, Quebec has not intervened or sent inspectors there. Duval said he knew he couldn't obtain a government permit to open a private hospital - as Chaoulli found out the hard way - so Duval found ways to circumvent the system. He succeeded by buying a nursing home that already had a convalescence permit.

16. _____

New York Times (June 9, 2005)
Canadian Court Chips Away at National Health Care
By CLIFFORD KRAUSS

TORONTO, June 9 - The Canadian Supreme Court struck down a Quebec law banning private medical insurance today, dealing an acute blow to the publicly financed national health care system.

The court stopped short of striking down the constitutionality of the country's vaunted nationwide coverage, but legal experts said the ruling would open the door to a wave of lawsuits challenging the health care system in other provinces.

The system, providing Canadians with free doctor's services that are paid for by taxes, has generally been supported by the public, and is broadly identified with the Canadian national character.

But in recent years, patients have been forced to wait longer for diagnostic tests and elective surgery, while the wealthy and well connected either seek care in the United States or use influence to jump ahead on waiting lists.

The court ruled that the waiting lists had become so long that they violated patients' "liberty, safety and security" under the Quebec charter, which covers about one-quarter of Canada's population.

"The evidence in this case shows that delays in the public health care system are widespread and that in some serious cases, patients die as a result of waiting lists for public health care," the Supreme Court ruled. "In sum, the prohibition on obtaining private health insurance is not constitutional where the public system fails to deliver reasonable services."

The case was brought to the Supreme Court by a Montreal family doctor, Jacques Chaoulli, who argued his own case through the courts, and by a chemical salesman, George Zeliotis, who was forced to wait a year for a hip replacement while being prohibited from paying privately for surgery.

Dr. Chaoulli and Mr. Zeliotis lost in two Quebec provincial courts before the Supreme Court took their appeal.

In a news conference, Dr. Chaoulli declared a victory and predicted that the decision would eventually apply to all of Canada. "How could you imagine that Quebecers may live," he asked, "and the English Canadian has to die?"

Dr. Chaoulli, who was born in France, has long called for Canada to adopt a two-tier, public-private health care system similar to those of France, Germany and Switzerland. Supporters of the current system, however, have argued that a two-tier plan will draw physicians away from the public system, which is already short of doctors, thus further lengthening waiting lists.

Dr. Chaoulli is a passionate if idiosyncratic advocate who has long been viewed as a lonely character on the political scene. In 1997, he went on a hunger strike for his cause in the streets of Montreal, after he was forced to abandon a private emergency house-call service.

The doctor also went to the University of Montreal law school to help him make his case, but flunked out after a semester. He carried on with his legal quest anyway.

Canada's prime minister, Paul Martin, responded to the court's decision by saying that his government would commit to lessening waiting times for medical services while preserving the system.

"We are not going to have a two-tier health care system in this country," Mr. Martin told reporters. "Nobody wants that. What we want to do is to strengthen the public health care system."

But legal scholars and health care experts predicted a slew of lawsuits challenging provincial health care laws across the country.

"This is indeed a historic ruling that could substantially change the very foundations of Medicare as we know it," the president of the Canadian Medical Association, Dr. Albert Schumacher, told reporters.

17. _____

Windsor Star (June 13, 2005)

Douglas fears for Medicare:

Activist actor calls court ruling a wakeup call for Canada

By Roseann Danese

The Supreme Court ruling opening the door to privatized health care should serve as a rallying "call to the people" of Canada, says the woman whose father was considered to be the pioneer of public health insurance.

"I think it's a warning and a real call to the people in the country, the politicians in the country," Shirley Douglas said Saturday before receiving an honorary doctor of laws degree from the University of Windsor.

"If this decision is going to stand, we will lose health care in Canada."

Douglas's father was Tommy Douglas, former Saskatchewan premier, co-founder of the NDP and the father of medicare. Shirley Douglas has been a lifelong champion of the Canadian health care system, but she warns Canada must protect its universal system -- which is the envy of countries around the world.

"Canadians are not even close to understanding, if we lose this health system, what is ahead for us. We're not used to saying, 'So and so down the street, their child needs a kidney and they have no insurance, therefore they are going home from the hospital and will wait for that child to die.'

"You cannot have enough bake sales and enough raffles to raise \$350,000 for someone to have an operation."

Douglas reminded graduates at the convocation ceremony never be afraid to say, 'no.' It's a philosophy that has been a staple in the life of the 71-year-old actor and social activist.

Formerly married to actor Donald Sutherland and mother to actor Kiefer Sutherland, Douglas has taken a stand over the years against racism, war, oppression and pollution. She was refused a work permit in the U.S. in the 1970s because of her involvement with a charitable group called Friends of the Black Panthers and returned to Canada as a single mother.

Despite a litany of roles she has played on stage and in television, Douglas has always maintained her strong roots in social activism.

"To come here and speak to young students today and tell them to shape up and fix the world, we should all be ashamed handing them the mess we're handing them," she said.

The health care system in Canada has always been the subject of sabotage, Douglas charged. Her father fought against double-billing by doctors in the 1970s and he would be horrified at the erosion of services approved by governments like the Mike Harris Conservatives who cut thousands of nursing jobs and closed hospitals.

"The ordinary Canadian who's trying to survive, work two jobs, get children through school, they are not all aware that governments actually go around sabotaging things to get rid of something that is very dear to them."

But Douglas said there's no need to debate the issue of universal health care. "The debate has been had and had and had. And consistently the people of the country have said they want a one-tiered, publicly funded, publicly delivered universal health care system."

She agrees waiting times for treatment have to be fixed, but "you don't just throw out a system because there are things wrong with it."