

National Post (Front Page)
June 8, 2005

MEDICARE FUTURE AT STAKE

High Court to rule on private-care ban legality

By Mark Kennedy, CanWest News Service

OTTAWA - The Supreme Court of Canada will render judgment tomorrow in a case that could have far-reaching implications for the future of medicare.

At the heart of the controversial case -- heard in court one year ago -- is whether it is unconstitutional to outlaw private health care for patients who can pay.

A Montreal doctor and a patient, who waited almost a year for a hip replacement, argued that waiting lists in the publicly funded system have become so long, they violate the Charter of Rights' guarantee to life, liberty and security of the person.

If the court agrees with their complaint, governments could suddenly be forced to open the door to a new private health care system to operate alongside the public system.

Mike McBane, spokesman for the Canadian Health Coalition, a pro-medicare lobby group, said in an interview yesterday the court decision will be "historic" because it could potentially "destroy" the public system.

"This is really big. This is a sleeper. Most people don't know the implications of this ruling. This could open the door to introduce a legal framework for private health insurance. It would be a constitutional coup d'etat on medicare."

However Philippe Trudel, the lawyer for the patient, said, "The issue at hand today can be boiled down to one question: Can the state keep people from obtaining the medical services that they need?"

And a coalition of doctors who support private care warned: "The people of Canada are suffering, even dying, under our laws."

Senator Michael Kirby, who chaired a Senate committee that studied medicare and which made a legal presentation to the court, said yesterday the case is extremely important.

He said there are three likely scenarios as to how the court could rule: maintain the status quo; allow a parallel private system; or, as a compromise, require governments to provide a so-called "care guarantee" to patients on how long they have to wait for treatment in the public system. Provinces that did not meet the benchmark would have to pay for the patient's treatment in another province or the United States.

"Any of those scenarios is profound," Sen. Kirby said. "Suppose they decide the status quo is OK. That is equivalent to saying governments have no obligation to meet reasonable service standards."

If the court were to endorse a care guarantee, it would be the biggest change in medicare's history, he said. Finally, if the court approved a private system, the country would be thrown into a tumultuous debate overnight, he said.

Mr. McBane said he believes the private care scenario would spark much more than just another debate.

"Automatically, all of the provincial and federal laws governing medicare would be struck down as unconstitutional. And that would leave a huge vacuum. And it leaves the door open to provincial legislatures like Alberta to introduce a new legal framework that would set up a private, parallel system."

The case was brought to the country's top court by Dr. Jacques Chaoulli and George Zeliotis, a 73-year-old Montreal businessman who contended he waited too long for his hip surgery in the mid-'90s. They argued people should have the right to buy private health insurance and pay for private care rather than waiting in the public queue.

Quebec's Health Insurance Act bans private insurance and paying for hospital services that are already covered by the public system. Similar laws exist in most provinces, and the ones that do not legislate have other means of limiting private health care, such as capping the amount doctors can charge patients.

Dr. Chaoulli and Mr. Zeliotis lost their legal battle in the lower courts in Quebec, which ruled the collective rights to a universal, publicly funded system are more important than individual rights.

The case was winding its way through the courts at the same time as a similar debate raged in the political arena. The federal government and provinces rejected a parallel private system and, instead, at a first ministers summit last year, promised vaguely to set goals on how to shorten waiting times for key treatments.

However, to the surprise of many observers, the Supreme Court agreed to hear an appeal of the Chaoulli case.

A lawyer for Mr. Zeliotis urged the judges to strike down laws that prevent patients from paying for private services and buying private health insurance.

The federal government advised the court against meddling with a health system that "is considered to be one of Canada's finest achievements and a powerful symbol of national identity."

A lawyer for the Quebec government warned the court that medicare would suffer a brain drain if affluent Canadians were allowed to lure away doctors and nurses to a private, pay-as-you-go system.

**Charter Committee on Poverty Issues and
the Canadian Health Coalition Intervene at
Supreme Court in Support of
Public Healthcare in Canada**

OTTAWA -- The appeal of Jacques Chaoulli and George Zeliotis, to be heard at the Supreme Court of Canada Tuesday, June 8th, at 9:00 a.m., attacks a critical pillar of the publicly funded healthcare system in Canada.

The Appellants, Chaoulli and Zeliotis, and a number of interveners supporting private healthcare, are asking that the Court create a right for big American and other health insurance companies to come in and unfairly compete with the public healthcare system. They argue for a right of private insurers at the expense of the right to healthcare of Canadians.

The Charter Committee on Poverty Issues and the Canadian Health Coalition believe that there is a constitutional right to healthcare in Canada. However, we believe the right to healthcare is a right of all Canadians. The right to healthcare should be interpreted by the Court in this case in accordance with the principles of the *Canada Health Act*, based on a single-payer, publicly funded health care system, accessible to all without barriers based on ability to pay.

Martha Jackman, counsel for CCPI and the Coalition, and Michael McBane, Co-ordinator of the Canadian Health Coalition, will be available for interviews on the front steps of the Supreme Court of Canada from 8:00 - 8:30 a.m. June 8th, during the lunch break and after the hearing. Interviews are available in English or French.



Canadian Health Coalition Coalition canadienne de la santé

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MEDIA ADVISORY

June 7, 2004

**ATTENTION: Assignment Editor
Photo Editor**

Supreme Court to hear case alleging Medicare is unconstitutional

OTTAWA — The Supreme Court of Canada will hear a case alleging Medicare is unconstitutional. The Chaoulli case will be heard on Tuesday, June 8th at 9:00 am. Joining the effort to dismantle Canada's single-payer health system is a group of 10 senators led by Michael Kirby, a director of the for-profit nursing home chain, Extendicare Inc.

Concerned citizens will arrive at the Supreme Court building on a double-decker bus to symbolize the threat of two-tier health care. The bus will drop off members of the public in front of the Supreme Court Building at approx. 8:30 am.

The Charter Committee on Poverty Issues along with the Canadian Health Coalition will present an oral argument before the court in Tuesday's hearing. If the Supreme Court rules in favour of Chaoulli, the door will be open to establish a U.S.-style two-tier health insurance system in Canada. This would sound the death knell for Medicare.

Photo Opportunity:

Concerned citizens arrive at Supreme Court in double-decker bus decorated with "two tier is for buses" banner, 8:30 am, Tuesday, June 8. The event is co-organized by the Ottawa Health Coalition, Ontario Health Coalition and Canadian Health Coalition.

For background on the Chaoulli case: www.healthcoalition.ca/chaoulli.html

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CTV News (June 8, 2004)

Supreme Court case could change face of universal medicare

LLOYD ROBERTSON: The Supreme Court of Canada began looking into a landmark case today that strikes at the heart of what Canadians say is their number one election issue, healthcare. The legal challenge was born out of the pain and frustration of one Quebec man's quest for hip surgery. As CTV's Jed Kahane reports, if successful, the case could forever change universal medicare as we know it.

JED KAHANE (Reporter): For George Zeliotis, the reality of long waiting lists is painfully clear. He spent more than a year waiting for a hip replacement. He says he should have had the right to pay for that surgery himself. Now he's brought his fight to the Supreme Court.

GEORGE ZELIOTIS (Patient): They don't let you go out and buy insurance, on the other hand they tell you, you know, indefinitely wait and wait and wait.

KAHANE: Right now, it's illegal in Canada to pay for surgery that's covered by medicare. One alternative is to go to the US. That's what Rosena Buff did after learning she'd have to wait a total of three years to have her hip replaced in BC.

ROSENA BUFF (Patient): Oh the pain was, never let up day or night. It was just excruciating.

KAHANE: It cost her \$30,000.00, but it was fast.

BUFF: And within 15 days, I was having my surgery.

KAHANE: Montreal physician Jacques Chaoulli told the court patients should be able to get that same service in Canada. If medicare can't provide it, he says the private sector should.

DR. JACQUES CHAOULLI (Physician): That's ideology of a one big system was a utopia. It has never materialized.

KAHANE: If the court agrees, critics say Canada will be forced into two-tier healthcare. They want the current system fixed, not scrapped.

MARTHA JACKMAN (Canadian Health Coalition): The remedy they're proposing is like euthanizing a patient who has the flu.

KAHANE: One thing is clear, the timing of this case is providing ammunition for the opposition eager to blame the Liberals for pushing patients this far.

ED BROADBENT (NDP Candidate): The real source of the problem was Mr. Martin slashing by billions in the 1990s.

KAHANE: The court could strike down the existing law or order the government to find another cure, like injecting more money to shorten the wait lists that prompted this fight in the first place. A ruling isn't expected until the fall. Jed Kahane, CTV News, Montreal.

ROBERTSON: A labour dispute is causing deep concern along Canada's borders. Would customs officers really roll out the welcome mat to criminals? That's just ahead. And later, the danger signs that could mean a deadly stroke is just months away, still to come on CTV News.

Canadian Press (June 9, 2004)

Private health hurts, court told

Top judges hear defence of medicare Where would staff come from, lawyer asks

BY DENNIS BUECKERT, CANADIAN PRESS

OTTAWA -- Allowing a private, parallel medical system inevitably would undermine the quality of medicare in Canada, a federal lawyer told the Supreme Court of Canada yesterday. Rather than shortening waiting lists for medical care, private clinics would divert resources from the public system and make lists longer, said Jean-Marc Aubry, in what some have called "the case of the decade" for medicare.

In a hearing dominated by dry argument about the pros and cons of private-sector medicine, Aubry showed some fire in defending the Western World's only single-tier health system.

"Doctors, nurses, technicians: where do you find them to staff a private hospital?" he asked. "There are limited resources in the public sector which are used to the maximum. There's why you hurt the public system."

The case involves a claim by Quebec doctor Jacques Chaoulli and his patient, George Zeliotis, that their constitutional rights have been violated by a Quebec law which prevents payment for medically necessary services. Pressed to explain why the government permits private MRI clinics if it is so opposed to private care, Aubry said the clinics do not provide core services.

Critics say that, if the claim is successful, all provinces would be required to permit two-tier health care, something no political party openly advocates.

Medicare advocates made the point by driving to the Supreme Court in a double-decker bus carrying the banner "Two-Tier is for Buses."

Zeliotis was obliged to wait about a year for a hip replacement in 1997, and says he should have been able to pay for quicker service. Chaoulli and Zeliotis say the ban on paying for health care infringes section seven of the Charter of Rights and Freedoms, which guarantees life, liberty and security of the person.

Their lawyer Philippe Trudel denied that the medical resources available in Canada are used to capacity. "They're not totally used. That's why we're here. That's our thesis. If you don't use all the resources it's unfair to prevent us from using what you're not using."

Chaoulli has long campaigned for the right to set up a private medical business, and once went on a hunger strike over the issue. He is being supported by some companies in the health-care field.

Marvin Storrow, representing Cambie Surgeries, a B.C. health-care company, said medicare in Canada is in desperate shape and the problem of waiting lists could be solved by private care.

Robert Monette, representing the Quebec government, denied that people's lives are at risk due to waiting lists. "There are certain problems but you can't conclude the system has collapsed."

Monette said delays in surgery for Zeliotis were only partly due to the medical system, and partly due to decisions by Zeliotis. He advised the court to stay out of an area which is essentially political.

Janet Minor, representing the Ontario government, cited research showing a two-tier system does not reduce waiting lists in the public sector.

She also suggested the court be cautious about intervening in health care. Her analogy was that killing medicare, because of its current problems, would be like euthanizing a patient with the flu.

Earl Cherniak, representing a group of senators from the Senate health committee, said that to be constitutionally valid the publicly funded health system must provide timely service.

He said the problem could be solved by care guarantees, recommended in a recent report by the Senate committee, under which patients who could not be treated within a set time would be sent to another jurisdiction for treatment.

That idea was endorsed by Paul Martin some time ago, but he has dropped it from his election platform. Experts say there is no way to estimate the costs of enforcing care guarantees, and the costs could be staggering.

A ruling is expected in the fall.

Nola Ries, a law professor at the University of Alberta, says the court could propose a number of remedies in the case without striking down medicare. For example, it could order the government to reduce waiting lists.

This article also appeared in the:

Toronto Star

Halifax Daily News

St. John's Telegram

Charlottetown Guardian

Vancouver Province

Canwest News (June 9, 2004)

Privatization could mean fewer doctors

By Janice Tibbetts

OTTAWA -- Medicare would suffer a brain drain if affluent Canadians were allowed to lure away doctors and nurses to a private, pay-as-you-go system, the Supreme Court of Canada was warned Tuesday at an appeal described as "the health-care case of the decade."

"There would certainly be a brain drain toward the private system," argued Robert Monette, a lawyer for the Quebec government who cautioned permitting patients to pay for medically necessary services would "go against our Canadian identity and Canadian values."

Monette, backed by the Ontario and federal governments, advised the judges against meddling in the complicated political domain of establishing health policy.

On the other side of the packed courtroom, a 72-year-old Montrealer who waited almost a year for a hip replacement wants the Supreme Court to rule it violates the Charter of Rights to deny private hospital care when lengthy lineups plague the public system.

A lawyer for Montreal businessman George Zeliotis urged the judges to strike down laws that prevent patients from paying for private services and buying private health insurance.

"The issue at hand today can be boiled down to one question -- can the state keep people from obtaining the medical services that they need?" said Philippe Trudel.

Dr. Jacques Chaoulli, a Montreal doctor who teamed up with Zeliotis in the case, painted a picture of a Canada in which doctors who have left the country could return to work in private hospitals and clinics.

"People are suffering and dying on waiting lists in the public system," Chaoulli told the court.

Chaoulli and Zeliotis contend hospital waiting lists have become so long they violate the constitutional guarantee to life, liberty and security of the person.

The Supreme Court reserved its decision and a ruling is not expected for months. Outside the court, Liberal Senator Michael Kirby described the appeal as "the health-care case of the decade if you look at the potential outcome."

Kirby and nine other senators intervened to argue governments could establish a Canadian Health Guarantee that would put a legal time limit on waiting lists -- a prospect the raised a few eyebrows on the bench. Despite the potentially significant ramifications, the court was short two judges because Justices Louise Arbour and Frank Iacobucci, who are resigning at the end of the month, bowed out of the case.

The remaining seven judges asked few questions through the five-hour hearing and only two provinces, Ontario and Quebec, showed up to defend Canada's public system, suggesting it is widely expected the court will preserve the status quo.

The two sides in the case came to court armed with competing studies on the merits and pitfalls of allowing a parallel private system to operate alongside a publicly funded one.

Some reports say allowing private systems eases pressure on waiting lists in the public system. Others conclude private care drains scarce resources from the public system.

Chaoulli and Zeliotis lost in the lower courts in Quebec, which ruled the collective rights to a universal, publicly funded system is more important than individual rights.

The case is one of two this week in which citizens seek to elevate health care to a Charter right, thereby eclipsing the power of politicians to dictate health policy.

On the flip side of the issue, a group of British Columbia parents will ask the court today to uphold a ruling that ordered the province to pay for early intervention therapy for 23 autistic children that costs up to \$60,000 annually per child.

Also appeared in the:

National Post

Victoria Times Columnist

Saskatchewan Leader Post

Vancouver Sun

Edmonton Journal

Montreal Gazette

Ottawa Citizen

Regina Leader Post

CTV Website (June 8, 2004)

Medicare going on trial in Supreme Court case

By CTV.ca News Staff

The Supreme Court is hearing a case that could have significant implications for universal medicare. A Quebec doctor and his patient are arguing their rights are violated by a law against queue-jumping.

Dr. Jacques Chaoulli and his patient, George Zeliotis, say that months spent waiting for hip replacement surgery in 1997 amounted to a violation of the constitutional right to receive treatment within a reasonable time.

In a case that has wound its way up the court system, they want to overturn portions of the Quebec Health Insurance Act and Quebec Hospital Insurance Act that prohibit payments for medically necessary services.

Lawyers for Chaoulli and Zeliotis have argued that patients have a constitutional right to pay for certain services from private doctors, such as hip surgery. Doing so, they say, would pose no threat to the public health-care system.

The argument has divided the medical community in a debate over the effectiveness and implications of a parallel private system.

While advocates contend private services would take advantage of existing capacity in the medical system, critics say it would further restrict access for those who can't afford to pay.

As the case began in Ottawa on Tuesday, protesters on both sides of the argument gathered outside the Supreme Court to register views.

Canadian Health Coalition lawyer Martha Jackman was one of those on hand to say the Supreme Court case is no way to cure what ails medicare.

"We agree the publicly funded health care system has problems," Jackman told CTV News. "But lets fix it. The remedy they're suggesting is like euthanizing a patient who has the flu."

Two years ago, the Quebec Superior Court ruled that the provincial law's intention was to prevent discrimination based on ability to pay. They said that was in line with the Charter of Rights.

In a decision last year, the Quebec Court of Appeal also dismissed Chaoulli and Zeliotis' challenge to the provincial law.

Though the case is based in Quebec, the whole country is watching the case, since the high court's decision could have a domino effect on similar laws in other provinces.