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INTERVENERS SEEK HEARING ON REMEDY IN QUEBEC HEALTH CARE CASE

Interveners in the Chaoulli case at the Supreme Court of Canada are asking the Court to hold a hearing and to issue an appropriate remedial order following its controversial ruling in the Quebec health care case. According to the interveners, a hearing into the appropriate remedy, and a separate remedial order from the Court is necessary to protect the right to life and security of those who cannot afford or who would not be eligible for private health insurance.

The Charter Committee on Poverty Issues and the Canadian Health Coalition filed a strongly worded submission with the Supreme Court of Canada on Monday July 11th, online at <http://www.healthcoalition.ca/int2005.pdf>. The interveners argued that "it would be tantamount to judicially sanctioned discrimination if the remedial order, under which Quebec is to redesign its health care system, ignored the rights of those who cannot realistically access private health care or insurance."

In its June 9th declaratory judgment, a slim, four judge majority of the Supreme Court found that excessive waiting lists in Quebec's public health care system deprive patients of personal security or life, and that in this situation, prohibitions on the purchase and sale of private health insurance in Quebec violate the right to life and security under the Quebec Charter. The Court's ruling addressed the situation of patients such as the appellant, George Zeliotis, who want access to private health insurance to access services that are delayed in the public system. However, the Court did not discuss the appropriate remedy to the violations of rights in the public healthcare system for those who cannot access private insurance, either because they cannot afford it or because they would be rejected by private insurers on the basis of acute or chronic illness or disability.

CCPI and the Coalition point out that the Court, in its ruling, admitted that the appellants, George Zeliotis and his physician, Jacques Chaoulli, were not personally affected by any infringement of a right to life or security. The Court rendered a decision based on the "public interest" in the rights at issue. CCPI and the Health Coalition argued that in framing a remedial order in a public interest case such as this, "the Court must take into account the entire public's interests and rights in determining the appropriate remedy, not merely the interests of the Appellants."

In their submissions, the interveners argue that a hearing into the appropriate remedy and a separate remedial order is necessary to ensure that the remedy implemented by Quebec and other provinces in response to the Court's decision is effective and appropriate for all those whose rights were infringed.

CCPI and the Health Coalition filed their submissions in response to a June 30th motion filed by Québec asking the Court to partially re-hear the appeal and to grant a stay of its judgment for a period of 18 months. Quebec asked for the stay to give it time to consider and implement broad reforms to health care legislation and delivery in response to the Court's judgment. CCPI and the Health Coalition support Quebec's request, but argue that a hearing and a full remedial order are required in order to ensure that the rights of all those in need of health care are protected in governments' responses to the Court's decision.

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For further comment, contact counsel for CCPI and the Canadian Health Coalition.

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