

Ontario Chaoulli challenge looks more like privatization politics than law

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A Charter challenge to Ontario's public health insurance system, announced today by the Canadian Constitution Foundation, represents yet another push to privatize the medicare system and is based on a distorted reading of the Supreme Court's Chaoulli decision, according to Charter health law expert, Professor Martha Jackman of the University of Ottawa's Faculty of Law.

Only three of seven judges in the Chaoulli case found that Quebec's ban on private health insurance violated the Canadian Charter. Contrary to the evidence accepted by the trial judge and Quebec Court of Appeal in the Chaoulli case, the three judges concluded that the problem of health care wait times could be solved by allowing private health insurance. The Chaoulli decision was widely condemned for its failure to recognize the costs and inefficiency of allowing two tier-medicine in Canada, and for ignoring the health rights of those Canadians unable to obtain private health insurance, because they are a bad risk or because they can't afford it.

In representing the Canadian Health Coalition and the Charter Committee on Poverty Issues in the Chaoulli case, Professor Jackman argued that legislation such as Ontario's Commitment to the Future of Medicare Act is necessary to protect and promote the Charter health care rights of all Canadians and not merely those who can afford to buy private care. The three dissenting judges in the Chaoulli case agreed that a ban on private health funding is a rational and legitimate measure to protect the integrity of the medicare system, which benefits all Canadians. Since the Chaoulli decision, one of the Justices who ruled in favour of Dr. Chaoulli has retired and Professor Jackman predicts that, in light of widespread condemnation of the Chaoulli decision by health law and policy experts alike, a second Chaoulli type challenge in Ontario is highly unlikely to succeed.

Professor Jackman is available to comment on the proposed Ontario health care challenge (in English or in French) at (819) 827-9282.