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Supreme Court Decision makes Constitutional Castaways' of the Poor

Chief Justice McLachlin, who once said that the poor in Canada ought not to be made "constitutional castaways" has made them into precisely that in her judgment, co-written with Justice Major, finding that legislation prohibiting two-tiered health care in Quebec is unconstitutional.

The Charter Committee on Poverty Issues, which intervened in the case jointly with the Canadian Health Coalition, is extremely disappointed and alarmed at the Supreme Court's split decision.

As Justice Binnie explained in a three-judge dissent:

Those who seek private health insurance are those who can afford it and can qualify for it. They will be the more advantaged members of society. They are differentiated from the general population, not by their health problems, which are found in every group in society, but by their income status. We share the view of Dickson C.J. that the Charter should not become an instrument to be used by the wealthy to "roll back" the benefits of a legislative scheme that helps the poorer members of society.

On the twentieth anniversary of the coming into effect of section 15 Equality Rights in the Canadian Charter, it is unthinkable that a majority of the Supreme Court of Canada could find it acceptable to force the Government of Quebec to allow private health care at the expense of the rights of the poor.

"If the public health system is failing to provide services necessary to life and security of the person, then the obvious remedy is that these services must be more effectively provided to everyone," said Professor Martha Jackman, an expert in the Charter and health care and counsel for CCPI and the Canadian Health Coalition in the case. "The three judges who found against Quebec's publicly funded system under the Canadian Charter rejected the idea that the Charter provides a right to health care," Jackman commented. "Yet at the same time, these judges found that the Government could not prohibit private health insurance because this may deny those who can pay for it access to health care necessary to their life and security of person. In effect, the Court seems willing to intervene only to protect access to health care for the more affluent. Such a discriminatory approach to constitutional rights is extremely disappointing from the Supreme Court charged with upholding all Canadians' rights."

The Chief Justice and Justice Major say that they are protecting the rights of 'ordinary Canadians' to access and pay for private healthcare. "We are left to wonder whether the 15% of Canadians who live below the poverty line, people with disabilities who struggle to make ends meet, women working in low-wage jobs trying to feed their children, and many others of us who cannot afford private care do not qualify as 'ordinary Canadians'", commented Sarah Sharpe, President of CCPI, "so our rights don't count."

CCPI recommends that the Government of Quebec, in response to this decision, follow the recommendation of the Quebec Human Rights Commission to amend the Quebec Charter to provide clear and universal protection of the right to health, without discrimination because of ability to pay. Indeed, Quebec must take this action to meet its obligations under international law.

Universal health care, which generations of Canadians have seen as a right to be enjoyed equally by all must not be transformed into a privilege of those who can pay for it. CCPI calls upon all levels of government to address the serious issues of waiting lists in a way that preserves the rights of all Canadians to timely and adequate health care.

- 30 -

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