

Canadian Supreme Court Ruling

Backgrounder

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What Happened

Dr. Jacques Chaoulli, an extreme right-wing Canadian physician with ties to a pro-privatization political/policy organization, claimed in court that Quebec's ban on private health insurance - which forbids private insurers from offering coverage which duplicates that provided by the public system - violated the province's Charter of Rights and Freedoms. Chaoulli claimed that his patient, George Zeliotis, had waited a year for hip surgery because he didn't have the option of buying private insurance.

A very slim majority (4-3) of the justices ruled in favor of Chaoulli after a hearing which almost entirely ignored evidence and expert testimony. The dissenting judges issued an extraordinarily harsh condemnation of the decision and the Canadian press was immediately inundated with criticism from commentators across the political spectrum.

Case Facts

Questionable Basis: Mr. Zeliotis, the patient whom Dr. Chaoulli claimed had "waited a year" for surgery, really hadn't been waiting that long. Mr. Zeliotis was first ruled "not an ideal candidate" for the hip surgery because he had undergone bypass surgery that same year. After requesting to be put on the waiting list anyway, Mr. Zeliotis removed himself from the waiting list in order to seek opinions from other physicians. The dissenting judges declared: "Mr. Zeliotis has not demonstrated that systemic waiting lists were the cause of his delayed treatment." (The average waiting time for elective surgery across all provinces was 4.3 weeks in 2003¹).

Political Motivation: The court acknowledged that Dr. Chaoulli, who runs a private house call business, had been waging a fight on behalf of privatized health care for some time. Recognizing that the suit had nothing to do with concern for his patient, the judges wrote that "For Dr. Chaoulli in particular, [the goal of privatization] is the whole point of this proceeding."

Phony "Experts": The majority judges accepted the "expert" testimony of Dr. Edwin Coffey, a "Senior Fellow" at the right-wing Montreal Economic Institute, the same "think tank" Chaoulli is a "fellow" at (Neither has ever produced a peer-reviewed publication). They also cited as an "expert" Dr. Eric Lenczner, an orthopedic surgeon who operates a private clinic in a wealthy Montreal neighborhood. An earlier trial judge had dismissed Coffey as "unqualified." The judges wrote that Coffey's testimony was "largely anecdotal and of little general application," including a story about a patient of his whose wait for surgery had caused him to lose access to his country club membership for a season.

Selective Evidence: The chief justice (who sided with the majority) dismissed a wealth of empirical evidence presented at the original trial, choosing instead to rely on pro-privatization studies and the testimony of conservative extremists. The majority dismissed the Romanow report and instead chose to accept the uncompleted report of pro-privatization Sen. Michael Kirby, who also sits on the board of directors of the corporate home-care firm Extencicare. This report has been criticized by Canadian groups for its selective and out-of-context use of OECD data. The dissenting judges called the reports admitted at the trial "based largely on generalizations about the public system drawn from fragmentary evidence."

For More Information: Canadian Health Coalition: www.medicare.ca

¹ Statistics Canada, "Comparable Health Indicators – Canada, Provinces and Territories" November 2004