

TEN THINGS YOU SHOULD KNOW ABOUT THE SUPRE



Illustration: Natasha Gerris

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On June 9, 2005, by a narrow majority, the Supreme Court of Canada found that Quebec's ban on private insurance for insured health services violates the Quebec Charter

of Human Rights and Freedoms. The plaintiffs

in the case – George Zeliotis, a Montreal patient, and Jacques Chaoulli, a doctor seeking to set up a private clinic – had asked Canada's top court to strike down sections of the Quebec Hospital Insurance Act that prevent people from buying health insurance for procedures covered by medicare.

While the ruling is certainly a victory for the advocates of privatization and two-tier health care, it is far less clear-cut than these forces claim. Here are 10 things you should know about the decision and its implications for health care.

1

The Supreme Court ruling has served as a rallying cry for pro-privatization forces.

Undoubtedly, the immediate challenge raised by the Chaoulli decision is a political one. While the case may have few actual legal consequences (see no. 6), pro-privatization forces are already pressuring other provinces to abandon single-tier care. Right-wing pundits and American health insurance corporations are calling the Supreme Court decision a victory for “health care freedom” – ignoring, of course, that a two-tier system would actually prevent people from accessing quality health care (see no. 2).

2

A two-tier system would not reduce waiting times.

Research repeatedly shows that parallel private systems don't cut public waiting lists. In fact, countries with parallel public and private health care systems have the longest waiting times. For example, England and New Zealand, which have parallel private hospital systems, have larger waiting lists and longer waiting times in the public system than countries with a single-payer system. The bottom line is that two-tier systems cut waiting lists for the wealthy and lengthen them for everybody else.

3

A private system would not cover most procedures.

Private health insurance companies only cover procedures that make them money. In two-tier systems, private insurance doesn't pay for the tough stuff like cancer care and cardiac treatments. Instead, it covers the relatively easy, high-volume

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procedures. Insurance companies cover the more expensive procedures only if the law requires them to do so, or if there are extensive government subsidies available.

4 **A for-profit system does not save money or improve the quality of care.**

The *New England Journal of Medicine* reports that no peer-reviewed study has found that for-profit hospitals are less expensive than not-for-profit hospitals. For-profit hospitals spend less on personnel, avoid providing charity care and shorten stays, but they spend more on administration, marketing, extra services, salaries for CEOs – and they must pay out profits to stockholders. In addition, a series of recent studies demonstrated that for-profit hospitals provide an inferior quality of care, compared to not-for-profit hospitals.

5 **There are better ways to reduce waiting lists and improve the Canadian health care system.**

Waiting times can be reduced by developing a centralized list, establishing rules for who actually is on the list, and encouraging coordination between physicians and hospitals. Governments can also free up money to address waiting lists by reducing high-cost areas, including the use of expensive, patented drugs. Most of these more expensive drugs aren't any better than older, cheaper drugs.

6 **The Supreme Court did not challenge the validity of the Canada Health Act.**

While the pro-privatization lobby has pounced on the Chaoulli decision as spelling the death of medicare, all of the Supreme Court justices acknowledged the importance and validity of the Canada Health Act. In addition, the legal effect of the Court's decision is limited to Quebec. This means that it has no bearing on either the Canada Health Act or any other provincial health care insurance plan.

7 **Provinces can maintain single-tier health care systems.**

This is true for Quebec as well. As Mme Justice Deschamps stated: “when my colleagues ask whether Quebec has the power under the Constitution to discourage the establishment of a parallel health care system, I can only agree with them that it does.” Justice Deschamps also pointed out that the provinces have several tools at their disposal to prevent the establishment of two-tier health care, including the right to regulate physician service charges.

8 **Canadians do not have the right to purchase health care services outside the public system.**

Quebec can maintain a ban on private insurance if it demonstrates that the province's residents have access to timely health care services. Remember that Chaoulli's case arose from the circumstances of Quebec's health care system as it was in 1997 – before the Romanow and Kirby commissions and several federal-provincial health accords focused on the problem of reducing waiting times.

9 **The decision might lead to court challenges in other provinces.**

While the Chaoulli decision might lead to similar challenges in other provinces, there are good reasons to doubt whether these would succeed. The Supreme Court was evenly split, 3 to 3, on the question of whether a ban on private insurance offended the Canadian, as opposed to the Quebec, Charter of Rights and Freedoms. A powerful dissenting argument given by Justices Binnie, Lebel and Fish suggests the Court failed to define a “manageable constitutional standard” for judging questions of health care services in the context of Charter rights.

10 **It is time to stand up for Canada's public health care system.**

The Chaoulli decision reaffirms that adequate and timely health care is a fundamental right of all Canadians. Turning to private companies to fix the problems caused by chronic under-funding is completely unacceptable. It's time for both the federal and the provincial governments to put their money where their mouths are, and re-invest in public health care – before private health corporations dismantle Canada's most valuable social program.

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