

Chaoulli decision resonates one year later

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One year after sparking consternation that a parallel, private health care system would rapidly emerge after the Supreme Court of Canada ruled that Quebec's ban on private health insurance for medically necessary services violated provincial human rights law, Montréal physician Dr. Jacques Chaoulli expresses surprise and disappointment that the landmark ruling (*Chaoulli and Zeliotis v. A.G. Quebec et al.*) hasn't been more transformative.

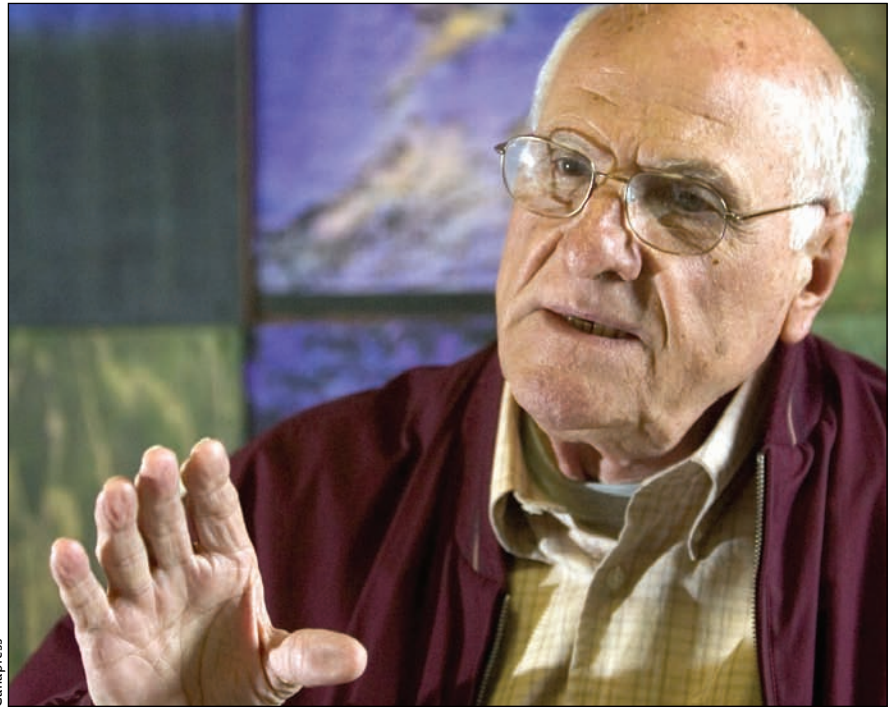
But he takes comfort in the increasing number of private clinics in Canada, arguing they are indicators of inexorable and inevitable change. "I can see, from the governments, not only Quebec, a tendency to let private health care grow, without much fuss about that, except in Ontario.... It seems to me that governments will tolerate an increase in private health care as long as it's not too obvious, in terms of private hospitals. The governments want to save their face."

Chaoulli forecasts a wave of innovative medical services, particularly the rapid growth of one-day surgery centres or clinics, run by public doctors, who will bill provincial medicare plans for their services, while charging patients accessory or user fees.

Chaoulli himself plans to ride the wave by launching a nation-wide medical consulting service that will advise corporate clients (and average Canadians who pay a membership fee) on available treatment options in public and private facilities in Canada and the United States and then help expedite their treatment.

It would also counsel clients on the pharmaceutical alternatives that exist when a medication has been prescribed by their family physician, identifying drugs that might be less costly and more effective than the one prescribed.

Fraser Institute Director of Health and Pharmaceutical Policy Research



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After waiting a year for a hip replacement, George Zeliotis and his physician's lawyer successfully argued that the ban on buying private insurance for health care contravened Canada's Charter of Rights and Freedoms and the Quebec Charter of Rights.

Brett Skinner argues that with each passing year, Canadians will see more such initiatives. "There's an evolutionary change that's underway that will be incremental, year over year — a slow expansion of private options, and the development of private insurance for those things."

The Canadian Independent Medical Clinics Association's executive vice-president says there's no way to accurately gauge the growth rate of the private health care industry since the Chaoulli decision because no organization, including his, tracks the number of private health care facilities. The best guess, says Zoltan Nagy, was made by *Maclean's* magazine in a recent survey that indicated there are now 23 private surgical centres offering medical services nationally, as well as 17 cataract clinics.

The real brunt of the privatization wave, Nagy argues, won't occur until provincial governments move to align their legislation with the Chaoulli deci-

sion and insurance companies step into the arena with new products.

Currently, the provinces use various measures to discourage or prohibit private insurance on the grounds it's necessary to preserve universality within the system so that access is based on need, not ability to pay. Six provinces (British Columbia, Alberta, Manitoba, Ontario, Nova Scotia and Quebec) outlaw private insurance for medicare services.

But once those policies change, insurance companies will step in quickly, Nagy says. "We know through the grapevine that there are insurance companies who are prepared to launch products." But, he added, insurance companies are extremely conservative. "They don't want to be seen as the ones that kick open the door and are on the vanguard of change. But once they see that the environment is secure and safe and politically okay, that's when we expect it from them."

Therein lies the most significant ef-

fect of the Chaoulli decision, says Dr. Antonia Maioni, director of the McGill Institute for the Study of Canada.

On the surface, the decision itself had little impact, other than the government of Quebec's proposed response to establish wait time guarantees for cataract, knee and hip surgeries, and allow elective surgeries for those 3 to be covered by private insurance and performed by a limited number of affiliated private clinics, Maioni says.

"However, there has been a big shift in the public debate around health care,"

"It's no longer taboo to talk about private financing."

Maioni adds. "What Chaoulli did was to open up the playing field to legitimize a wider range of alternatives for the direction of Canada's health care system."

Conference Board of Canada Director of Health Programs Glen Roberts concurs. "It's no longer taboo to talk about private financing."

Skinner argues the debate has already turned in favour of private financing. "The largest impact has been to change the consensus on whether or not the health care system is sustainable. It's changed the consensus on whether it's even just." As importantly, it's affected a shift in provincial government behaviour, Skinner adds. "While they maintain the rhetoric of the Canada Health Act, there's a reluctance to enforce it because they know that on legal grounds they would fail."

But others say that the debate and threat of privatization have served to rejuvenate the national will to save medicare, resulting in significant re-investment in the system, a raft of reforms to reduce wait times, as well as legislative initiatives like Ontario's Commitment to the Future of Medicare Act to protect public financing of the system.

The public system is poised to demonstrate there's no need for a major overhaul, argues Dr. Danielle Martin, chair of the newly formed Canadian Doctors for Medicare.

"We're at the thin edge of the wedge of re-investment into the system," says

Martin, a Toronto FP. Wait times are decreasing and people are getting faster access to diagnostics, she says. "In the space of only a year, [that] is pretty impressive."

Still, Martin concedes, the impetus for privatization isn't likely to disappear, whether it stems from patient need and patient demand, or "whether the impetus for privatization is somebody wants to make some money."

That makes it ever more incumbent that physicians "stand with our patients" to save and strengthen the sys-

tem, she adds. "The threat is never gone. This debate will never go away. In some ways, that's good because ... the medicare project that we've undertaken in this country ... [is] a costly one although not as costly as the alternatives and it requires a big social commitment and so we have to re-commit to it all the time. It's one of those things that we all have to wake up every morning and choose it again."

CMA President Dr. Ruth Collins-Nakai says she welcomes Martin's group and the input of Canadians. "It's wonderful to have different people becoming involved in the debate. It has to be a public debate." — Wayne Kondro, *CMAJ*

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Medical students oppose two-tier, petition CMA

More than 20% of Canadian medical students have signed a petition asking the CMA to support publicly funded and accessible medical services.

The petition was set up by the Student Medical Reform Group following CMA delegates' vote last August to support allowing private health insurance and private-sector health services. The reform group, which started 3 years

ago at the University of Toronto, is affiliated with the Medical Reform Group, a voluntary group of socially minded physicians concerned with the social, economic and political factors influencing health care.

As of late May, the petition (www.medicalreform.ca) had garnered 1107 signatures representing every Canadian medical school; there are 8177 medical students across Canada.

"It's pretty significant for a grassroots initiative," says Larissa Lontos, who is in the third year of the MD/PhD program at the University of Toronto.

The reform group hopes the petition will result in the CMA "publically stating they support a universally accessible health care system and that patients' ability to pay won't interfere with their access to care," says Lontos, co-chair of the reform group's Toronto chapter. "Paying out of pocket is counter to accessibility," she added. "We don't want to see our future colleagues going down that road."

The vote has also embodied an inherent conflict of interest since physicians stand to gain from the move, she pointed out. — Barbara Sibbald, *CMAJ*

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CMA proposes options for private-public split

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Canadians and physicians must decide the degree to which they would like to increase private health care financing and delivery in light of the unsustainability of the existing system.

The CMA unequivocally states in its June 7 discussion paper, *It's about Access! Informing the Debate on Public and Private Health Care* (www.cmaj.ca), that the status quo is not tenable and delineates 4 options Canadians may consider in reforming the system.

Delegates at the CMA Annual Meeting Aug. 21–23 will be asked to use the paper to reconsider the private-public