

Supreme Court strikes down Quebec ban on private health insurance

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In a decision that opens the door to more privatized health care, the Supreme Court has ruled 4-3 in favour of a Quebec patient and doctor who challenged the province's ban on private health insurance for medically necessary services.

The case revolved around Quebec doctor Jacques Chaoulli and his patient George Zeliotis. They argued that Zeliotis's year-long wait for a hip replacement in 1997 violated his right to life, liberty and security under the Canadian Charter of Rights and Freedoms and the Quebec charter. At issue was the Quebec law prohibiting physicians from providing private surgical or emergency services in publicly funded hospitals.

The court split over whether the law violated the Canadian human rights law, but 4 justices decided it did violate Quebec's charter.

The Supreme Court ruled that the Quebec law's prohibition on private medical insurance "impinges on the right to life, liberty and security of the person in an arbitrary fashion that fails to conform to the principles of fundamental justice."

Citing testimony by doctors

practising in Quebec, Chief Justice the Right Honourable Beverley McLachlin wrote that: "Inevitably, where patients have life-threatening conditions, some will die because of undue delay in awaiting surgery."

"The right to life and to personal inviolability is therefore affected by the waiting times," she stated.

The Canadian Medical Association submitted a brief to the Supreme Court on June 8, 2004 arguing that "a system which precludes alternative means to obtain medically necessary health care is unconstitutional where waiting times are excessive, based on clinical evidence."

Reacting to the judgement, CMA President Dr. Albert Schumacher called the ruling "historic."

"This represents a stinging indictment of the failure of governments to respond to the mountains of studies and years of research with real action [regarding wait times]," he said. "In essence, the court has agreed with our fundamental position that Canadians have the right to timely access to health services."

He called on the federal gov-

ernment to quickly sit down with provinces and interest groups to map out timely access to health care services.

Both Prime Minister Paul Martin and Justice Minister Irwin Cottler insisted that the ruling does not jeopardize medicare.

"On a first quick reading, the importance, the validity and the integrity of the public health care system has been reaffirmed," Cottler told reporters as he left Cabinet.

Martin insisted the ruling only applies in a provincial context.

"We're not going to have a 2-tier health care system in this country," he told reporters outside the Cabinet meeting. "Nobody wants that."

But lawyers quickly predicted a spate of lawsuits in other provinces aimed at similar legislation there — and the Canadian Taxpayers' Federation encouraged people to come forward to challenge similar laws.

"This is the end of medicare as we know it," said John Williamson, speaking for the federation. "This is a breach in government monopoly on health care in this country." — *Laura Eggertson, CMAJ*