

Supreme Court strikes 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 involved 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 of Human Rights and Freedoms.

At issue was whether the prohibition on private health insurance contained within Quebec's Health Insurance Act and Hospital Insurance Act were justifiable protections of the public health care system or whether they deprived individuals of a basic right.

The court split over whether the law violated Canadian Charter rights, but 4 justices decided June 9 that it did violate Quebec's Charter.

The Supreme Court ruled

that Quebec'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."

The judgment stated: "Inevitably, where patients have life-threatening conditions, some will die because of undue delay in awaiting surgery."

It further stated that "[t]he right to life and to personal inviolability is therefore affected by the waiting times."

CMA President Dr. Albert Schumacher called the ruling "historic."

"In essence, the court has agreed with our fundamental position that Canadians have the right to timely access to health services," said Schumacher.

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

Martin said the ruling applies only in a provincial context. "We're not going to have a 2-tier health care system in this country," he told reporters.



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Dr. Jacques Chaoulli celebrates the Supreme Court decision.

"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*

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