

# Virtual Mentor

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## Case in Health Law

### *Chaoulli v Quebec: Testing the Single-payer System*

*On June 9, 2005, the Supreme Court of Canada struck down a Quebec law that banned the use of private insurance for publicly insured health services covered under that province's universal health care system, Medicare [1]. The goal of the long-standing ban was to prevent those who could afford it from "jumping the line," and paying for faster service with private insurance rather than waiting their turn for Medicare treatment, as those with less money must do. The historic ruling threatens to alter the country's determined resistance to a 2-tiered system of payment for medical services.*

*The following comments, based on a discussion with Canadian Medical Association president, Albert J. Schumacher, MD, and a written statement from physicians Sylvia R. Cruess, MD, and Richard L. Cruess, MD, provide some background for the landmark Court decision and some thoughts on its implications for the country's universal health care system.*

In a joint statement to the press, the Canadian Medical Association (CMA) and the Canadian Orthopaedic Association expressed concurrence with the fundamental position of the Court's decision that Canadians have the right to timely access to health services [2]. Quoting from that statement, CMA president Albert J. Schumacher, MD, said that the Court's decision "represents a stinging indictment of the failure of the governments [federal and provincial] to respond to the mountains of studies and years of research" with any real improvements in the system [2]. Wait times have become so long as to amount to rationing, Schumacher said, adding that patients have died on the wait list.

The Canada Health Act, passed by Parliament in 1984, established universal and mandatory coverage for all citizens and forbade Canadian physicians to accept private funds for medically necessary services. The act listed 5 criteria for the national health care system:

1. Public administration – by a nonprofit public authority appointed by the government of the province;
2. Comprehensiveness – coverage of all services provided by hospitals, medical practitioners, or dentists and, where the law of the province permits, similar or additional services rendered by other health care practitioners;
3. Universality – plan services available to 100 percent of the insured persons of the province;

4. Portability – residency requirement or waiting period of no more than 3 months before residents of a province are eligible for services;
5. Accessibility – provision of services on a uniform basis that does not impede or preclude access through financial or other barriers.

Dr Schumacher said the Supreme Court decision could have the effect of adding “timely access” as a sixth criterion for the Canadian health plan [3].

The CMA and 6 national specialty associations established a Wait Time Alliance to work on timely access to care for Canadian citizens long before the Supreme Court ruling [4]. The goal of the Wait Time Alliance, which released an interim report on April 3, 2005 [5], is to determine evidence-based benchmarks for acceptable wait times in 5 areas of medical need—diagnostic imaging (CT scans, MRIs and nuclear medicine), hip and knee replacement surgery, radiation therapy, cataract surgery, and cardiac care. Procedures in these areas of medical need are classified into 3 levels of priority—emergency, urgent/semi-urgent, and routine—with medically appropriate wait times stipulated for each level of priority. The final report of the Wait Time Alliance is due out by the end of summer.

Despite claims by the media and some politicians that the Court’s ruling could signal the collapse of universal health care in Canada, Dr Schumacher doubts that it will open floodgates to a private insurance industry. At most, the decision cracks the door for those instances in which wait time is tantamount to rationing of a needed service. Dr Schumacher predicts that Canada may migrate, as some European countries have done, toward the existence of a small private health care market that represents a single-digit percentage of the much larger government system.

## References

1. *Chaoulli v Quebec* (Attorney General), 2005 SCC 35.
2. CMA/COA press conference [press release and conference]. Available at [www.cma.ca/index.cfm/ci\\_id/44609/la\\_id/1.htm](http://www.cma.ca/index.cfm/ci_id/44609/la_id/1.htm). Accessed June 20, 2005.
3. Personal Communication with *Virtual Mentor* editor: June 23, 2005.
4. The Wait Time Alliance comprises the CMA, the Canadian Association of Radiologists, the Canadian Association of Nuclear Medicine, the Canadian Association of Radiation Oncologists, the Canadian Cardiovascular Society, the Canadian Ophthalmological Society, and the Canadian Orthopaedic Association.
5. Eggertson L. Access to health care: Wait Time Alliance first to set benchmarks. *Can Med Assoc J.* 2005;172:1277.

*Albert J. Schumacher, MD, a family physician in Windsor, Ontario, is president of the Canadian Medical Association. Dr Schumacher is strongly committed to student leadership training programs that help develop medicine's professional leaders of tomorrow.*

## Commentary

Sylvia R. Cruess, MD, and Richard L. Cruess, MD

We have said—and written—that it is unsustainable morally and politically to forbid a private sector in the health care field if the population believes that the public sector will not care for them when they are sick. Every citizen deserves access to care when he or she needs it. Canada balanced its budget 10 years ago by making significant cuts in the health care system (and health education, including medical schools). This transformed a system that had once been performing well—number 1 in Organisation for Economic Cooperation and Development (OECD) ratings—to one with long waits, insufficient facilities, and less-than-modern equipment. We thus began rationing health care more than we had before, albeit in a reasonably equitable fashion, with crisis cases handled quickly and well, but long waits in emergency departments and for elective procedures. The planners and policy makers were reluctant to put more dollars into the acute care system, which was what the public clearly wanted. Until recently, reform efforts were concentrated on primary care and community and preventive care, which are laudable activities but only if the acute care system is able to treat citizens when they are sick. Moreover, in the 1990s the federal and provincial governments, acting together, cut positions in medical school and residency programs based on the assumption that doctors generate expenditures. Similar cuts were made in nursing. This was done on the basis of seriously flawed studies and led to a shortage of physicians, nurses, and other health care workers. The end result was an underfunded and understaffed health care system which did not meet the needs of its citizens who had nowhere else to go for care, since the Canada Health Act and most provincial laws essentially outlawed all private health care insurance and delivery.

The voters rebelled, and health care has become Canada's number 1 political issue. In response to voter pressure Canada is now expanding enrollments in medical and health professional schools, building new schools, adding residency positions, and relaxing immigration rules for foreign-trained doctors. Finally, all levels of government are attempting to refinance the health care system with large infusions of cash, but these measures will take 5-10 years to have a real effect. The Supreme Court decision comes against this backdrop.

It now appears that it is unconstitutional in 1 province (Quebec) to forbid the sale of private insurance to pay for any service that is covered by the publicly funded system. The prohibition has been found to contravene the province's own Charter of Rights, which guarantees the security of the individual. The Court, in a majority decision written by a judge from Quebec, stated that access to health care is necessary to preserve this individual security. Had adequate and timely care from the publicly funded system been available, the Court would presumably have supported the existing law. Health care is a right in Canada, and the Court has certainly supported this principle. It is somewhat ironic that Canada's universal single-payer system was established because health care is believed to be a right—which is not true in the United States—and that the Court is opening the door to an expanded private sector in order to preserve this right.

The future is difficult to predict, but there will certainly be changes. There is strong sentiment in Canada against the establishment of a market-dominated health care system like the one in the US. Equal access to care irrespective of the ability to pay is a

principal supported by most Canadians. The Supreme Court judgment is at present restricted to Quebec, but challenges will undoubtedly be filed in other provinces in the near future, raising the ruling's impact to the national level. There will undoubtedly be a vigorous debate on what changes Canadians want. It is probable that we cannot avoid an expanded private sector in which Canadians can purchase health insurance and receive some care in the private sector. However, it will probably be a private sector activity that is restricted in scope and heavily regulated. As an example, there are no private general hospitals in Canada, and governments can certainly determine what happens in the hospital sector that they control. They also must give permits for all health care-related construction. Finally, most provinces are very active in workforce planning and will continue to try to influence how many enter practice and what they do.

None of this would have occurred had the public system been funded adequately and the medical workforce maintained at adequate levels. Canada's Supreme Court has stated that timely access to competent care is a right and that the publicly funded system did not provide it. This will result in some form of a parallel private sector, but the most significant result may well be to force all levels of government to meet their obligations and to improve access to the public system. This is what many of us hope. The most difficult task will be to preserve the values of equity and social justice inherent in the present system as an enhanced role is given to the private sector.

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