

FOCUS REVIEW

The case for increased privatization of Canadian health care

Edwin Coffey

The charter-protected right of all Canadians to purchase private medical and hospital services and insurance for medically required services was implied in the 2005 landmark judgment of the Supreme Court of Canada (SCC) case involving *Chaoulli/Zeliotis vs Quebec and Canada*. This precedent-setting judgment is now part of Canadian case law and jurisprudence.

In this SCC case, two sections of Quebec's medicare legislation that banned the sale and purchase of private medical and hospital insurance and private medical services in hospitals for services covered by government medicare insurance were declared to be unjustified infringements of the plaintiffs' right to life, personal security, inviolability and freedom.

Coming in the midst of the longstanding public debate over the future roles of the public and private sectors in Canada's health system, the SCC judgment established the following:

1. Confirmed the legality of purchasing and providing private medical and hospital services and insurance;
2. Declared the invalidation of Quebec legislation that prohibits these private health services and insurance;
3. Reassured the opponents of private sector health services and insurance "that the prohibition [of private services] is not necessary to guarantee the integrity of the public medicare plan";
4. Refuted the claims of the Attorney Generals of Quebec and Canada and their expert witnesses, concerning the likely impact of lifting of the ban on private health services and insurance namely: (a) increased overall expenditures, as these would be mainly paid voluntarily by private patients and their insurers; (b) attraction of patients with less acute conditions to the private sector, leaving the sicker patients with the public sector, as the public sector

already looks after the sicker patients and would be relieved of many patients with less acute conditions; (c) physicians would tend to lengthen public wait lists in order to direct these patients to their private facilities, since if this should happen the government could establish a framework of practice for public physicians who wished to practice part-time in the private sector.

Canada's deteriorating health system is largely the result of ill-conceived federal and provincial health-financing policy and bad health legislation. During the past four decades, individuals and families have been prohibited from purchasing private alternative or duplicate medical and hospital insurance for services covered by the public insurance plan, even when public services are not available. Patients are not allowed to use their medicare insurance for private non-participating physicians. Physicians in the public system are generally not allowed to treat privately funded or insured patients.

In this context it is not surprising to see the emergence of a strong public desire for health-system reform in the financing, insuring and delivery of essential medical and hospital services. This thirst for reform should not be ignored. The question facing our political leaders is whether the solutions should come from the public or private sector or a mixture of both.

A 2007 international survey of seven countries by the Commonwealth Fund (New York) found that 72% of Canadians think their health care system needs either fundamental changes or complete rebuilding.

A 2006 Léger Poll for the Montreal Economic Institute shows that 48% of Canadians and 60% of Quebecers would find it acceptable if patients were allowed to pay for health care in the private sector while still maintaining the present free universal medicare plan.

Now that the Supreme Court of Canada has invalidated Quebec's legislation and has concluded that access to a private alternative health insurance would

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not endanger the integrity of the public system, it is incumbent upon Quebec and the other provinces with similar legislation to immediately rescind these legislated infringements of the charter rights of patients while retaining present medicare entitlements. This will reduce the associated pain, suffering, and sometimes death that continues to be inflicted on Canadians by this unjust legislation.

The Quebec government recently appointed a Working Group headed by Claude Castonguay, the former Minister of Health who was in office when the current medicare legislation was enacted. His group is examining the present health system and will give recommendations for the future role of the private sector in Quebec's health care system.

It is hoped that the concepts of personal freedom, free market competition, ready access, high quality patient-centred services and patient choice in all health care matters will be reflected in the recommendations of the Castonguay Group early in 2008.

These same concepts for health-system reform in Quebec and Canada form the basis of an earlier proposal, *Universal Private Choice: Medicare Plus*, co-authored by the writer and Dr. Jacques Chaoulli and published online by the Montreal Economic Institute: www.iedm.org/main/show_publications_en.php?publications_id=30/

In order to restore the lawful and necessary place of private alternative medical and hospital services and insurance alongside publicly funded medicare services, the following measures are suggested for implementation by the respective federal and provincial governments:

1. Retain the universal tax-supported medicare plans and entitlements in the provinces;
2. Reassure Canadians that the restoration of freedom, choice and competition with access to private health-care and health-insurance services will not jeopardize universal access to publicly funded health services;
3. Reaffirm the constitutional jurisdiction of the provinces over health services;
4. Repeal all freedom-infringing and monopolizing provisions in medicare legislation, similar to those invalidated by the 2005 Chaoulli/Zeliotis judgment of the Supreme Court of Canada;
5. Restore the freedom of voluntary non-profit or commercial associations to provide a full range of health insurance services including health savings accounts and health purchasing agencies;
6. Revise the criteria in the Canada Health Act regarding federal cash or tax transfers to the provinces and territories to enhance freedom, quality, access, choice and competition by financially rewarding provinces and territories that undertake the above revisions in their health legislation, rather than penalizing them;
7. Promote a socio-economic environment of individual freedom, personal choice and the opportunity for consumers and providers of medical and hospital services to exercise personal responsibility, innovation and experimentation in the financing, insuring, purchasing and provision of these services, including those covered by medicare.

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