

Canada's Supreme Court hears case aimed at overturning public health care system

François Legros
16 September 2004

Canada's Supreme Court will soon render judgment on a case that targets the country's public health insurance system, Medicare. Last June 8, a Quebec-based physician, Dr. Jacques Chaoulli, and his patient, Georges Zeliotis, went before the court to demand that it strike down two provincial laws that bar Quebecers from purchasing private health insurance to cover the cost of medically necessary treatments that are available through the public system and from paying for medical services at a public hospital. Should the court rule in favor of the plaintiffs and find the laws unconstitutional, the door will be open in Quebec, and by legal extrapolation across Canada, for the development of a multi-tier health care system in which the well-to-do have access to the best health care that money can buy, while the majority of the population are forced to rely on a shrunken, cash-starved public system.

Previously, the court had refused to hear like cases, accepting without comment lower-court rulings upholding the constitutionality of Medicare. That Canada's highest court has seen fit to hear the Chaoulli case is bound up with the intense ruling class debate over the future of Medicare, a national public health insurance system, which is funded by both the federal and provincial governments but administered by the provinces.

Since the beginning of the decade, Canada's corporate and political elite have touted health care "reform" as the number-one social policy issue facing the country. Corporate think tanks, newspaper editorialists and—increasingly—politicians have proclaimed the current Medicare system "unsustainable."

Amongst the elite, a consensus has emerged that the current public health system must be fundamentally transformed by transferring a major and increasing share of health care costs from government budgets to individuals and their families. There are important differences, however, over what mechanisms or combination of mechanisms to employ—user fees, insurance premiums, government-sponsored individual health care accounts, the de-listing of services, or encouragement of the parallel private provision of some services and treatments—and just how far to go in the direction of a US-style "free market" in health care.

Private health care and insurance companies are eager to profit from the dismantling of the public health care system. The Canadian Manufacturers Association, meanwhile, favors a "cost-efficient" public insurance system, since the current state-funded plan gives Canadian-based manufacturers a significant competitive cost advantage over their US rivals.

By far the biggest obstacle to big businesses' assault on Medicare is popular support for a state-funded, universal public health scheme and hostility to a US-style system. The US system has left more than 40 million people without access to proper health care because they have no insurance, and many tens of millions more are just a pink slip away from being in the same position.

Massive social spending cuts by both Ottawa and the provinces during the 1990s have caused a serious deterioration in the quality, especially the timeliness, of health care in Canada. Yet, hospital emergency-room overcrowding, long waiting lists for necessary and even life-saving medical treatments, and the frequent lack of advanced equipment have, at least until recently, not shaken public support for Medicare, as measured by the opinion polls.

Important sections of Canada's political and economic establishment are hoping that the Supreme Court with its decision on the Chaoulli case will provide a legal mechanism through which to trump the popular opposition to the dismantling of Medicare. Typical was a July 18 editorial written by André Pratte, the principal editorial writer for Montreal's *La Presse*. Titled "Shock Therapy," the editorial declared, "In an ideal world, the [federal and provincial] governments would have admitted the hypocrisy of their position and opened the door, where it would be useful, to private health care. Sadly—we saw during the recent federal election campaign—the politicians continue to support the myth of an efficient public health care monopoly. From all the evidence, an electric shock will be needed to force the politicians to face the reality of the situation. It is far better that this shock be administered by the Supreme Court, in a coherent and prudent fashion, than by the financial crisis that will inevitably arrive sooner or later."

Chaoulli and Zeliotis are seeking to have the court overturn two statutes whose effect is to limit the development of private, for-profit health care. Central to their legal argument is the lamentable state of public health care in contemporary Canada. They point to the fact that many patients cannot obtain treatment within a medically safe time period because of lengthy waiting lists, and that others must suffer great pain or loss of mobility while awaiting their operation. They then argue that Quebec's restrictions on obtaining private health insurance and paying for treatments at public hospitals are a violation of Article 7 of Canada's Charter of Rights and Freedoms, which guarantees the right to life, liberty and security of person.

Chaoulli has thrice before brought court cases aimed at promoting private health care. In the current case, which arises out of delays in providing Zeliotis with a hip replacement, the lower courts have found that, given the lengthy waiting lists, the prohibitions on having a private medical insurance plan or personally paying for a medically necessary treatment at a public hospital do constitute a violation of Article 7. But the courts refused to declare the prohibitions unconstitutional, for it found their infringement on individual rights “reasonable” given that they help sustain a universal public health insurance system.

The 150-page judgment the Quebec Superior Court issued in rejecting the case brought by Chaoulli and Zeliotis reveals that the judiciary is acutely conscious that a decision in favor of the plaintiffs would have a profound impact on class relations and spark political conflict. “The present debate over health care and its current problems of accessibility,” begins the judgment, “sometimes causes us to forget the not so distant past when sick people didn’t get cared for simply because they didn’t have the means.” The judgment then considers the historical origins of the public health system and the experience of privatization in other countries, notably Australia. It concludes that privatization through the promotion of private health insurance “outrageously” benefits the rich. Experience, the judgment adds, shows that, contrary to what the proponents of privatization claim, this purported solution further enfeebles the public health care system by draining resources and personnel to the private sector while leaving it to care for the persons who are the sickest and poorest—i.e., those unable to obtain private insurance.

“Experience has demonstrated that the right to have access to a parallel system of private health care would have repercussions on the rights of the entire population, threatening the integrity, the proper functioning, and the viability of the public system.... It isn’t up to the courts to find solutions to the problems of the health system. As to whether there needs to be a revision of the model on which the current system is based is a political question the court cannot answer.”

A further extract of the Superior Court’s ruling gives an idea of the social elements for whom Chaoulli and Zeliotis are speaking and their reactionary politics. The ruling summarizes Chaoulli’s argument as follows: “It is in reality for reasons of a moral character, the contention that the search for profit leads to abuse, that private hospitals are repressed. Dr. Chaoulli asserts that other than the Cr ditistes [supporters of the right-wing, populist Social Credit party], at the time [Medicare was established] all the parties and labor federations vigorously asserted that it was unacceptable that patients, having paid a non-participating [i.e., private] doctor, should have a greater access to health services. Marxist-Leninist theses have, according to him, led to the egalitarian ideology that we have today and the *Medical Insurance Law* was adopted in this context.... Said the legal counsel for his co-plaintiff George Zeliotis, ‘I plead for the right of richer people to have access to parallel health services.’ ”

Not surprisingly, among the interveners in the case who are supporting Chaoulli and Zeliotis are several private health companies, such as Cambie Surgeries Corp., Speciality MRI Clinics and the numbered company 411044 Canada Inc.

A group of 10 senators, led by Liberal Senator Michael Kirby, have also been given legal standing to intervene in the case. They do not go as far as Chaoulli and Zeliotis in advocating unrestricted access to private health care. Rather, they have asked the courts to allow people to use a parallel private system if the public system fails to provide them timely access. There is no question that important sections of business and the political establishment would welcome a ruling along these lines, believing it would provide an important lever to press over time for the dismantling of Medicare—especially since these same sections are pressuring governments to curtail public spending and lower taxes. Kirby is himself a director of Markham, Ontario-based Extendicare, which owns a chain of for-profit nursing homes.

Politically, it must be said, however, that the biggest support for the cynical legal arguments of Chaoulli-Zeliotis and for the big business campaign to undermine Medicare in general has come from the federal and provincial governments, which, whatever the stripe of the political party in power, have presided over the budget cuts and chronic underfunding of the public health care system that have caused growing numbers to be denied vitally needed care in a timely fashion.

Canada’s social-democratic party, the NDP, takes pride in associating itself with the founding of Medicare. But where it has formed provincial governments over the past decade, it has slashed health care budgets. Subservient to big business’s drive for profit and international competitiveness, the NDP counterposes the defence of the queue (that is, health-care rationing) to the right’s reactionary campaign for individual wealth to be the arbiter of who gets access to health care and how fast. Thus, former Saskatchewan NDP Premier Roy Romanow—in the major report he prepared for the federal Liberal government on health care in 2002 and in repeated public interventions since—has opposed calls for medical experts to determine what are safe and reasonable waiting-times for the most important operations and procedures and for the state to guarantee that sufficient resources are provided to ensure those needing such care receive it within the prescribed time limits.



To contact the WSW and the
Socialist Equality Party visit:

wsws.org/contact