

# Canada's Supreme Court sanctions drive to dismantle public health care

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Canada's Supreme Court has provided big business and the political right with the battering-ram they have long sought to dismantle the country's universal public health-care system, Medicare.

By a margin of 4 to 3, the country's highest court has struck down a Quebec law that prohibits private health insurers from providing coverage for medically necessary services available through the state-funded public health insurance system.

The plaintiffs, anti-Medicare activist Dr. Jacques Chaoulli and his patient, George Zeliotis, argued that the prohibition on private insurance violated Zeliotis's constitutional right to security of person because he was forced to endure a painful, nearly year-long wait before undergoing hip surgery.

Thursday's Supreme Court ruling overturned two lower court judgments. The lower courts had found that while Zeliotis's individual rights were curtailed, this was acceptable because the prohibition helped ensure a greater collective good—the viability of a public health care system that provides health care to all, not just those with the means to pay for private health care.

The Supreme Court majority justified their decision by pointing to the lengthy waiting lists that now exist in Quebec and most parts of Canada for necessary and even potentially life-saving medical procedures and to the failure of governments to address this problem, although it has persisted for years.

Chief Justice Beverley McLachlin and two other of the four judges who voted to strike down the Quebec law declared: “The evidence in this case shows that delays in the public health-care system are widespread, and that, in some serious cases, patients die as a result of waiting lists for public health care.”

Like hospital emergency ward overcrowding and the pandemic of super-bugs in Canadian hospitals, lengthy waiting-lists are the result of a decade and a half of federal and provincial budget cuts and chronic under-funding of health services. But the judges refrained from noting the obvious, but essential point: Those arguing most vociferously for a “right” to buy private health insurance are precisely those who pressed for governments to massively reduce spending on public and social services and to cut corporate and personal income taxes in the name of ensuring the “competitiveness”—i.e., the profitability—of Canadian business.

Ignoring the findings of a recent royal commission on health care in Canada conducted by Saskatchewan Premier Roy Romanow, the majority on the Supreme Court also proclaimed that there is no evidence the existence of a parallel private health-care system—in

which private insurers profit from providing those who can afford it expedited access to health care provided by a network of for-profit clinics and hospitals—will undermine the public health care system. To cite the ruling authored by Justices McLachlin and Major, “When we look to the evidence rather than to the assumptions, the connection between prohibiting private insurance and maintaining quality health care vanishes.”

As proof of this contention they pointed to Britain. In fact, waiting lists are as great, if not a greater problem, in Britain than in Canada. If only a relatively small percentage of Britons, less than 15 percent, choose to rely on private medical care, this isn't because the National Health Service hasn't been undermined by the diversion of money and resources into a parallel private health care system. It is because of the prohibitive cost of private health care.

Aware that they are on shaky ground in suggesting that the development of a private health-care system that caters to the richest and most powerful layers in society is in any way an answer to the waiting-list crisis, the Supreme Court majority said it wasn't up to the plaintiffs to demonstrate that private health insurance will solve Medicare's problems.

Thursday's decision has immediate legal force only in Quebec. This is for two reasons: although the other nine provinces have prohibitions on private health insurance akin to that in Quebec, the court case dealt only with Quebec law; secondly and more importantly, majority decision was based on the finding that the Quebec law violates Quebec's charter of rights.

Three of the four judges who voted to strike down the Quebec law also found that it violates Canada's Charter of Rights and Freedoms. But the fourth judge, Justice Dechamps, skirted this issue, choosing not to rule on whether the Quebec law conforms with the Canadian Charter.

Nevertheless, it is conceded by all that Thursday's Supreme Court ruling has set a legal precedent that will result in legal challenges to the other provinces' restrictions on private health insurance. Governments that favor the development of a parallel, for-profit health-care system are also expected to seize on the court ruling to rescind the current prohibition without waiting for the matter to come before the courts.

Alberta's Premier Ralph Klein said he was “very pleased with this decision. I fully support any change that will allow Canadians more choice in getting access to the health-care services they want.”

“This is the end of Medicare as we know it,” said John Williamson of the right-wing Canadian Taxpayers Federation. Saying perhaps more than he meant, Williamson called the Supreme Court ruling “one small step for patient care and one giant leap for health-care reform”—i.e., the expansion of private health care. “It’s going to open up litigation across the country in the other nine provinces as taxpayers there press for the same right, which is the right to seek and buy insurance to cover private health care.”

Quebec Premier Jean Charest said he will ask the court for a six-month to two-year delay in the implementation of its ruling. But Charest, who has himself repeatedly promoted greater private sector involvement in the management and provision of health-care services, stressed that in due course his government will conform with the court’s ruling.

For the better part of a decade, big business has been pressing for Medicare “reform”—a euphemism for measures to transfer a greater part of health-care costs from the state to individuals and their families, greater utilization of market mechanisms to restrain health-care costs, and greater participation of for-profit companies in the provision of health care, one of the fastest growing sectors of the economy.

Yet despite the ruinous impact of successive rounds of budget-cutting on health care—for years opinion polls have showed the state of the health-care system to be among the main concerns of ordinary Canadians—big business and the right have been unable to develop a popular constituency for the dismantling of Medicare.

Time and again, politicians and parties that have overtly identified themselves with the campaign to dismantle Medicare have been rebuffed by the electorate. Even the Conservative Party—the new right-wing party formed through the merger of the right-wing populist and neo-conservative Canadian Alliance and the Progressive Conservatives—posed in the last federal election as a defender of Medicare.

Canadians are well aware of the deplorable conditions that exist south of the border, where “free market” health care has left 45 million Americans without health-care insurance and tens of millions more struggling under the weight of mounting health-care premiums.

Through the mechanism of the unelected Supreme Court, the ruling class in Canada is now seeking to trump the popular opposition to its drive to dismantle Medicare.

The *National Post* has been in the forefront of a campaign decrying “activist judges” who reputedly have unduly extended the meaning of Canada’s Charter of Rights to limit police powers and extend antidiscrimination protection and rights to gays and lesbians. But in its lead editorial Friday, the *Post* had nothing but praise for the majority on the court, although their ruling constitutes a virtually unprecedented intrusion of the courts into the formulation of public policy. The *Post* especially commended the ruling of Justice Deschamps, who dismissed the three dissenting judges for fear-mongering and for framing the debate over the future of public health care “as pitting rich against poor.”

“Yesterday,” proclaimed the *Post* “was a historic day. Now that Canada’s health care taboo has been smashed by its most esteemed tribunal, it is only a matter of time before our leaders

accept the fact that Canada needs a mix of private and public health care systems.... What a poor reflection it is on our timid political class that it took an unelected judge to remove the wool from our eyes.”

Liberal Prime Minister Paul Martin and several provincial premiers have vowed that they will not allow the court ruling to undermine Medicare. “We are not going to have a two-tier health system in Canada,” declared Martin.

No one should give any credence to these pledges. It is the cuts implemented by governments of all the parties of Canada’s ruling elite, including the *indépendantiste* Parti Québécois, but especially the Chrétien-Martin Liberal government, that have undermined Medicare and opened the door for the Supreme Court and big business to exploit the system’s grave failings to promote health-care privatization.

As for the unions and the social-democratic New Democratic Party, they have strangled struggles against the dismantling of public services, most notably the 1997 Ontario teachers and 1999 Quebec nurses strikes. The unions and social democrats entirely accept the framework of the ruling class debate over health care, that is, that human needs must be subordinated to the profit imperative. Thus the Canadian Labour Congress (CLC) responded to the Supreme Court decision by reminding corporate Canada that Medicare provides it with an important labor-cost advantage over its US rivals.

Thursday’s ruling threatens Canada’s public health-care system with the death of a thousand cuts. Big business and the right will now seek to overthrow the remaining legal prohibitions on the development of a private health-care system, while setting up private clinics and hospitals that will siphon off the most profitable medical treatments and much of the best-qualified personnel. Over time, Medicare will be hollowed out, leaving a shrunken and dilapidated public health-care system for the vast majority of Canadians.

If this nightmare scenario is not to be realized the working class must intervene in the health-care debate as an independent political force fighting for the radical reorganization of economic life so as to place human need before individual profit.



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