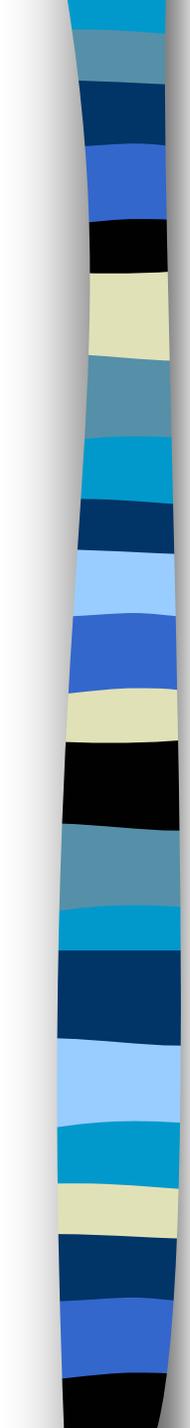


What's Law Got To Do With It?



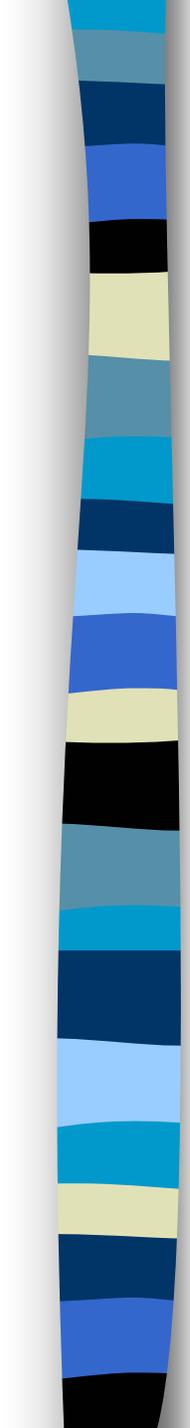
Legal Mechanisms and Accountability in Health Care

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Many pressures on system...

- maintain a universal, comprehensive system of publicly insured care
- allocate resources to other important programs and services (e.g. education, environmental protection)
- address concerns regarding sustainability and accountability

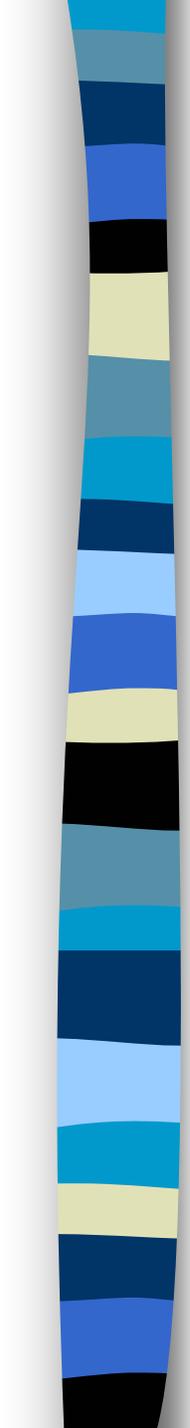


- growing interest – both on part of individuals and governments – in using legal mechanisms to define rights in regard to health care

- mechanisms:

- “see you in court”

- “there oughtta be a law”



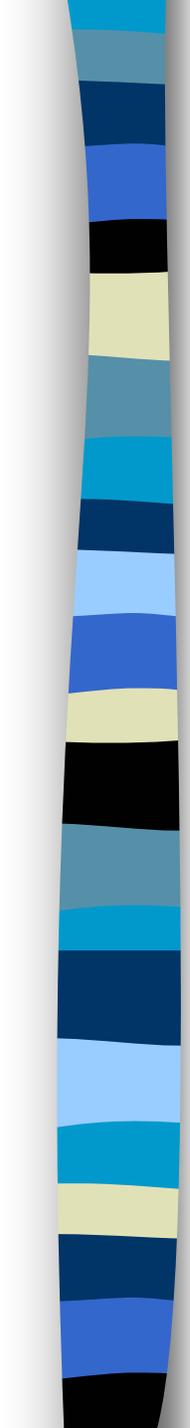
Timely Access to Care

- *Chaoulli v. Quebec*

- hip replacement
- Charter challenge – seeks parallel, private tier of health care

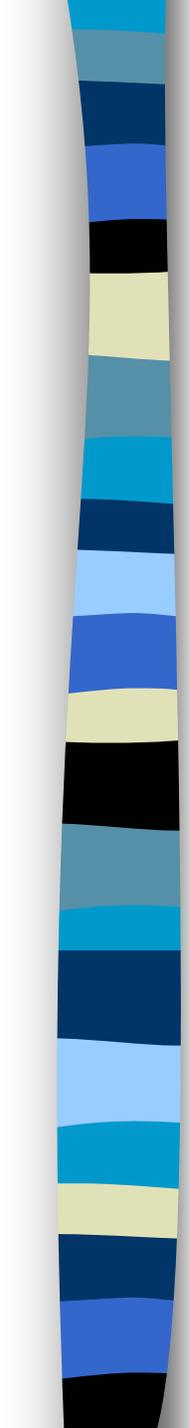
- *Cilinger v. Centre hospitalier de Chicoutimi*

- radiation therapy for breast cancer
- class action under Quebec *Health and Social Services Act*
- right to appropriate health care, but “within limits of human, material and financial resources”



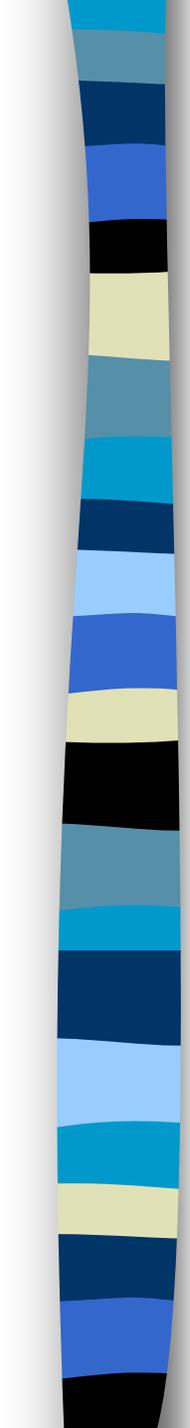
- *Nfld & Labrador v. Sparkes*

- autism therapy
- human rights challenge – discrimination against children with autism
- “Brandon Sparkes was treated differently from children with other illnesses, such as cancer, by being denied effective and timely treatment ... the Ministry failed to show it could not have allocated adequate resources to provide treatment to Brandon”



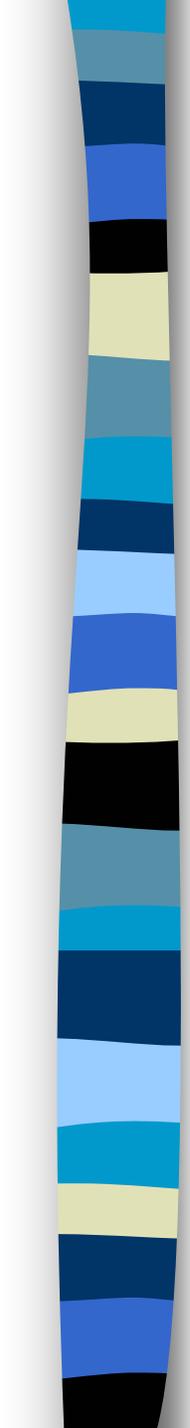
Public Funding for Services

- *Eldridge v. British Columbia*
 - sign language interpretation services
- *Cameron v. Nova Scotia*
 - fertility treatment
- *Auton v. British Columbia*
 - autism therapy
- *Webster v. Ontario*
 - genetic testing for breast cancer
- *Waters v. British Columbia*
 - phalloplasty surgery for female-to-male transsexual



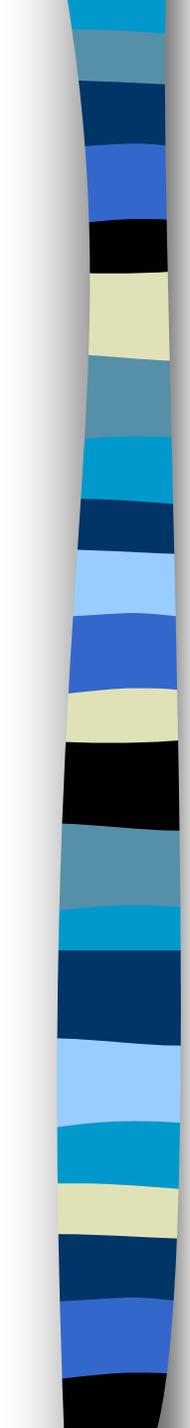
Beneficial Impact?

- justification in public forum
- evidence underlying policy decisions, especially cost factors
- “impressionistic evidence of increased expense will not suffice”

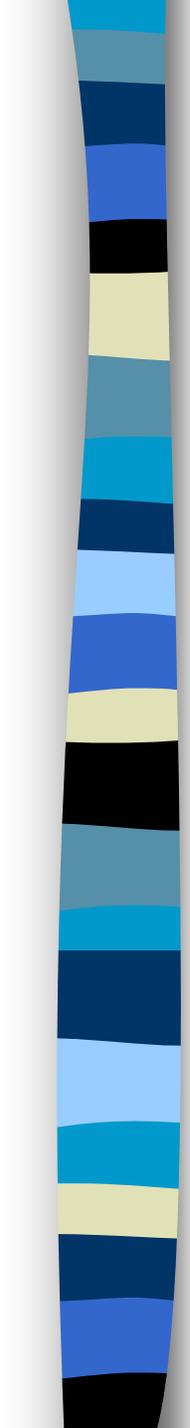


Detrimental Effects?

- “...the irrefragable statement that health care resources are limited ... the effect of funding treatment for autistic children would direct resources away from other children with special needs”

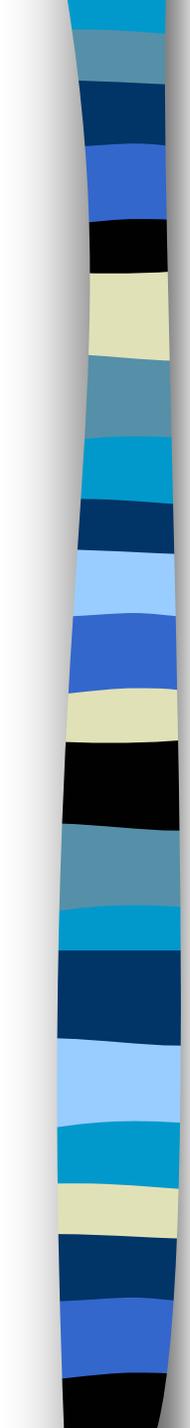


“will impel the necessarily complex administrative choices required to be made in the course of balancing the myriad and competing demands for health care, into the courts for decision on the allocation of scarce resources on a case by case basis, rather than on a comprehensive and systematic basis”



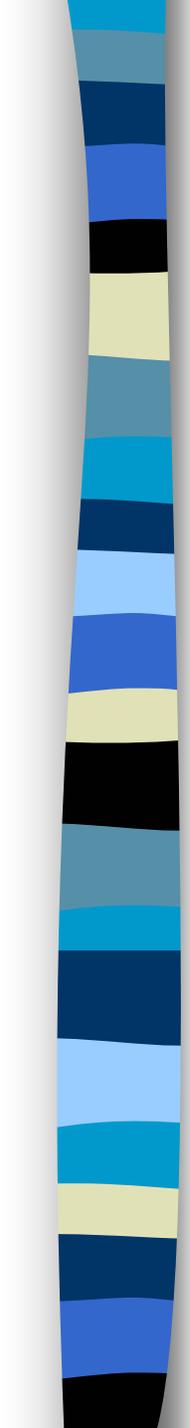
Other Impacts...

- requires courts to identify “winners” and “losers”
- “winner” gets resources redistributed in their favour
- may result in reduction of other benefits
- inevitable demand = inevitable challenges?



Legislative Mechanisms

- legislation that explicitly sets out rights (and responsibilities) in health care
- patient charters / bills of rights
- care guarantees



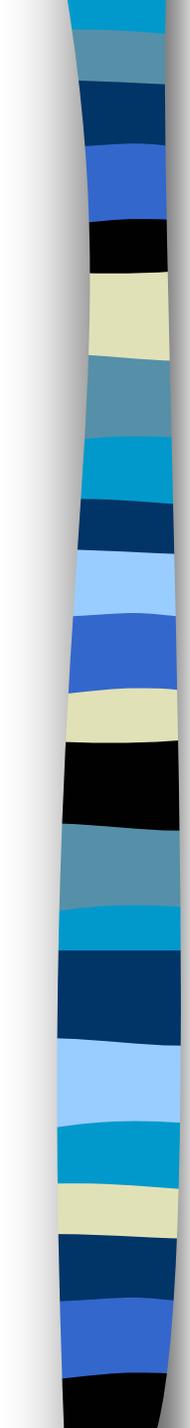
Examples

- New Brunswick: *Health Charter of Rights and Responsibilities Act*
 - affirm Canada Health Act principles
 - right to timely and safe access
- Quebec
 - *Health and Welfare Commissioner Act*
 - amendments to *Charter of Human Rights*:
“right of every person to benefit from programs and services that will allow that person to enjoy highest state of physical and mental health of which person is capable”



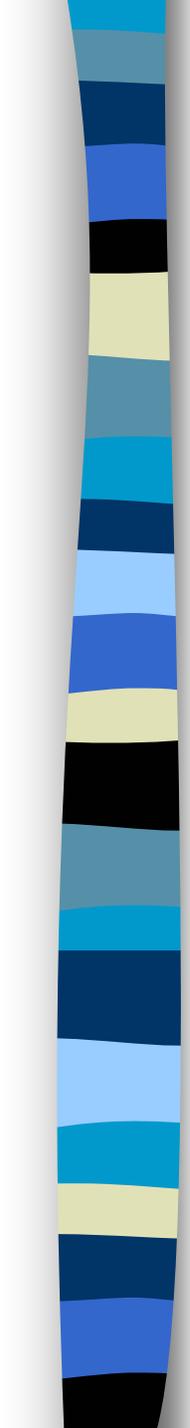
Care Guarantees

- international experiences
 - UK, Spain, Sweden, Italy, for example
 - Sweden: Maximum Waiting Time Guarantee
 - UK: Patient Charter
- criticisms
 - short-term impact
 - waits for other patients increased



Impacts of Legislative Plans?

- On the plus side:
 - symbolic value
 - establishment of monitoring and reporting bodies
- However:
 - effectiveness may be constrained
 - problem of enforceability
 - not sufficient in and of themselves – “part of a package of initiatives”



Conclusions

- legal challenges don't offer best approach to systematic reform
- focus on “rights” claim of individual litigant – competency of courts to deal with issues
- cost and hassle
- new laws may not offer enforceable standards
- even if they do, problem of drawing resources from other areas
- lack of consensus re: appropriate standards to enshrine into law

Watch the headlines...

Court tells B.C. to pay for therapy

G+m - Oct 17/02 AI

THE GLOBE AND MAIL
THURSDAY, FEBRUARY 26, 2004

Courting health-care trouble

BY ARMINE YALNIZYAN and
ROBERT McMURTRY

'Having created a universal medicare system, the government is prohibited from conferring those benefits in a discriminatory manner'

Court ready to enforce therapy ruling

12 • CANADA

THE GLOBE AND MAIL
WEDNESDAY, MARCH 10, 2004

Medicare costs called unsustainable