



# **DON'T PANIC:**

## **The Hitchhiker's Guide to Private Health Insurance**

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October 23, 2006

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H E A L T H N E T W O R K



# ME

## Currently:

- **Research Director, Canadian Policy Research Networks**
  - Independent policy research think-tank based in Ottawa
- **Associate Professor, Political Science, U of Regina**
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## Past Lives:

- **Romanow Commission on the Future of Health Care**
- **SIPP (UofR), Sask Health, Fyke Commission, Queen's**



# Outline

- Public Insurance & Private Insurance in Canadian Health Care
- Waiting for Care in Canada
- Chaoulli v. Quebec
- What the Supreme Court Said
- What the Decision Means
- Future Court Decisions...



# Some Background

- There has been a lot of media coverage & talk in government about a “private” health care system developing in Canada
- For some it will save Medicare, for others it will kill Medicare
- The debate is heavy on rhetoric & political posturing, light on facts & analysis
- Recent Court decisions have not helped...
- Public is anxious & unsure...



# Publicly Insured Health Care

- All services provided by doctors and in hospitals are paid for by provincial gov't insurance supported by our tax dollars
- Physicians bill provincial insurance agency for those services – Doctors are “private actors” paid by “public funds”
- Doctors CAN NOT bill both the public insurance system and the private insurance system for the same service...

**[Psst: That last bullet is important]**



# Privately Insured Health Care

- Services like prescription drugs, home care, long-term care, dental care, optometry, etc. can be covered by private insurance
- Some provinces make it illegal to sell insurance for services provided by the public insurance scheme – Saskatchewan does not
- For 30+ years the public & private schemes operated in relative peace
- About 30% of what we spend on health care is private spending (insurance & out of pocket)



# Waiting for Care in Canada

- Over the past 15 years, a number of factors have created longer wait lists for some kinds of services:
  - Spending cuts in 1990s, lack of investment in technology, cut-backs in med & nursing schools, etc.
- Result is longer waits for “elective” surgeries & diagnostics (MRIs)
- Public confidence in the health system is undermined & people begin to look for other options...



# Response to long wait lists

- For some, the solution lies in the creation of a private health care system accessible to those who can pay for faster, better service:
  - *"If I need a new hip, why can't I pay for it out of my pocket!?"*
- Supporters argue this would *"take the pressure off the public system & reduce wait times for everyone"*
- Critics argue it would take \$\$, resources and people from public system & do irreparable harm – need to fix the public system





# Chaoulli v. Quebec

- The first case to test the ban on private insurance for publicly provided services:
  - Mr. Zeliotis needed a new hip, but faced a very long wait in Quebec health care system
  - He wanted to pay Dr. Chaoulli to perform the surgery privately...but that was illegal in Quebec
  - Dr. Chaoulli went to court saying that the ban on private insurance violated both the *Quebec Charter of Rights* & the *Canadian Charter of Rights*
  - He loses in Quebec Courts, appeals to Supreme Court of Canada



# Two Questions for the Court

- 1) Does the ban on private insurance violate Dr. Chaoulli's rights under the Quebec Charter of Rights?
- 2) Does the ban on private insurance violate Dr. Chaoulli's rights under the Canadian Charter of Rights?
  - **NOTE:** If the answer to (1) is YES...then you don't need to answer (2) because the law is already invalid...
  - **PSST:** This is important, too...



# What the Supreme Court Said

- *"People are dying because of long waits"*
- The gov't of Quebec is not providing timely access to necessary services
- Therefore it is inappropriate to deny them access to a private system that might offer them faster service
- Therefore the ban on private insurance violates Dr. Chaolli's right to offer timely care to Mr. Zeliotis...



# The Reaction...

- Supporters claim *“death of medicare as we know it...”*
  - Much cheering and jubilation at Fraser Institute
- Critics claim *“death of medicare as we know it...”*
  - Much wailing and gnashing of teeth at Shirley Douglas’ house
- Both sides are wrong...DON’T PANIC



# The Devil is in the Details...

- The ruling was 4 to 3 in favour of Chaoulli in saying that the ban violated the QUEBEC Charter of Rights
- The Court was split 3 to 3 (with one abstention) on whether the ban violated the CANADIAN Charter of Rights
- If Quebec could fix the wait times problem then the ban would be reasonable
- [Why did one justice abstain? What about the two missing justices?]



# Taking a Closer Look

- The decision only applies to Quebec because **only** the Quebec Charter was violated
  - We will have to wait for another case in another province to find out whether the ban on private insurance violates the Canadian Charter of Rights
- The Court did not overturn the ban on doctors practicing in both the public and private systems at the same time – this is still illegal in Quebec (& nine other provinces)
- The Court has been criticized on the evidence
  - Are people dying while they wait?



# What if...

- What if the ban on private insurance applied across the country?
  - Already legal in 6 provinces, but no substantial market exists...it might in some urban centres
  - Where would you get your private surgery?
  - Would you pay for private insurance for something you already pay for through taxation? Only if its substantially better & that makes it expensive...
  - Would you buy medical insurance for conditions you might never get? Remember, you can't get insurance for a condition you already have...



# What if...

- What if the next case involves the ban on practicing in both the public and a private system?
  - This could be very problematic for the public system...would have to compete on wages, resources and working conditions with private system
  - BUT the public system could deny private sector surgeons access to public facilities & support...building a full-scale private surgical facility is expensive & that can drive up costs for patients & increases financial risk for doctors





# Conclusions

- The debate over private insurance and a parallel private system is often clouded by a lot of rhetoric and too few facts...
- The Supreme Court has not (for good or ill) killed Medicare...
- The problems of the health system are complex...and so are the answers
- BEWARE of Policy Analysts (or politicians) bearing simple solutions...





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