The Chaoulli Supreme Court of Canada Decision
June 9, 2005

The Background

Dr. Jacques Chaoulli and his patient George Zeliotis took the province of Quebec to court when the Quebec government said that the Quebec health insurance legislation did not permit Zeliotis to purchase health care privately, outside the public plan to avoid a long waiting list for surgery. The case was dismissed in Quebec Superior Court and was also dismissed in the Quebec Court of Appeal.

Chaoulli and Zeliotis then appealed to the Supreme Court of Canada. They alleged that the prohibition on private health insurance in Quebec legislation violated their rights under section 1 of the Quebec Charter of Human Rights and Freedoms, which says "Every human being has a right to life, and to personal security, inviolability and freedom," and under section 7 of the Canadian Charter of Rights and Freedoms, which says "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Chaoulli and Zeliotis argued that if they have the means to buy care instead of waiting, they should not be restricted from doing so.

The Supreme Court began to hear the case on June 8, 2004 and issued its decision on June 9, 2005. A long list of private clinics and 10 senators led by Senator Michael Kirby supported Chaoulli in the case. Kirby argued "that Quebec's ban on private insurance/purchase of insured health care services is unconstitutional." The Canadian Labour Congress and the Charter Committee on Poverty Issues were primary intervenors in the case seeking to have the appeal dismissed.

The Decision

Four of seven Supreme Court justices agreed with Chaoulli and Zeliotis that the Quebec Charter was violated. This majority ruled that the ban on the purchase of private insurance for health care services covered under the Quebec health insurance plan violated the Quebec Charter of Human Rights and Freedoms. Three justices strongly disagreed.

…/2

The majority decision was based largely on the issue of waiting lists and waiting times. The Supreme Court ruled that while the ban on private health insurance in Quebec is designed to protect the integrity of the public health system, it does not mean that patients must endure unnecessary delays that increase a patient's mortality or result in pain that impinges greatly upon a patient's quality of life. In effect, the Court ruled that individuals in Quebec could purchase private health insurance to cover services under the provincial health plan because the health system does not meet the needs of the patient. Further, the four justices rejected evidence that private health insurance would lead to an eventual demise of public health care.

The Court was divided 3-3 on the question of whether the Canadian Charter was violated, with one of seven justices voicing no opinion on that issue.

As it stands the decision is applicable only to the province of Quebec and the province is asking for a stay on the judgement in order to implement measures to address the legislative and health system issues.

What it Means

The Supreme Court has sent a very strong signal that provincial governments must move swiftly to strengthen their health care systems if they wish to avoid similar challenges. The issues of management of waiting lists and length of waiting times must be a priority in that process.

This decision does not mean that wholesale privatization of health care is now acceptable across the country. The decision applies only to the province of Quebec. However, in the near future, we may well see similar challenges to other provincial health insurance plans that ban private health insurance from covering provincially insured services.

Those who seek to push the privatization envelope by developing for-profit clinics, surgical facilities and private hospitals will be encouraged by the decision and will push the privatization envelop even further regardless of province or territory. Provincial governments must resist this pressure.

The federal government must strengthen its resolve to enforce the *Canada Health Act* and its principles of universality, accessibility, portability, public administration and comprehensiveness. Federal inaction on this enforcement has contributed in part to provincial permissiveness on privatization of health care.

…/3

Cuts to federal health care transfers to the provinces and territories dating back to the mid-1990s set the stage for the Supreme Court decision. Those cuts led to a massive restructuring and downsizing of provincial health care systems resulting in longer wait times and a decrease in the quality of care. While the federal, provincial and territorial governments reached a deal on health care funding in September 2004, the transfers have no strings attached. If the provinces do not use the money to strengthen their public health care systems, the Chaoulli decision will take on greater significance.

For years, the labour movement and our coalition allies have suggested strategies to strengthen publicly funded and delivered health care. These include:

- Implement pharmacare strategies such as bulk-buying of prescription drugs and an end to evergreening where drugs similar to old drugs are issued new patents, keeping them more costly.
- Expand home care and long term care to reduce avoidable pressures on emergency rooms and acute care beds.
- Develop waitlist management strategies.
- Increase the number of health care workers.
- Utilize operating rooms to full capacity rather than contracting-out surgery to private clinics
- Create day-surgery clinics within the public system.

The Chaoulli decision means that it is imperative, now more than ever before, that these strategies are pursued and public health care is strengthened.

rks/cope 491