



Health care on trial in Supreme Court

Two sides debate merits of medicare. Government argues private system would lure doctors, nurses away from public

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Medicare would suffer a brain drain if affluent Canadians were allowed to lure away doctors and nurses to a private, pay-as-you-go system, the Supreme Court of Canada was warned yesterday at an appeal described as "the health-care case of the decade."

"There would certainly be a brain drain toward the private system," argued Robert Monette, a lawyer for the Quebec government who cautioned permitting patients to pay for medically necessary services would "go against our Canadian identity and Canadian values."

Monette, backed by the Ontario and federal governments, advised the judges against meddling in the complicated political domain of establishing health policy.

On the other side of the packed courtroom, a 72-year-old Montrealer who waited almost a year for a hip replacement wants the Supreme Court to rule it violates the Charter of Rights to deny private hospital care when lengthy lineups plague the public system.

A lawyer for Montreal businessman George Zeliotis urged the judges to strike down laws that prevent patients from paying for private services and buying private health insurance.

"The issue at hand today can be boiled down to one question - can the state keep people from obtaining the medical services that they need?" Philippe Trudel asked.

Jacques Chaoulli, a Montreal doctor who teamed up with Zeliotis in the case, painted a picture of a Canada in which doctors who have left the country could return to work in private hospitals and clinics.

"People are suffering and dying on waiting lists in the public system," Chaoulli told the court.

Chaoulli and Zeliotis contend hospital waiting lists have become so long they violate the constitutional guarantee to life, liberty and security of the person.

The Supreme Court reserved its decision and a ruling is not expected for months.

Outside the court, Liberal Senator Michael Kirby described the appeal as "the health-care case of the decade if you look at the potential outcome."

Kirby and nine other senators intervened to argue governments could establish a Canadian Health Guarantee that would put a legal time limit on waiting lists - a prospect the raised a few eyebrows on the bench.

Despite the potentially significant ramifications, the court was short two judges because Justices Louise Arbour and Frank Iacobucci, who are resigning at the end of the month, bowed out of the case.

The remaining seven judges asked few questions through the five-hour hearing and only two provinces, Ontario and Quebec, showed up to defend Canada's public system, suggesting it is widely expected the court will preserve the status quo.

The two sides in the case came to court armed with competing studies on the merits and pitfalls of allowing a parallel private system to operate alongside a publicly funded one.

Some reports say allowing private systems eases pressure on waiting lists in the public system. Others conclude private care drains scarce resources from the public system.

Chaoulli and Zeliotis lost in the lower courts in Quebec, which ruled the collective rights to a universal, publicly funded system is more important than individual rights.

The case is one of two this week in which citizens seek to elevate health care to a Charter right, thereby eclipsing the power of politicians to dictate health policy.

On the flip side of the issue, a group of British Columbia parents will ask the court today to uphold a ruling that ordered the province to pay for early intervention therapy for 23 autistic children that costs up to \$60,000 annually per child.

The parents say their children are protected by the Charter's equality guarantees and the Canada Health Act principle of universality of the system.

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