



## The Chaoulli case: one-tier medicine goes on trial in Quebec

Susan Pinker

A white van with Emergency Medicine 24 Hours in red block letters on the side sits parked in Dr. Jacques Chaoulli's driveway. However, the 47-year-old family physician has been informed that it is illegal to use this mobile emergency room, which is equipped with an x-ray machine, darkroom, siren, portable electrocardiograph machine and intravenous equipment, and that it is also unlawful for him to accompany his patients into a hospital.

As it does for all physicians who have opted out of Quebec's medicare system, the Quebec Health Care Act prohibits Chaoulli from providing private medical services in hospitals. And the Quebec Hospital Insurance Act prevents his patients from buying insurance to cover their private medical costs. Chaoulli maintains that these strictures violate his and other Quebecers' personal and professional freedoms under the Quebec and Canadian charters of rights. This fall, he began contesting the validity of these laws before Quebec's Superior Court.

Chaoulli, who received his medical training in France, is incensed at what he considers a provincial monopoly over health care. He has teamed up with George Zeliotis, a retired businessman, to challenge Quebec's medicare laws. In a trial spanning 4 weeks and involving 20 witnesses, Chaoulli and Zeliotis demanded that 2 sections of the provincial health care and hospital insurance acts be struck down. These laws prohibit private insurance coverage for medical acts now covered by medicare, and they prevent doctors from providing private surgical or emergency services in publicly funded hospitals. Chaoulli says they also buttress state control of health care, which is antidemocratic. The controversial case, which has received heavy coverage in the Quebec media, has rallied medical experts on both sides of the public health debate and has effectively put Quebec's strained medicare system on trial.

George Zeliotis, Chaoulli's coplaintiff, says he's a casualty of the existing system. The 67-year-old retired businessman waited almost a year for hip-replacement surgery in 1997. While on the waiting list he was immobile and in great distress; he appealed to politicians, hospital administrators and the press for help. "The pain was intolerable," says Zeliotis, who would have paid for timely private surgery had such a move been allowed. "At night I couldn't sleep. The only thing to relieve my pain was the surgery. There was no choice. Day by day I was hoping the telephone would ring and someone would help me."



Chaoulli: "I have a duty to my patients."

Zeliotis, who made the comments during a break in the court proceedings, says his goal is to ensure that he is not trapped in this predicament again. "Any future surgery could be delayed again," he says. "I wouldn't be able to govern my life."

Zeliotis hired lawyer Philippe Trudel to plead his case, but Chaoulli is representing himself in the month-long trial before Judge Ginette Piché at the Palais de justice in Old Montreal. Chaoulli has called a list of high-profile witnesses that includes former Quebec Health Minister Claude Castonguay, who is considered the father of Quebec medicare, and Dr. Edwin Coffey, a past president of the Quebec Medical Association and a longstanding advocate of parallel private and public health care systems in Canada.

As Chaoulli's primary expert witness, Coffey described how Canada is one of the only industrialized nations not to offer citizens a choice between public and private health care. "In a parallel, noncompetitive health insurance system, everyone pays into the universal public system but also has the option of paying for private health insurance," says Coffey. He countered criticism offered by government lawyers that allowing private and public health insurance to coexist would create one system for the rich and another for the poor.

"It is not only the wealthy who buy insurance," Coffey countered during his 3 days of testimony. "Almost half the private insurance bought today is purchased by those earning \$30 000 or less."



He also insisted that an unofficial, two-tiered medical system already exists and that it allows those with education and “connections” to jump to the front of the queue. “Thanks to money, connections, influence, geographic location, level of intelligence and availability of highly trained physicians and up-to-date technology, [some] get served first or better.”

The court has also heard testimony from Barry Stein, a Montreal lawyer with metastatic colon cancer who sought medical treatment in New York after being put on a waiting list for surgery and chemotherapy in Montreal. Despite the urgency of Stein’s condition his surgery was postponed 3 times due to hospital overcrowding. Surgical insertion of an internal chemotherapy pump was recommended and deemed medically necessary, but was unavailable in Quebec.

In 1996 Stein asked the Régie de l’assurance-maladie du Québec, which is responsible for operating the province’s health insurance system, to reimburse him for his medical costs in the US. When he was refused, he petitioned Quebec’s Superior Court for a review; in August 1999 the régie was ordered to cover the medical costs incurred by Stein while outside Canada.

That judgement implies that the medicare system is obliged to reimburse those who cannot get timely and up-to-date medical treatment in Quebec and have to seek it elsewhere. A number of surgeons and specialists whom Chaoulli called to testify said that situation is becoming more common in the province’s overburdened hospitals.

Daniel Doyle, a cardiovascular surgeon from Laval University in Quebec City, described how patients die while on waiting lists for bypass surgery — the average wait for an appointment with a surgeon and an operating date ranges from 6 to 8 months. And ophthalmologists testified that many patients go blind while waiting up to 18 months for cataract surgery, while others on the waiting list suffered falls and lost their driving licences in the interim.

André Lespérance, the federal government’s lawyer, objected to the relevance of some of this dramatic testimony, questioning how closely it related to the issue of allowing privately financed health care within a public system. Together with Robert Monette, the lawyer representing the Quebec government, Lespérance called on a series of public health and health policy experts to address whether the

coexistence of private and publicly insured patients would erode the medicare system. Most of the government witnesses, despite their consensus that the health care system needs change, said privatization is not the answer. Dr. Charles Wright, a Vancouver general surgeon who directs the centre for clinical epidemiology at the Vancouver Hospital, raised the spectre that doctors would make publicly funded patients wait longer while they treat those who can pay. He said this situation already exists in the United

Kingdom. And Dr. Fernand Turcotte, a doctor and public health expert from Laval University, described the reintroduction of a profit factor into health care as “obscene.”

The phalanx of lawyers, experts, analysts and assistants riffling through mountains of documentation on the government side of the bench dwarfed the plaintiffs’ team, which consisted pri-

marily of Chaoulli, Coffey, Zeliotis and his lawyer.

Judge Piché kept track of the proceedings on a laptop computer as lawyers and witnesses volleyed rebuttals back and forth in French and English. The volume and scope of the testimony overran the 3 weeks scheduled for the case, and final pleas had to be postponed until early December.

Although there won’t be a judgement for several months after that, there have already been some political aftershocks. Youth delegates attending the annual meeting of the Quebec Liberal Party, which coincided with the final week of the Chaoulli hearing, put forward a motion that would allow hospitals to be kept open on evenings and weekends for paying patients, thereby shortening the waiting period for patients awaiting surgery covered by medicare. The idea was hotly debated by delegates and adopted with a firm majority.

Chaoulli, meanwhile, has spent the better part of 2 years preparing his case, with little time left over to do emergency medical house calls in his customized van — or any other clinical work, for that matter.

He is emphatic that he can provide the best care for his patients within the context of private medicine, and he is prepared to defend his principles. “I have a duty to provide a good service to my patients. No one should interfere. No one should block me when I want to help my patients and alleviate their pain.”

Susan Pinker is a Montreal journalist.

---

## The controversial case has rallied medical experts on both sides of the public health debate and has effectively put Quebec’s strained medicare system on trial.

---