



www.cdhowe.org

C.D. Howe Institute
Institut C.D. Howe

COMMUNIQUE

For Release at 10:00 a.m. EDT Wednesday, Nov. 29, 2006

Provincial Action on Wait-Time Guarantees, Patient Accountability, Key to Future of Healthcare: C.D. Howe Institute Study

Toronto, Nov. 29 — Provincial governments bear the legal and political onus for establishing patient wait-time guarantees, as patient accountability emerges as a key principle of healthcare, according to a C.D. Howe Institute study. In the paper, Patrick Monahan, Dean of Osgoode Hall Law School, assesses the far-reaching impacts of the Supreme Court of Canada decision in *Chaoulli v Quebec* 2005, which ruled that where the publicly funded system does not provide timely care, forbidding the individual purchase of care is unconstitutional. He argues that the decision's impact is only beginning to play out across Canada. Major change in the Canadian healthcare system is inevitable, he says.

In his study, "*Chaoulli v Quebec* and the Future of Canadian Healthcare: Patient Accountability as the 'Sixth Principle' of the Canada Health Act," Monahan characterizes the ruling as a "watershed" for the entire Canadian healthcare system, although it applies, on its face, only in Quebec. "The Supreme Court has determined that excessive rationing of the supply of healthcare services cannot be justified legally or morally," he says.

Since the ruling, Monahan notes, the federal government has fully embraced the decision and made a care guarantee one of its priorities. If the provinces fail to quickly provide legally enforceable guarantees of timely access to healthcare, he says, they will be vulnerable to constitutional challenges to their monopoly on healthcare insurance and services. Two such cases, in Alberta and Ontario, are already underway that will test whether the constitutional principles identified in *Chaoulli* apply outside Quebec. "I expect that courts that are asked to consider such challenges will confirm that *Chaoulli* does apply across the country and that, therefore, Canadians cannot be denied access to timely care within the context of a universal, single-payer system."

Monahan assesses the future of Canadian healthcare, post-*Chaoulli* in the annual Benefactors Lecture for the Institute. “Far from heralding the destruction of Canada’s publicly funded healthcare system, I believe that *Chaoulli* may provide the key to its reform and long-term sustainability,” he says. “At bottom, what *Chaoulli* does is to introduce a new sixth principle, beyond the five already enshrined in the *Canada Health Act* — that being patient accountability.”

The *Chaoulli* case was launched by Dr. Jacques Chaoulli, a doctor who wanted to offer private health services and George Zeliotis, a Quebec patient who had been on a waiting list for hip surgery. The Court’s 4-to-3 ruling in June 2005 struck down the impugned provisions in Quebec law on the basis of the Quebec Charter of Human Rights and Freedoms. As Monahan points out, three members of the majority ruled that the Quebec legislation also violated the Canadian Charter of Rights and Freedoms, with a fourth declining to rule on the issue.

Post-*Chaoulli*, a new paradigm is in place, Monahan argues. Governments and, increasingly, the health policy community now understand that unless they establish enforceable limits on waiting times for medically necessary care, they will be required to provide individuals with the opportunity to pay privately for their healthcare services. Far from destroying medicare, this reality will prompt a serious and meaningful patient-centred debate over the future shape of medicare.

How will this shape evolve? Monahan argues that two viable reform options present themselves: an improved, sustainable version of the single-payer, universal system that now exists, with performance benchmarks and improved timely access to services across the system; or, introduction of a privately funded option that would be available to patients who exceed maximum acceptable wait-time benchmarks within the publicly funded system. “The choice between these options will ultimately be made by governments and legislatures, rather than the courts,” he concludes.

The Benefactors Lecture 2006, sponsored by IPSCO Inc., is available at www.cdhowe.org.

The C.D. Howe Institute is Canada’s leading independent, nonpartisan, nonprofit economic policy research institution. Its individual and corporate members are drawn from business, universities and the professions.

For further information on this study contact:

Patrick Monahan,
Dean,
Osgoode Hall Law School

Finn Poschmann,
Director of Research,
C.D. Howe Institute,
416-865-1904
cdhowe@cdhowe.org

Chaoulli v. Quebec and the Future of Canadian Healthcare: Patient Accountability as the “Sixth Principle” of the Canada Health Act by Patrick J. Monahan, is the 15th Annual C.D. Howe Institute Benefactors Lecture, (November 2006). 30 pp; free of charge (plus postage & handling and GST — please contact the Institute for details). ISBN 0-88806-698-8
