

## The Top Five - 2005

Each year Justice Stephen Goudge of the Ontario Court of Appeal identifies five cases that are of significance in the educational setting. This summary, based on his comments and observations, is appropriate for discussion and debate in the classroom setting.



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### ***Chaoulli v. Quebec (Attorney General), 2005 (S.C.C.)***

[http://www.lexum.umontreal.ca/csc-cc/en/pub/2005/vol1/html/2005scr1\\_0791.html](http://www.lexum.umontreal.ca/csc-cc/en/pub/2005/vol1/html/2005scr1_0791.html)

An individual's Charter right to have private insurance pay for private health services which are already provided in the public system

Chaoulli, a physician, and his patient Zeliotis, brought forth a Charter challenge contesting the validity of prohibitions in the Quebec *Hospital Insurance Act*, and the *Health Insurance Act*. The prohibitions in these two statutes prevented Quebec residents from getting private insurance to pay for private sector health care services when these services are already available under Quebec's public health care plan. A part of their argument was that long wait times in the public system, and the inability to get private insurance and private services, was an infringement of an individual's s. 7 rights (life, liberty and security of the person) under the Canadian *Charter of Rights and Freedoms* and an individual's s.1 rights (life, personal security, inviolability and freedom) under the *Quebec Charter*.

The Quebec Superior Court and the Quebec Court of Appeal found against Chaoulli and Zeliotis. Both levels of court found that while the *Hospital Insurance Act* and the *Health Insurance Act* violated s.7 Charter rights, this violation was in accordance with the principles of fundamental justice. Chaoulli and Zeliotis appealed.

The Supreme Court of Canada allowed the appeal in a 4-3 split decision. Three judges, including the Chief Justice, found that in circumstances where a lack of timely health care can result in death, the s.7 right to protection of life exists. In circumstances where a lack of timely health care can result in serious psychological and physical suffering, the s.7 right to protection of security of the person exists. Where a law negatively affects an individual's life, liberty or security of the person, it must conform to the principles of fundamental justice. The judges in this case concluded that the statutes jeopardized s.7 rights in an arbitrary manner. This means that they found that there was no real connection on the facts or evidence presented to the courts that demonstrated that prohibitions on private insurance are actually connected to maintaining quality health care or that allowing private insurance will necessarily lead to the fall of public health care. The prohibition was therefore found not to be in accordance with the principles of fundamental justice.

Next they considered whether the breach of s. 7 could be justified under s. 1 of the *Charter of Rights and Freedoms* as a reasonable limit demonstrably justified in a free

and democratic society. The court found that there was no rational connection between the government's objectives and the prohibitions in the two statutes. They again recognized that the government had an undeniable interest in protecting the public health regime, and that it may have been intending to try and do this through the prohibition on private insurance, however the evidence did not show that a prohibition on private health insurance actually protected the public health care system. They also found that the prohibition went further than necessary to protect the public system and was not minimally impairing. The prohibition against contracting for private health insurance was therefore not shown to be justified as a reasonable limit under s. 1 of the *Charter of Rights and Freedoms*.

Justice Deschamps agreed with the decision and also addressed the *Quebec Charter* issue. She found that patients on waiting lists were in pain and could not fully enjoy any real quality of life. She agreed that their rights to life and to "personal inviolability" under s.1 of the *Quebec Charter* were infringed by these two statutes and that this could not be justified under s. 9.1 of the *Quebec Charter*. S. 9.1 of the *Quebec Charter* is a provision corresponding to s. 1 of the *Canadian Charter*. Using *Canadian Charter* analysis, she found that there was a rational connection between the government's objective of preserving the integrity of an accessible public health insurance scheme for all Quebecers and the prohibition on private insurance, but that the complete prohibition on private insurance went further than was necessary and was not a measure that minimally impaired the protected rights. She found that there was evidence that a range of less dramatic measures could have been applied instead of an outright private insurance prohibition.