

# Top court strikes down Quebec private health-care ban

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[CBC News](#)

The Supreme Court of Canada ruled Thursday that the Quebec government cannot prevent people from paying for private insurance for health-care procedures covered under medicare.

In a 4-3 decision, the panel of seven justices said banning private insurance for a list of services ranging from MRI tests to cataract surgery was unconstitutional under the Quebec Charter of Rights, given that the public system has failed to guarantee patients access to those services in a timely way.

As a result of delays in receiving tests and surgeries, patients have suffered and even died in some cases, justices Beverley McLachlin, Jack Major, Michel Bastarache and Marie Deschamps found for the majority.

The Quebec government reacted by saying it would apply immediately for a stay of between six months and two years before the decision takes effect, given the chaos it could cause in the delivery of medical services in Quebec.

Intergovernmental Affairs Minister Benoit Pelletier said the province would consider using the notwithstanding clause in Quebec's constitution as an alternative to abiding by the court's decision.

The plaintiffs in the case – a Montreal patient and a doctor wanting to set up a private clinic – asked Canada's top court to strike down sections of the Quebec Hospital Insurance Act that prevent people from buying health insurance for medical procedures covered by the public health plan.

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Four of the seven justices ruled Thursday that the provincial policy violates the Quebec charter. But they split 3-3 on whether it violated the Canadian Charter of Rights and Freedoms, meaning there is no immediate impact on the Canadian health-care system as a whole.

One justice gave no opinion on whether the laws violate the charter.



George Zeliotis waited a year for hip replacement surgery.

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### **Waited year for hip replacement**

The two plaintiffs in the case had separate complaints, but the court decided to hear their court challenges together.

In 1996, Montreal businessman George Zeliotis waited a year for hip replacement surgery. While waiting, he asked whether he could purchase insurance that would allow him to skip the public queue and pay directly for the surgery.

When he learned it was against the law, he took his case to court.

Canadians can buy private health insurance for things outside of public medicare such as prescriptions, physiotherapy or private hospital rooms.

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The 73-year-old Zeliotis argued the year-long wait for surgery was unreasonable, endangered his life and infringed on the charter's guarantee of right to life, liberty and security.

The second plaintiff, Dr. Jacques Chaoulli, wanted the court to overturn a Quebec provision preventing doctors who don't operate within the medicare plan from charging for services in public hospitals.

Chaoulli, who had tried but failed to set up a private hospital, represented himself before the court.

On Thursday, Chaoulli said the ruling can only improve the quality of the country's health care system by taking some of the burden off cash-strapped provincial governments.

"The government cannot continue to raise taxes to pay for health care," Chaoulli said. "Too many Canadians are suffering."

Senator Michael Kirby, who chaired a Senate committee studying health care, recommended the provinces pay for private treatment if the patient isn't treated within a certain timeframe.

Lawyers for the federal government argued the court should not interfere with the health-care system, considered "one of Canada's finest achievements and a powerful symbol of the national identity."