WITH Dr. Jacques Chaoulli, General Practitioner

Dr. Jacques Chaoulli is a general practitioner from Montreal who successfully challenged Canada's Public Medicare Monopoly before the Supreme Court of Canada in 2005. He was born in France in 1952. After obtaining his medical doctorate from Université de Paris VII, he immigrated to Quebec in 1978 and undertook research in medical education at Laval University's faculty of medicine. He received a master's degree in education from Laval University in 1982. He has practiced medicine in Quebec since 1986. As a first-hand observer of the difficulties of access to health services, he began, in 1996, to make a particular examination of these problems, notably by analyzing the health systems of countries comparable to Canada. Since 1997, he has studied the legal frameworks governing health-care systems in Quebec and Canada. He was interviewed prior to his Lunch on the Frontier on December 6, 2007 in Winnipeg.

Frontier Centre: Why do you think there hasn't yet been a Chaoulli in a different province besides Quebec?

Jacques Chaoulli: This is a very good question. First of all, you have to find a lawyer. You have to find financing, and eventually you have to find a plaintiff. The plaintiff part is not the big issue. The most important thing was to find the lawyer and the financing.

FC: You financed part of this yourself, right?

JC: I did finance it all myself, and I did plea and make the legal arguments and I did it without a lawyer.

FC: From some of the background reading I've done, you don't have a law degree, right?

JC: That is right. I have studied law, extensively. It's quite ironic that the case in the Supreme Court accepted my legal argument against the teaching of those legal scholars.

FC: So, you might shake up two professions in Canada, not just one!

JC: Well, I am underground, so I did practice law in the court, and if I don't have an LLB degree I suggest that the Chaoulli judgment could be viewed as better a diploma than the LLB.

FC: It took more work to get that than to get a law degree. Do you think that's part of why you were willing to go ahead with this, because you were handling both the medical and the legal aspects?

JC: Well, the reason I did that was because as a doctor I saw people suffering. I felt I needed to do something about that. The only thing to do was to go to court. I had to study law. First of all, because I didn't have money to pay a lawyer and second, even if I were able to pay a lawyer, a lawyer would not agree with my legal argument, particularly on the freedom of contract - Section 7 of the Canadian Charter because it was against the teaching in the law schools in this country. So, I had no choice; I *had* to do it myself.

FC: Are there cases in other provinces that you think might lead to a similar result?

JC: Yes. You probably know that John Carpay and the Canadian Constitution Foundation, located in Calgary, are helping in one case in Alberta and one case in Ontario.

FC: What province do you think is closest to developing a private stream for medically necessary health care?

JC: Quebec. No doubt, Quebec. As I will say in my speech, I believe that a private business initiative in Quebec would be key to spreading the word across the country and in showing the way.

FC: That would be an example of federalism as it's supposed to work by experimenting with this in one province.

JC: Exactly.

FC: Do you have any thoughts on Dr. Day? Well before he became the head of the CMA, he had a career that was very sympathetic to the notion of private health care. However, since his appointment, he's seemed almost reticent to talk about it, and perhaps the cause might have been better served by someone who wasn't so highly associated with for-profit care, as it's always called.

JC: Well I'm not sure about that because my understanding is that Brian Day, since he was appointed president of the CMA, has spoken in favour of a private system and the mix of private-public system.

FC: I have read statements by him where he has said that he wants to support Medicare, and he wants to improve Medicare, which strikes me as a very diplomatic way of putting it if what we're talking about is fundamental change.

JC: That is fine in the sense that private health care, in my view and in the view of Brian Day as well, would help Medicare. We are not in the process of dismantling Medicare; we are in the process of letting a private sector emerge in order to respect the judgment and to help reduce the waiting time in Medicare for those who don't have the money to pay. So in that sense, I feel comfortable with the statements made by Brian Day.

FC: So the goal is to strengthen Medicare while breaking down the monopoly.

JC: Yes, absolutely. By the way, the only way to protect Medicare is to break the monopoly. In all other countries,

that's what you have. You have a mixed public and private system for medically required service for the financing.

FC: All European countries have private and public health, care and they all have slightly different approaches to balancing the two. Which country do you think is the best or which one do you think is not very good in terms of the approach they've taken?

JC: The best of all those systems would be the Swiss model. In Switzerland, it is based on private insurance. Everybody has to buy private insurance, and for those who don't have the money, the federal government foots the bill pays their private insurance premium. Everybody has access to high quality health care in a timely fashion. On top of that, what is extremely important in the Swiss model is that should people want a higher level of service or more service, the private insurance company turns to the federal government and asks for authorization to raise the premium because of the higher demand and that's it. In other words, the Swiss are given a service they are willing to pay for. That is the way it should be because money does not grow on trees, as we say. This is a perfect example of a system where the boss is the people. This is the way it should be.

FC: Do people have the ability to choose between different sorts of insurance plans in Switzerland? Can they choose higher deductibles?

JC: If you push me a little bit further, I would suggest that there's not enough competition in Switzerland between private insurance companies. This is because of the federal government's intervention in that field. This is the downside. Overall, I would suggest that Switzerland is, according to my knowledge, the best among the European systems. The federal government doesn't have any incentive to reduce the number of doctors to prevent private hospitals from emerging because the main payer is not the federal government, the main payer is the people through private insurance companies, and that is the way it should be. Again, down the road we might consider a system where private insurance companies would not play such a big role and where people could have a system of self-insurance or have recourse to a practitioners' company for catastrophic disease as in the Netherlands. You could design a variety of models in order to balance the needs of the market and the needs of the consumers.

FC: If you could change any single policy aspect of the Canadian health care, if you could make any one change, what would it be?

JC: The first thing to do is to acknowledge the freedom of contract between the patient and the doctor for medically required service. This is the first and most important thing to restore in Canada.

FC: From the perspective of political philosophy, it seems a bit absurd that the government has put itself in the business of telling doctors whom they can and cannot treat and whether or not people can or cannot purchase services.

JC: We have to understand the historical roots. Historically, the government started to intervene a long time ago because the workers were suffering because they didn't have access to health care. It was to protect those who were not able to pay. Today, the government is doing it as a job. Today, the government is preventing those who are suffering from using their own money to get care, and it ends up in an infringement to the right to life, security and liberty of a person. This is another story here. It is a story where a government is, practically speaking, killing patients at random. This was on the front page of the *National Post* the day of my judgment that the Supreme Court's meaning is that government may not kill people.

FC: Many people argue that health care shouldn't be treated like a business but, related to what you were just saying, wouldn't Canadians be better off if they were treated like customers? In almost every other arena, customers are treated with more respect and given more freedom than patients are given in Canada today.

JC: We have to come back to the fundamental definition of what is a business. In French, business is "commerce" and in the old French language, it used to mean "exchange." So if I were comfortable in speaking with you, I would say we have good business together. In the sense, we make good exchange, we make good company. That is the historical root of business, exchange. And it is an exchange, an exchange between the patient and the doctor. It should be business. It is a business of professional service against remuneration. A doctor gets paid for treating patients – that is the definition of a business, and it is a business. As long as the doctor gets paid, it is a business, never mind that he is paid by the government or a private source.

FC: Has anything concrete changed in Canada since the Supreme Court decision?

JC: Yes, in Quebec, the government is becoming more open to private financing. Elsewhere in Canada, in B.C., I heard that, like Brian Day, for example, is feeling much more comfortable to opening the door to his activity under private financing. In Ontario and Alberta, there are two cases pending following my judgment, so yes indeed there are a lot of things being done. Also at the federal level, you have a federal Conservative government that is willing to let the provinces deal much more with those issues, which I think is a good thing.

FC: Given that the judgment concerned the *Quebec Charter of Rights and Freedoms.* which is not identical to that in effect to the rest of Canada –

JC: I'm sorry. Three Justices ruled under the *Canadian Charter* and four Justices ruled under the *Quebec Charter*, but if you carefully read the ruling of one Justice who ruled under the *Quebec Charter,* you understand that the rationale applies under the *Canadian Charter*. In other words, a good interpretation of that judgment is that it is applicable under the *Canadian Charter.*

FC: So there's no impediment, in your view, to the same judgment anywhere else?

JC: No, none at all.

FC: Because it was the four out of the seven under *Quebec* and three out of seven under the *Canadian* as well, right?

JC: Yes. The four majority Justices ruled for the *Canadian Charter* and for the *Quebec Charter*. And one of them ruled only on the *Quebec Charter*.

FC: The next question is about the practice of block funding for hospitals and how that generates waiting lists really by turning each patient into a liability and not a source of income. Do you have any thoughts about that?

JC: Yes. We forgot the diagnostic related group, the DRG system, who are paid on a fee-for-service.

FC: Oh, yes. What they have now is global funding, where the hospital gets a budget regardless …

JC: The global funding is, in my view, not good. The hospital should be paid on the fee-for-service basis as is done with great success in other countries. Yes, of course I support funding on the fee-for-service, DRG we call it, which is the opposite of what we have now.

FC: Are any jurisdictions in Canada looking at that?

JC: Yes, I have heard that Ontario has been looking at that.

FC: Would you like to expand on anything we've talked about today?

JC: The key in Canada, and particularly in Quebec, will be to have a private business initiative to take the lead because we cannot expect governments to take the lead. We have to get the business people and the consumers, particularly groups, employers and organizations that have a lot of members, to take the lead in order to establish privately financed health care services. And do the business and let the government come.

FC: In the same way that Workers' Compensation does now, where they purchase private care.

JC: Yes.