

The Long Road to Freedom in Canadian Medicine

Jacques Chaoulli, M.D.

The right of free citizens to spend their own money as they see fit on their own medical care is a moral precept that is fundamental to a free society. Recognizing what is moral and right, however, is often not sufficient to bring about a positive change.

Challenging a powerful state monopoly of medical services is not easy, but as I had reached the point where I could no longer tolerate seeing my patients suffer and die while on waiting lists, I had to do something.

The road to freedom in medicine in Canada was filled with disappointments, sacrifice, and personal hardships, and often very lonely. The philosophy of "live free or die" does not attract a large number of fellow travelers. Odds were against winning such an ambitious battle. I now see victory as part accident of history, and part miracle.

My journey began in May 1997 when I requested and was granted a meeting with officials of the government of Alberta. I knew that the Alberta government was more open to the concept of private medical care, and I set out to explore the possibilities. A representative of a large American health insurance company, Columbia HCA, accompanied me.

Unfortunately, the Alberta government was not very receptive to removing the prohibition against private insurance and private treatment. The Alberta official said that would require permission from the federal government. After I showed him that the prohibition was actually an Alberta statute, not a federal one, the official said: "Oh, that would be a big deal. Social debate."

I replied: "If it is like this, then I will go to court to break down your law."

He said: "Go ahead."

So, I did, although at the time I had no knowledge or formal training in law.

When I returned to Montreal, I asked a few lawyers for help, but they provided little. So, I undertook the study of law by myself, in law libraries. I also studied medical service systems around the world. By the end of 1997, I was ready to launch the legal battle against Goliath, representing myself and pleading before the courts, eventually reaching the Supreme Court of Canada.

By 2000 I had achieved "troublemaker" status in the eyes of many Canadian scholars. It was at that point that I applied to the Montreal University School of Law to earn an LLB degree, so that I could be more effective in my goal to help more Canadian patients. Since I had some free time before registering for law school, I took a few law courses in a separate program. I was very proud of the fact that I earned several A's in those courses, particularly in constitutional law.

After the law school failed to answer my request to become a full-time law student, I realized that I had been blacklisted. I subsequently contacted a well-known Montreal newspaper and

publicly declared my intention to attend the Montreal Law School in order to obtain a law degree so that I could help patients. The following day, I was quoted in a major article, and soon afterward I was accepted to law school.

My time in law school was short. It seems that Canadian law professors do not appreciate questions that challenge socialist interpretations of the law. In Canada, the government not only has a monopoly on medical care, but a monopoly on law universities as well. The government pays law professors poorly, so they are often dependent on additional, more remunerative, contracts from the state.

I saw firsthand how socialist law professors were brainwashing impressionable young law students. Something had to be done. After I challenged my law professors in class concerning their interpretation of the law, my grades went from A's to D's. Having learned a valuable lesson about tolerance as extolled by socialists, I left law school and pursued further study of the Canadian Charter of Rights and Freedom—the Canadian equivalent of the American Bill of Rights—on my own. Ironically, five years later the Canadian Supreme Court would uphold my interpretation of the Canadian Charter of Rights and Freedom, as opposed to that of the socialist law professors.

Along the road to freedom I sought the help of Canadian physicians, naively thinking that they would fully support my legal challenge, for the benefit of our patients. Of course, I was wrong again. Most people seemed to care only about their own wallets. So, at the risk of alienating physician leaders, I subpoenaed presidents of certain key medical associations, including specialty societies for oncologists and ophthalmologists—without first talking to any of these physician leaders. As angry as some of these involuntary witnesses were, they told the truth when they got in the witness box, as I had hoped.

Hearing the truthful testimony about patients suffering and dying while on waiting lists of the Canadian medicare program, the trial judge ruled that the prohibition against private medical care did, in fact, violate the rights to life, liberty, and security. Nevertheless, she rejected my motion on the grounds that a two-tiered health system would be unacceptable under the Canadian version of equality.

Ultimately, I took the challenge to the Supreme Court of Canada. On June 9, 2005, in a historic decision, the Supreme Court of Canada ruled that the Canadian single-payer medical system has led to situations whereby patients do, in fact, suffer and die on government waiting lists, in violation of the rights to life, liberty, and security under Section 1 of the Quebec Charter of Rights and Freedoms and under Section 7 of the Canadian Charter of Rights and Freedoms. The Supreme Court's decision has invalidated the unconstitutional prohibition of a parallel private medical system in addition to the government-mandated medicare program.

Interestingly, after this victory for freedom, the same Alberta official who had previously rebuffed any attempt at removing the

prohibition on private medicine was quoted by the Canadian news wire as saying: "The Alberta government is very pleased with this decision. Premier Klein fully supports any change that will allow Canadians more choice in getting timely access to the health care services they want."

Following my victory against socialism, I have been called a national hero, both in Canada and in the United States. The fact is that this battle would not have been possible without the love and support of my family. In 1997, my wife and daughter were staying with my father-in-law in Japan. I missed seeing my daughter grow up. In the early years of the battle, I was in Montreal, home alone, near bankruptcy, with barely enough money to buy food for myself. Had it not been for the generous and gracious financial support of my father-in-law, the outcome of this journey would have been quite different. I was fortunate that my father-in-law saw in me a person who was dedicated to doing the right thing for people, and he felt a need to do whatever he could do to help.

I feel blessed to have a wife who demonstrated her love and support throughout very real hardships imposed by my pursuit of freedom. I also feel a sense of satisfaction knowing that I have taught an important lesson to my daughter about the value of fighting for freedom, and I am pleased that she is proud of her father. My father-in-law is now very old and no longer in a position to sacrifice further, but he can take pride in knowing that because of his support, the Canadian medical monopoly has come to an end.

The fight doesn't end here. More remains to be done. Winning the right to have a parallel private medical system running alongside the compulsory medicare program is a result that still

does not meet the needs of all people. Those who are unable to pay twice, through general taxation and the additional cost of a private system, will continue to suffer from the deficiencies of the government-run medical program.

Perhaps my victory in Canada might spark new debate about the constitutionality of the U.S. Medicare program. Both systems derive from the same socialist ideology, and both exist because of misinterpretation of constitutional rights.

I sometimes wonder why in a so-called free and democratic society like Canada's, a citizen must sacrifice almost everything in order to fight against infringement upon his fundamental human rights. What has become of the concept of a representative democracy when legislators do not support the basic fundamental rights of the people?

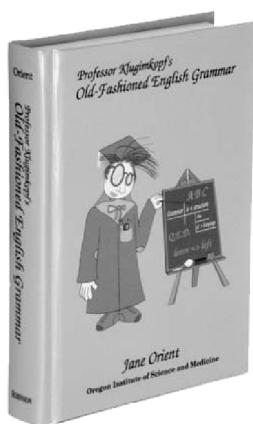
As I said to a Canadian journalist, freedom is not a gift like an apple on a tree. You have to fight for freedom. You also have to fight if you wish to make a lot of money, but if wealth is your main pursuit, then in my view you are not a free man, but a slave.

Ultimately, freedom in medicine in Canada means more freedom of choice for Canadian citizens, and fewer patients suffering and dying while on waiting lists. It is a worthy victory for our patients.

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