



**Wait Times**

*Chaoulli v Quebec (AG)* [2005] 2005 SCC 35

- Prohibition of private medical insurance in the face of long wait times violated the *Quebec Charter of Human Rights and Freedoms*

*Auton (Guardian ad litem of) v British Columbia (AG)*, 2004 SCC 78

- Unsuccessful challenge, but related to the issue of pursuing novel and/or innovative treatments beyond pre-approved standard treatment.
- Government funding for “non-core” medically necessary treatments is not required under section 15(1) of the *Charter*.

**Malpractice Litigation**

**Caps on Damages**

- Canadian courts cap damage awards to reflect conservative pre-determined calculations of necessary medical costs.
- This ensures consistency and legitimacy of court awards.

**Evidentiary Threshold**

- Ediger v Johnston*, 2013 SCC 18
  - Application of “but for” test
  - Doctor was found to have breached standard of care as negligently caused brain damage to new born and did not have medical supports available for recognized risk which would likely have reversed effects of the injury.
  - Doctor must breach standard of care and duty of care to be liable

**Malpractice Litigation**

**Innovations in approach to expert evidence**

- R. v. Mohan
- The evolving evolution of jurisprudence to deal with the “hired gun”
- New Rules of Civil Procedure
- Some disclosure of work product
- Duty of the Expert to be objective, impartial and assist the court

**Conservation of Resources**

- Early Mandatory Mediation
- Focus on discovery of disputed material facts rather than opinion evidence
- Summary Judgement – Mini Trials
- Judge or Jury Trial

**Malpractice Litigation**

Canadian Medical Protective Association (CMPA)

- The CMPA's protection includes medical liability advice and assistance for physicians in Canada.

Thank you