Allen v. Alberta

2015 ABCA 277

Country: Canada
Region: Americas
Year: 2015
Court: Alberta Court of Appeal
Health Topics: Health care and health services, Health systems and financing
Human Rights: Right to liberty and security of person, Right to life

Facts

Mr. Allen was a dentist who required a back operation. A multi-year wait time to be treated within the Alberta health care system and increased pain forced Mr. Allen to sell his dental practice to pay for surgery in Montana (a state in the United States) instead of waiting an additional 18 months to have surgery in the public health system. He challenged the constitutionality of section 26(2) of the Alberta Health Care Insurance Act. Section 26(2) stopped him from obtaining private health care insurance that could have covered the cost of the operation (cost exceeded $77,000) and would have allowed him to have the surgery sooner.

Mr. Allen argued that restrictions on obtaining private health insurance were unconstitutional violations of section 7 of the Canadian Charter of Rights and Freedoms. Section 7 guarantees the right not to be deprived of life, liberty and security of person except in accordance with the principles of fundamental justice. The chambers judge found that section 7 could be compromised by the prohibition of private health care insurance but that such a violation would be partially a question of fact. The chambers judge found that the sparse evidence presented by Mr. Allen did not establish a sufficient causal connection between state-caused effect and harm suffered by Allen to trigger section 7 of the Charter. Mr. Allen appealed to the Alberta Court of Appeal.

Decision and Reasoning

The Court of Appeal held that the constitutionality of prohibitions on private health care insurance depends on facts and, therefore, an inquiry into their constitutionality requires a full trial and not summary proceedings. Mr. Allen could not depend on precedent from the Supreme Court of Canadaâ€™s decision in Chaoulli v Quebec (AG) (a decision in which the Supreme Court found bans on private health care insurance in Quebec unconstitutional) in the absence of a more extensive factual record.

The Court asserted that the Canadian Charter of Rights and Freedoms does not give a free-standing right to health care. Consequently, every challenge on a health care issue must include enough evidence about the specific facts of the case to determine whether a section 7 right has been breached.

Decision Excerpts

â€œThe Charter does not confer a freestanding right to health care: Chaoulli at para. 104. The Canadian governments could abolish the universal health care system at any time. They can remove services from the system, or add new services. These social policy choices do not engage the constitution; neither the Charter nor the judiciary have much to contribute to the debate.â€• Para. 35.

â€œThere is another interesting aspect of the Chaoulli decision. It appears that the constitutionality of the public health care monopoly depends on the resources dedicated to the system, and how those resources are allocated within the system. The prohibition was said to be unconstitutional because the waiting lists were too â€˜longâ€™, and because the government was â€˜doing nothingâ€™ (at paras. 97, 108, 124). Presumably, if more resources were dedicated to health care, the government would no longer be â€˜doing nothingâ€™, and there would come a point in time when the waiting lists would be â€˜just rightâ€™. Rather than reflecting a fundamental constitutional norm, the validity of the prohibition on private health insurance would vary from time to time, and from province to province.â€• Para. 43.

â€œIt is inappropriate to focus on only a small portion of the overall Canadian health care system, and then

subject that part to Charter scrutiny. At a trial, the Canadian health care regime could be examined to determine if, as a whole, there was a breach of s. 7, whether the system overall provides a â€˜fundamental justiceâ€™ rationale for the challenged limit, and whether it is demonstrably justified in a free and democratic society.â€• Para. 49.

â€œIn summary, while there might be situations where a binding precedent makes the outcome of a constitutional challenge inevitable, Chaoulli is not such a precedent. The constitutionality of prohibitions on private health care insurance depend heavily on the factual context. This is not a situation in which procedural and evidentiary shortcuts in deciding the constitutionality of legislation can be taken with any confidence. The constitutionality of s. 26(2) must be pursued at a full trial.â€• Para. 53.