

## News Release

### Second Plaintiff Joins Lawsuit Over Timely Access to Health Care; Action Against Ontario Government Dubbed “Ontario Chaoulli”

**(September 5, 2007, Toronto, Ontario)** – John Carpay, Executive Director of the Canadian Constitution Foundation (CCF), today introduced the media to Ms. Shona Holmes of Waterdown, Ontario, who is filing a Statement of Claim against the Ontario Government over timely access to health care and the patient’s right to access health care outside of Ontario’s government-run monopolistic health care system. Ms. Holmes joins Newmarket, Ontario resident Lindsay McCreith as the second person to make a constitutional challenge against the laws governing health care in Ontario. The action against the government has been dubbed the ‘Ontario Chaoulli’ by many observers. (The full Statement of Claim can be found at [www.CanadianConstitutionFoundation.ca](http://www.CanadianConstitutionFoundation.ca).) Joining Mr. Carpay and Ms. Holmes at the media conference was Toronto lawyer Avril Allen; urologist, Chair of the Department of Surgery, McMaster University and former Ontario Medical Association (OMA) President Dr. William Orovan; and Kanata, Ontario family physician Dr. Merrilee Fullerton.

“It’s both a privilege and an honour to introduce you to Ms. Shona Holmes, who today joins Lindsay McCreith in filing a constitutional challenge to the Ontario laws which create a government monopoly over the provision of essential health services,” Mr. Carpay told a roomful of reporters. “As you are likely aware, Ontario allows people to buy comprehensive health insurance for their dogs and cats, but makes it illegal to buy similar protection for yourself or your children. We think that’s just plain wrong. Thanks to the courageous actions of Ms. Holmes and Mr. McCreith, we feel confident the courts will see it that way as well.”

Ms. Holmes, a self-employed family mediator and the married mother of two children, began losing her vision in March of 2005. She also experienced severe headaches, anxiety attacks, high blood pressure, extreme fatigue, and weight gain. In spite of these serious symptoms and an MRI revealing a tumour in Ms. Holmes’ brain, Ontario’s health care system told her that she would have to wait months to see a specialist. Her vision deteriorating rapidly, Ms. Holmes went to the Mayo Clinic in Arizona in June of 2005. After extensive testing, several specialists (including an endocrinologist, a neurologist and a neurosurgeon, who is licenced to practice in Ontario) told her that if she did not receive surgery to remove the tumour immediately, she risked losing her vision forever, and possibly death.

With the Mayo Clinic test results and diagnosis in hand, Ms. Holmes returned to Ontario, only to be told to wait for more appointments and tests. Having lost one half of her vision in her right eye and one quarter in her left, and unable to expedite appointments with specialists, she returned to the Mayo Clinic, where surgeons operated to remove the tumour. Within ten days, Ms. Holmes’ vision was completely restored. Visual field testing and a post-operative MRI also confirmed that the tumour caused the vision loss. Surgery had indeed been necessary to save her eyesight. Nevertheless, the Ontario Health Insurance Plan (OHIP) refuses to reimburse Ms. Holmes for any of the expenses she was forced to incur in seeking necessary medical care abroad. While she has returned to work, her husband must now work two full-time jobs to pay off the debts they were forced to incur to save her vision.

“I consider myself one of the lucky ones,” said Ms. Holmes, “having survived the Ontario health care system. But the reality is, this has been a bitter-sweet experience for me and my family. After receiving compassionate treatment in the United States with my brain surgery, counting my blessings is mixed with the stress and worries placed on my family. We have had to pay a high financial, emotional and spiritual cost. I don’t want to see anyone else have to go through what we’ve gone through.”

Ms. Holmes's ordeal is similar to what Lindsay McCreith endured in 2006. A retired body shop owner, Mr. McCreith also had a brain tumour, and Ontario's health care system told him that he would have to wait more than four months for an MRI. Not willing to risk the growth and spread of what might be cancer, and with private MRIs being illegal in Ontario, Mr. McCreith paid for one in Buffalo, New York. He also paid for brain surgery in Buffalo to remove the malignant tumour, after having been told he would need to wait for months to see a specialist in Ontario.

Dr. Fullerton fully supports Ms. Holmes and Mr. McCreith in challenging the Ontario Government, saying, "A wait times strategy that ignores individuals' needs is a strategy for suffering and death. It's unfortunate that efforts to control costs in our public health care system have resulted in patients being unable to get timely access or care. Patients must wait with potentially life threatening, painful or incapacitating conditions, but they aren't allowed any other recourse within Ontario. Individuals should be empowered to access the care they feel they need in a way that's acceptable to them and which is also accepted in most other developed nations."

In their constitutional challenge to Ontario health care legislation, Shona Holmes and Lindsay McCreith will rely on the 2005 Supreme Court of Canada decision in *Chaoulli v. Quebec*. In *Chaoulli*, the majority of the Supreme Court judges ruled that Quebec's ban on private health insurance creates a "virtual monopoly" over health care by government. The Court ruled that this monopoly, through its waiting lists, inflicts physical and psychological suffering on patients, and the risk of irreparable harm (loss of vision, for example) and even death. While disagreeing on some of the details, the majority of judges in *Chaoulli* ruled that a total ban on private health insurance is not necessary to preserve a public health system. With parallel private and public systems operating side by side, Austria, Belgium, France, Germany, Japan, Luxembourg and Switzerland, for example, have no waiting lists in their public health care systems.

Dr. Orovan, who is also supporting the Charter challenge, agreed with Dr. Fullerton. "Waiting on a list for care while being denied the right to take charge of your own medical needs is not the Canadian way," said Dr. Orovan. "The lives of individuals are being put at risk, and their rights denied, so that short-term political agendas can be met. As a physician, citizen and patient, I find that deplorable."

Dr. Douglas Mark, President of the Coalition of Family Physicians of Ontario, could not be present at the news conference, but issued the following statement on behalf of his organization:

Timely access to quality medical care is a right that all Ontarians deserve. Our Government's management of the healthcare system has led to our current widespread paucity of healthcare resources. We remain astonished by the fact that we are virtually the only jurisdiction in the developed world that does not allow an alternative to rationed state-run healthcare. We hope that this constitutional challenge succeeds and brings an end to the Government's irrational rationing of healthcare resources and allowing Ontarians to move into the modern age of having options available to timely access to care.

Dr. Mark indicated that he could be contacted at 416-412-1474 or 416-617-7952, or by e-mail at [dmark@cofp.com](mailto:dmark@cofp.com) or [drdjmark@aol.com](mailto:drdjmark@aol.com).

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