



uOttawa

L'Université canadienne
Canada's university

**FACULTÉ DES ÉTUDES SUPÉRIEURES
ET POSTDOCTORALES**



**FACULTY OF GRADUATE AND
POSTDOCTORAL STUDIES**

Drew Justin Swanson

AUTEUR DE LA THÈSE / AUTHOR OF THESIS

M.A. (Political Science)

GRADE / DEGREE

School of Political Science

FACULTÉ, ÉCOLE, DÉPARTEMENT / FACULTY, SCHOOL, DEPARTMENT

**The End of Medicare or Did Anything Even Change?
Examining Discourses in the Wake of *Chaoulli v. Québec***

TITRE DE LA THÈSE / TITLE OF THESIS

Michael Orsini

DIRECTEUR (DIRECTRICE) DE LA THÈSE / THESIS SUPERVISOR

CO-DIRECTEUR (CO-DIRECTRICE) DE LA THÈSE / THESIS CO-SUPERVISOR

Nathalie Burlone

Jonathan Paquette

Gary W. Slater

Le Doyen de la Faculté des études supérieures et postdoctorales / Dean of the Faculty of Graduate and Postdoctoral Studies

The End of Medicare or Did Anything Even Change?
Examining Discourses in the wake of *Chaoulli v. Québec*

By
Drew J. Swanson

Thesis
submitted in partial fulfillment of the
requirements for the Degree of
Master of Arts
in Public Administration

University of Ottawa

October, 2010



Library and Archives
Canada

Published Heritage
Branch

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque et
Archives Canada

Direction du
Patrimoine de l'édition

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file *Votre référence*
ISBN: 978-0-494-73869-6
Our file *Notre référence*
ISBN: 978-0-494-73869-6

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.


Canada

Abstract

In the immediate aftermath of *Chaoulli* vs. Québec (Attorney General), it seemed that this decision would constitute a turning point in the way public health care is delivered in Canada. However, the lack of change in the following years has left this theory largely suspect. This thesis sets out to establish how two separate, yet equally powerful reactions to this case, proliferated in the wake of this decision. It aims to validate an original hypothesis that suggests that the treatment of the case from academia and from the print media (Canadian daily newspapers) constituted the most dominant discourses in the wake of the *Chaoulli* case. Furthermore it examines whether these two sectors were predominantly homogenous in their views of the case. However, this thesis concludes that, while these were two of the most dominant reactions to the *Chaoulli* case, the boundaries of these discourses and their respective supporters were not relegated exclusively to any given sector.

Acknowledgements

I would like to thank Professor Michael Orsini for his assistance throughout this research, as well as Professors Nathalie Burlone and Jonathan Paquette for helpful suggestions. Their guidance and assistance have been enormously helpful.

I would also like to thank my parents and family for all of their support throughout my Master's degree and my education in general.

Table of Contents

Chapter 1 – Introduction and Context.....	4
<i>Chaoulli vs. Québec (Attorney General): A Background</i>	11
<i>Bill 33: An Act to amend the Act respecting health services and social services and other legislative provisions</i>	17
Chapter 2 – Critical Discourse Analysis: Looking Through Three Lenses	22
Discourse Analysis: Three Lenses Approach.....	31
Lens One: Augmentative vs. Transformative Discourses.....	33
Lens Two: The Emphasis of “Rights-Talk”	36
Lens Three: Framing of Messages	41
Selection of Sources and Explanation of Methodology	44
Chapter 3 – Empirical Analysis: Examining Discourses.....	46
Lens 1: Augmentative vs. Transformative Discourses.....	49
Lens 2: Rights “Talk”	68
Lens 3: Message Framing	78
Chapter 4 – Explanation of the Critical Discourse Analysis	89
Lens 1: Augmentative & Transformative Discourses.....	89
Examination of the First Lens	89
Lens 2: The Importance of Rights “Talk”	90
Examination of the Second Lens	90
Lens 3: Creating Exploitations through Message Frames.....	90
Examination of the Third Lens.....	91
Implications of this Analysis.....	91
Conclusions: What did the <i>Chaoulli</i> decision actually do?	98
Bibliography	102
Newspapers	102
Articles/Books/Government Documents.....	134

Chapter 1 – Introduction and Context

In 2005, the Supreme Court of Canada ruled in *Chaoulli vs. Québec (Attorney General)* that the provincial government of Québec could no longer maintain a ban on private health insurance as it violated the fundamental rights of its citizens. In its decision, the Supreme Court decided that preventing patients from seeking private care despite lengthy wait-times constituted a violation of the right to life, liberty and security of person under the *Québec Charter of Rights*. Although this decision was limited to Québec, the nature of these violations would arguably also have an effect on other provinces (who have similar charters) and for all of Canada (governed by the *Charter of Rights and Freedoms*).

Despite this decision, and nearly five years after it was levied, the state of the public health care system in Québec has only been subject to small changes. *Bill 33*, the Québec government's response to the case, made limited changes to the way health care was delivered in Québec by allowing elements of private care while maintaining many of the core elements of the public medical system. While it offered a private route for citizens to receive care, it remained committed to the core pillars of the public health system by creating a wait-times guarantee which was designed to prevent the need for private care. In that sense, the system has changed in a minor way, but not to the degree that some actors had originally expected.

While the public system has not been destroyed by privatization as some pundits had speculated, it remains in a sort of political purgatory. By this I mean that the *Chaoulli* decision has forced governments to field attacks against their public systems from private forces using this case to justify their action. Delving into the literature, it is apparent that there are still a number of divergent opinions about the case amongst academics, politicians, bureaucrats, and, most importantly, the general population. It is these opinions and the general misunderstanding

about the long-term effects of the decision that have raised some interesting questions about the legacy of this case.

While the *Chaoulli* case created a number of different reactions, two important discourses have stood out within this expanding discursive domain about the role of the decision in the future of health care delivery in Québec. One of the most discussed topics in the wake of the case was the potential policy ramifications of this decision and what the Québec government was going to do to address them. The second most prevalent theme focused on how the case shifted the fundamental role of the state in providing health care and whether the government could continue to advocate a predominant public health care role despite the decision of the Supreme Court. While this question also impacts public policy, it stands as a more philosophical question about the government's role in providing health care. In essence, this thesis suggests that one theme focused on which steps the government should take to reform the system in an effort to prevent the conditions that led to the *Chaoulli* case, such as limiting excessive wait-times, while the other addressed whether the Québec government should continue to limit the private role or whether they should introduce more private elements into their health care delivery plan.

It should be noted that this thesis does not infer that one discourse is more favourable than the other. In fact, both sectors address specific, albeit different, consequences of the case. In other words, numbering these discourses does not reflect the emphasis with which they were discussed in the wake of the *Chaoulli* case. Instead, each theme should be viewed as a separate yet equal reaction to the case. In fact, each discourse raises serious questions about what steps the Québec government would need to take to respond the *Chaoulli* case and although these discourses focus on the case in different capacities, they both contributed to the growing discursive domain focusing on what effects this case would have. When the Québec government

asked for an 18-month stay (and was granted 12 months), these discourses emerged as important questions for the government to answer while crafting its response to the *Chaoulli* case.

It is important to stress that these discourses were not entirely a result of the *Chaoulli* case. Instead, they were prevalent long before the *Chaoulli* case was finally decided. One needs to look no further than Deber and Gamble,¹ Chappell,² Sanmartin and colleagues,³ Greenspon,⁴ Weber,⁵ and Taft and Steward,⁶ among many others, to see how these discourses were examined preceding the *Chaoulli* case. However, it is important to note that while these discourses may have existed before and were argued by many of the people who commented on the case afterwards, the *Chaoulli* decision helped to legitimize these ideas in the public imagination. The case exposed these issues to a wider audience who helped to shape them in the wake of the *Chaoulli* decision.

While these discourses are not limited to specific sectors of citizens, a preliminary study of the literature (including newspaper editorials and articles, academic journals, government documents, and press releases from organizations advocating both public and private health care (such as the National Citizen's Coalition, the Council of Canadians, the Canada Health Coalition, etc.) suggests that the Canadian academic community and the print media (specifically Canadian daily newspapers) drew heavily on these discourses in their coverage of the case. What is most striking about this preliminary study is that the academic community had focused largely on the public policy reaction to the case, while the print media focused on more fundamental questions

¹ Raisa Deber and Brenda Gamble, "What's In, What's Out': Stakeholders' Views about the Boundaries of Medicare," *Longwoods Review* 2.3 (2004): 2-10.

² Neena L. Chappell, "The Future of Health care in Canada," *Journal of Social Policy* 22 (1993): 487-505.

³ Claudia Sanmartin et al., "Waiting for medical services in Canada: lots of heat, but little light," *Canadian Medical Association Journal* 162.9 (2000): 1305-1310.

⁴ Eddie Greenspon, "Health-care woes deemed provinces' fault, poll reveals," *Globe and Mail*, 6 February 1999, A7.

⁵ Bob Weber, "Privatization Worries Alberta Auditor-General," *The Globe and Mail*, 10 October 2001, A16.

⁶ Kevin Taft and Gillian Steward, *Clear Answers: The economics and politics of For-Profit Medicine*, (Alberta, Canada: Duval House Publishing, 2000).

related to the role of the state in delivering health care. This is not to suggest that each sector was entirely homogenous in its views; upon first glance, there are notable deviations in each sector. This suggests, however, that the majoritarian view of each sector focused on one particular theme in the wake of the *Chaoulli* decision.

This point requires greater explanation. Preliminary research here shows there has been a significant effort in the academic realm to deconstruct the *Chaoulli* case and focus on what is viewed as the pressing implications of the decision. Of these pressing implications, the most recurrent themes include: the potential normative impact on policy debates; removals of restrictions on private insurance being used as a justification to strike down other elements of public health systems (such as physicians working in both the public and private sectors), financial responsibility for medical care should it not be made available in a timely fashion; and problems with removing the restrictions on private health insurance under the NAFTA agreement. In essence, health policy scholars have chosen to focus on the public policy aspects of this case.

The media have chosen to address a more philosophical question of responsibility and rights. Since the Supreme Court framed its argument as being an issue of rights (e.g. ban on private insurance struck down as it violated personal *Charter* rights), much of the media's focus has been on the more philosophical questions of whether or not governments have the right to prevent their citizens from seeking private insurance or if governments are even responsible for providing health care to their citizens. In essence, the media have viewed the case in more abstract lenses.

It is important to point out as well, that these are not the only discourses present in the discursive domain following the *Chaoulli* decision. Additionally, neither academics nor members

of the media are the only groups who have intervened publicly in the wake of the *Chaoulli* case. Interest groups, think tanks, and citizen organizations, among others, have spoken out about the ramifications of the *Chaoulli* case. However, the rationale for focusing on the discourses chosen by these two groups relates to a discussion of the *issue-scope* of power as advanced by Steven Lukes.⁷ His argument suggests that there is a difference between organizations with single-issue power and multi-issue power. He argues that possessors of single-issue power, while powerful when focusing on that issue, are less powerful than possessors of multi-issue power because they remain focused on a sole issue. Those who can wield influence across a broad range of issues have greater influence over the political process because they can address a number of issues. This thesis identifies both the media and academia as sectors which wield enormous power by the virtue of their multi-issue approaches. While these sectors can be reduced to possessors of single-issue power at an individual level, their collective approach provides them with the sort of multi-issue power which provides them tremendous influence.

Furthermore, this thesis chose these two sectors over others for two reasons. First, newspapers and academic articles are influential in shaping government policy. Second, both of these discourses promote further dialogue. In newspaper editorials, citizens and newspaper staff alike are able to respond to newspaper coverage in subsequent issues. In academic journals, scholars can respond to ideas put forth by colleagues in future editions. There is a great deal of opportunity for immediate response to their treatments of the *Chaoulli* case. While other discourses may have developed in the wake of the *Chaoulli* case, this thesis argues that the vocal force with which their supporters have expressed them are arguably the most interesting results of this case. It is for this reason and issues of time constraint, that this thesis will choose not to

⁷ Steven Lukes, *Power: A Radical View*, 2nd ed. (Palgrave MacMillan: London, 2005), 74-75.

focus as heavily on other discourses that entered the discursive domain which may have been derived from this case.

The central question of this thesis can be summarized as follows:

How can we describe the character of the media and academic discourses that developed in the wake of the *Chaoulli* case?

By analyzing a broad selection of newspaper articles/editorials from major Canadian daily newspapers and articles from academics, this thesis examines whether the preliminary literature survey, which suggests that two distinctive discourses developed, one focused on the public policy ramifications of the case (media) and the other on the philosophical role of the government in delivering health care (academia), are the most important discourses in the discursive domain surrounding the *Chaoulli* case. Additionally, it aims to validate whether these two sectors were relatively homogenous in their views.

This thesis begins by making two important claims, by virtue of the preliminary literature search. The first suggests that there are two dominant discourses in the discursive domain about the *Chaoulli* case. One suggests that the case is more important for its policy ramifications while the other focuses more on the philosophical questions about the role of the state in health care delivery. In the wake of the *Chaoulli* case, these two discourses were prevalent in the discussion about the preferred solutions that the Québec government should employ to “fix” the health care system. Second, it suggests that these discourses identify with certain sectors of actors who were involved in the discussion in the wake of the *Chaoulli* case. It suggests that the media had focused on the philosophical questions while academia had focused on the policy ramifications. With these suggestions in mind, this thesis will attempt to validate these assertions through an extensive survey of newspaper and academic articles.

Despite the goals of this research, however, the results do not corroborate with the original hypothesis which suggests that there would be two distinct discourses emanating from academia and the media. While this thesis does support the claim that these two discourses are among the most prevalent in the academic and media sectors, it does not support the suggestion that these sectors were homogeneous in their views. It explains that while these discourses remain the most discussed discursive themes, the views in each sector are not homogenous. Instead, it explains that these discourses are celebrated by both sectors and from a number of different angles.

To explain how these conclusions were reached, this thesis is divided into four major sections with a small concluding section. This first chapter provides a brief history of the case and examines some of the key elements of the Supreme Court's decision in *Chaoulli*. It will not provide an in-depth analysis of the legal arguments framed in the case as this has been done elsewhere (see Yeo and Lucock,⁸ Manfredi and Maioni,⁹ Hagen,¹⁰ Flood,¹¹ and Jackman¹²). Additionally, perhaps the greatest collection of legal opinions surrounding the case is compiled by Flood, Roach and Sossin.¹³ Instead, it will provide a historical background of the case and highlight some of the key developments which led to the Court's decision.

The second chapter will outline the theoretical approach being employed in this thesis, namely critical discourse analysis. I employ three separate lenses to analyze the treatment of the

⁸ Michael Yeo and Carole Lucock, "Quality vs. Equality: The Divided Court in *Chaoulli vs. Québec*," *Health Law Journal* 14 (2006): 129 – 150.

⁹ Christopher P. Manfredi and Antonia Maioni, "The Last Line of Defence for Citizens': Litigating Private Health Insurance in *Chaoulli vs. Québec*," *Osgoode Hall Law Journal* 44.2 (2006): 249-271.

¹⁰ Gregory R. Hagen, "Personal Inviolability and Public Health Care: *Chaoulli v. Québec*," *Health Law Review* 14.2 (2005): 34-37.

¹¹ Colleen M. Flood, "*Chaoulli's* Legacy for the Future of Canadian Health Care Policy," *Osgoode Hall Law Journal* 44.2 (2006): 273-310.

¹² Martha Jackman, "The Last Line of Defence for [Which?] Citizens': Accountability, Equality, and the Right to Health in *Chaoulli*," *Osgoode Hall Law Journal* 44.2 (2006): 349-375.

¹³ Colleen M. Flood, Kent Roach, and Lorne Mitchell Sossin, Eds., *Access to Care, Access to Justice: The Legal Debate over private Insurance in Canada*, (Toronto: University of Toronto Press, 2005).

case by the media (specifically, newspapers) and academia. These include a lens focused on whether the literature uses augmentative or transformative discourses, a lens focused on the reliance of “rights-talk”, and a lens focused on message framing. These three lenses will be used to conduct an analysis of the way this case was treated by newspapers and in the academic literature to establish the prevalence of these two contending discourses.

The third chapter presents the empirical findings from the content analysis of media and academic discourses. This chapter will highlight how the each sector handles its treatment of this case. This section will be vital to outlining the implications in the following section. The final chapter examines the Québec government’s response to the case by looking closely at Bill 33. It will examine how each lens has been divided and then explain the implications of this research. It will then outline exactly what the Québec government did with Bill 33. This section will also address the possibility that the most significant legacy of this case might be that it has expanded the discursive domain about the way health care is delivered in Québec and, to a lesser extent, Canada.

Chaoulli vs. Québec (Attorney General): A Background

To understand the discourses that developed in the wake of the *Chaoulli* decision, a brief background of the case’s chronology is required. In 1994, 62-year old private citizen George Zeliotis began to suffer problems with his hips. A citizen of Québec, Zeliotis entered the public system and received his first consultation on 23 June 1994.¹⁴ His doctor suggested that his problems did not merit consideration for surgery at the time. However, Zeliotis persisted over the course of the next year and had an arthroplasty (joint-replacement surgery) on his left hip on 18 May 1995. Although the surgery corrected the problems with his left hip, continued aggravation

¹⁴ Flood et. al. 2005, 533.

from his right hip had him enter the public system shortly after for a second procedure. After a variety of consultations and continued medical problems (including additional problems such as falling on and injuring his shoulder and having surgery to remove a hernia), Zeliotis was finally scheduled for a surgery which would take place on 4 September 1997.¹⁵

While Zeliotis sought surgery through the public system and ultimately had his surgery performed by physicians compensated through the public system, it was what happened between surgeries that led him to the Supreme Court. After completing the first surgery, Zeliotis looked in to having his second surgery performed outside of the public system, paying for the procedure out of his pocket, by searching for possible surgery options. He believed that the procedure he desired could be performed in advance of the September 1997 date set by the public system. To his dismay, Zeliotis found out that he was prevented from seeking such a surgery by virtue of a ban on private insurance in the province of Québec. Arguing that he should be provided the option to seek surgery in a private system if he wanted, Zeliotis began to look at possible legal avenues to counteract this “illegal” ban.

Zeliotis began a media campaign devoted to railing against perceived deficiencies in the Québec system. It was this media blitz that attracted the attention of Dr. Jacques Chaoulli, a Québec physician who had made a career trying to open the Québec system to greater private intervention in the public system. Chaoulli, originally of France, started practicing medicine in Québec in 1986. In 1988, after successfully earning an emergency vehicle license, he began to perform house calls in the South Shore region of Montreal. However, the regional health board refused to recognize his services and contested his compensation for those services. In 1995, Chaoulli held a public demonstration involving over 50 patients and a hunger-strike.¹⁶ After

¹⁵ Flood et al. 2005, 534.

¹⁶ Flood et al. 2005, 535-536.

three weeks, and a conditional offer to reimburse him for his services (which he refused), Chaoulli finally relented with a promise to exit the public system. His hope was to find private insurers to fill the void for his services. He successfully exited the public system October 9, 1996.¹⁷

Chaoulli's exit from the public system coincided with Mr. Zeliotis' search for a private option to complete his second surgery. Upon learning of Mr. Zeliotis' desire to seek surgery in the private sector, and despite not being his personal physician, Chaoulli decided to take legal action against the province of Québec for what he perceived as a blatant violation of his, and Mr. Zeliotis's, personal rights. Naming Zeliotis a co-plaintiff, Chaoulli took the case to provincial court under Justice Ginette Piché.

Chaoulli and Zeliotis argued that sections 11 and 15 of the Health Insurance Act of Québec violated section 7 of the Québec Charter of Rights.¹⁸ They further argued that "the right to liberty mentioned in section 7 of the charter extends to the individual's right to autonomy in the making of personal decisions which he or she must make" and "that the right to obtain private insurance or pay for hospital services is an ancillary right relating directly to their right to obtain the health care for which they need."¹⁹

The court argued that invoking section 7 of the Charter in opposition to social programmes had not been fully explored by the Supreme Court of Canada to this date, but Justice Piché stated that one rule that has "enjoyed universal acceptance" is that "section 7 was not designed to protect purely economic rights."²⁰ Justice Piché stated in her decision that preventing someone from seeking private care if it is immediately necessary is an infringement

¹⁷ Flood et al. 2005, 536.

¹⁸ *Chaoulli and Zeliotis v. Québec* [2000] R.J.Q. 786.

¹⁹ *Chaoulli and Zeliotis v. Québec* 2000.

²⁰ *Chaoulli and Zeliotis v. Québec* 2000.

of the fundamental right to security of person. However, she further argued that this infringement only qualifies as a violation if the patient is denied timely access to necessary care. In her decision she stated that the “Court considers that the right to health and even to some extent security has no real meaning unless it has a preventative scope. The ‘threat’ or deprivation must be real or imminent.”²¹ Since Zeliotis had already undergone one surgery and that the other was to be scheduled in accordance with need, this case did not present an immediate violation of his personal security. Therefore, the case was dismissed. Upon dismissal of the case, Justice Piché went further to suggest that the demand for reform in health care should not be found through legal channels. Instead, the court argued that while the need for reform may be evident, “it remains a political question which the court cannot answer, that being the function of the legislature.”²²

Determined to continue their protest, Chaoulli and Zeliotis appealed the decision to the Québec Court of Appeals. They further expanded their appeal to include sections 1, 4, 5, and 6 of the Québec Charter of rights.²³ The appeal was ultimately rejected. However, further legal nuance was created in these decisions. Justice Jacques Delisle argued that the ban prescribed in sections 11 HOIA (Hospital Insurance Act) and 15 HEIA (Health Insurance Act) is in fact an economic right and not a fundamental right. He deemed that it is not equitable to offer a right as fundamental which does not apply equitably, especially to those who are disadvantaged economically.²⁴ He continues by echoing the decision of Justice Piché by stating that an

²¹ *Chaoulli and Zeliotis v. Québec* 2000.

²² *Chaoulli and Zeliotis v. Québec* 2000.

²³ Section 1 deems “Every human being has a right to life, and to personal security, inviolability and freedom.”; Section 4 “every person has a right to safeguard of his dignity, honour and reputation”; Section 5 “Every person has a right to respect for his private life”; and section 6 “every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law.”

²⁴ Flood et al. 2005, 560.

infringement must be imminent and predictable as opposed to remote and uncertain.²⁵ Finally, he states the section 7 of the Charter of Rights and Freedoms cannot be stretched to ‘second-guess’ societal choices because it would infringe on the role of elected representatives and the legislative arm of government.²⁶

Justice André Forget agreed with Justice Delisle but ultimately suggested that section 7 could be applied if it was proven that a lack of private options in health insurance could harm the plaintiffs’ personal security. In this regard, Forget followed the legal logic of Justice Piché by claiming that this must be established for section 7 to apply. Justice André Brossard echoed the opinions of Justice Forget. Hence, the appeal was rejected.

Despite two rejections of their case, Chaoulli and Zeliotis continued their appeal process to the Supreme Court of Canada. The legal logic of this case created the sense that public health care stood in fundamental disagreement to the Charter of Rights and Freedoms. Consequently, the case drew considerable media attention at provincial, national and international levels. As Yeo and Lucock state, “The legal issue before the Court was whether Québec legislation prohibiting private insurance for physician and hospital services provided by the publicly funded system contravened the Canadian *Charter of Rights and Freedoms* and/or the Québec *Charter of Human Rights and Freedoms*.”²⁷ Chaoulli and Zeliotis began to accumulate support for this continued appeal. As Martha Jackman states, “Their supporting interveners, including Senator Michael Kirby and the members of his Standing Senate Committee on Social Affairs, Science and Technology, a number of private health clinics from British Columbia, and the Canadian

²⁵ Flood et al. 2005, 560.

²⁶ Flood et al. 2005, 560.

²⁷ Yeo and Lucock 2006, 129.

Medical Association, argued that governments were required to eliminate health care delays or allow private funding.”²⁸

Despite two previous courts already finding in favour of continuing the ban on private insurance, the Supreme Court would move the case in another direction. In a narrow split decision of 4-3, the Supreme Court ruled that Québec could no longer maintain a ban on private health insurance as it violated the fundamental rights of Québec’s citizens. While the court is normally composed of nine justices, two voted to abstain as a result of being appointed after the case was decided. However, the remaining seven justices levied three separate opinions. Justices Binnie, Lebel and Fish upheld the decision of the Québec Court of Appeals. In contrast, Chief Justice Beverly McLachlan, and Justices Major and Bastarache argued that the decision did in fact violate personal security as prescribed under section 7 of the Canadian Charter of Rights and Freedoms as well as section 1 of the Québec Charter.

The most contentious twist in this decision was the opinion expressed by Justice Marie Deschamps, who argued that the only burden the appellants had to express was whether “their right to life and to personal inviolability has been infringed.”²⁹ She suggests that since the prohibition of private insurance had not sufficiently been justified by the Attorney General of Québec under section 9.1³⁰ of the Québec Charter, it “is not necessary to answer the other constitutional questions,” including whether the ban stood in contrast to section 7 of the Canadian Charter of Rights and Freedoms.³¹ In essence, her decision limited the scope of the decision to Québec but provided the infrastructure for similar challenges from other provincial jurisdictions.

²⁸ Jackman 2006, 351.

²⁹ Flood et al. 2005, 586.

³⁰ Section 9.1 “In exercising his fundamental freedoms and rights, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec.”

³¹ Flood et al. 2005, 586.

As Gregory Hagen states, Justice Deschamps took a broader interpretation of the Québec Charter when reaching her decision: “In previous cases, the right to inviolability contained in the Québec Charter has been interpreted more broadly than ‘security’ under the Charter, and includes physical, psychological, moral and social inviolability.”³² Furthermore, Deschamps was not reluctant to wade into areas of public policy. As Manfredi and Maioni state, quoting Deschamps, “Courts have all the necessary tools...to find a solution to the problem of waiting lists...and respond to the urgency of taking concrete action in the face of a situation that continues to deteriorate.”³³

After the Supreme Court levied its decision, the Québec government asked the court for an 18-month stay to study the effects of this decision and to formulate a public policy response. While the Court did not acquiesce to this time frame, they did grant 12 months so that the Québec government could manage the implications of the decision. With the stakes of this case having the potential to drastically alter the public health care system, the remainder of this thesis looks at what took place during these 12 months.

Bill 33: *An Act to amend the Act respecting health services and social services and other legislative provisions*

One of the benefits of conducting this research is that one is afforded the benefit of hindsight in examining how the Québec government ultimately responded to the *Chaoulli* decision. This hindsight allows this thesis to effectively link the overarching discourses and their relationship to the government’s response. Furthermore, it opens the door for further examination of the case in both the media and academia to examine whether they have maintained their initial reactions to the case or if they have softened, perhaps even changed.

³² Hagen 2005, 35.

³³ Manfredi and Maioni 2006, 269.

Bill 33, An Act to amend the Act respecting health services and social services and other legislative provisions, came into effect on the 13 December 2006 although it was the product of intensive public consultation and political debate in the province of Québec. Having been told that their ban on private insurance was now illegal and facing the deadline imposed by the Court-ordered stay of the Chaoulli decision, this bill was widely deemed the blueprint for the direction Québec would go with public health care.

The Bill had a three-fold objective, designed to accommodate the Chaoulli decision. It was designed to allow elements of private care into the system without damaging the core services of the public system. The first objective in the plan was to developing a wait-time guarantee, designed to highlight wait-times and to determine if surgeries can be accommodated within a time frame deemed to be medically necessary. The second objective was to develop specialized clinics, to be associated with existing hospitals, which could handle overflows of medically necessary procedures and remove some of the burden on public hospitals. The final objective was to allow for the purchase of third-party, private insurance for a select group of publicly covered procedures which are covered by the wait-time guarantee, including cardiac surgery and cancer treatments, hip and knee replacement, and cataract surgery. Each of these requires greater explanation.

The first objective establishes a wait-time guarantee, which is made readily available to the public for consultation. This guarantee will be established by the Québec government in consultation with the Régie de l'Assurance Maladie du Québec (the Québec Medical Association). Through this care guarantee, the Québec government "has committed itself to a wait-time guarantee for a range of health services including cardiac surgery and cancer

treatments, hip and knee replacement, and cataract surgery.”³⁴ The “bill provides for the implementation in hospital centres of a central mechanism for managing access to those services. The mechanism will include rules to be followed to enter a user on an access list, as well as the manner in which the estimated date on which services will be received is to be determined. The person responsible for the mechanism is to ensure that it operates properly, and the executive director of the institution is to report on its operation to the board of directors.”³⁵

Essentially, this mechanism will allow individuals to see whether their surgery can be accommodated in a reasonable time frame. If it is not feasible in the prescribed time-frame, then the hospital may set up alternative methods to complete this procedure. This wait-time guarantee provides the Minister of Health with the opportunity to set up alternative access to these procedures within the public system or to provide an alternative, private service. In essence, “The Minister is authorized to issue directives in order to implement alternative access mechanisms for a specialized medical service if the Minister considers that the waiting time for that service is unreasonable. In such a case, the director of professional services is to make an alternative service proposal to the user concerned so that he or she may receive the service within a time the Minister considers reasonable.”³⁶

By covering a number of high volume procedures, this wait-time guarantee makes the need for alternative service options even more prevalent. To achieve this increased demand, the Québec government has established the opportunity for the development of specialized care centres, funded by private financing, which can both decrease wait-times for these procedures in public hospitals, but also to handle the overflow of procedures should it occur. The bill “creates a

³⁴ Gerald W. Boychuk, “Provincial Approaches to Funding Health Services in the Post-Chaoulli Era,” Paper Presented at the CPSA Annual Meeting, York University, Toronto, June 2006, 15.

³⁵ National Assembly of Québec, Bill 33 - *An Act to amend the Act respecting health services and social services and other legislative provisions* (13 December 2006, Chapter 43).

³⁶ Bill 33 2006.

legal framework for carrying on medical activities in specialized medical centres. The operator of such a centre may provide in the centre all medical services necessary for the surgery specified by law, as well as any other specialized medical treatment that the Minister may determine by regulation.”³⁷

By promoting such clinics, the Québec government has relinquished some authority over these surgeries and softened legislation that requires these procedures to be undertaken within the confines of a public health centre. Instead, the Québec government has developed regulations to ensure that while the procedures will still be undertaken under the auspices of the public system, they can now be performed outside of a public centre. Furthermore, these services can be provided by private physicians working in these clinics. To ensure accountability for these new clinics, “the bill provides for supervision of the quality and safety of the medical services provided in a specialized medical centre, in particular by requiring the operator of such a centre to hold a permit, to obtain accreditation and to appoint a medical director.”³⁸

Finally, the bill provides hospitals the opportunity to become formally associated with these specialized clinics so that, under certain conditions, an institution operating a hospital centre may be authorized to become associated with a medical clinic for the provision of specialized medical services to users of the institution.³⁹ This partnering is done “in order to expand capacity without requiring new capital outlays by government.”⁴⁰ It allows private-financiers to engage in the medical system but does so without damaging the core elements of the public system.

³⁷ Bill 33 2006.

³⁸ Bill 33 2006.

³⁹ Bill 33 2006.

⁴⁰ Boychuk 2006, 15.

As a last measure, arguably directly influenced by the *Chaoulli* decision, the government of Québec lifted “the ban against third-party insurance for a limited range of publicly-funded procedures which are subject to an access guarantee.”⁴¹ Since the Québec government could no longer establish that a ban on private insurance was in the best interests of Quebeckers, Bill 33 establishes guidelines in which individuals could seek private insurance for services traditionally covered by the public system. Bill 33 “amends the Health Insurance Act to enable a person to enter into an insurance contract that covers the cost of the insured services required for the surgery specified by law or for other treatment determined by a regulation of the Government made after examination by the appropriate committee of the National Assembly.”⁴²

However, despite the initial reactions made about the introduction of private insurance into the Québec medical system, the Québec government still provided reasonable limitations on what effect it could actually have on the public system. First, it limits the purchase of private insurance to only a select group of procedures, specifically those which had been associated with extensive (occasionally, prohibitive) wait-times, *including* cardiac surgery and cancer treatments, hip and knee replacement, and cataract surgery. This means that, outside of the list of services, all medically necessary services are still covered within the confines of the public system. This limitation has little effect however as many of the procedures not covered in this list are not subject to the same wait-time problems.

Second, arguably the most important aspect of this provision of Bill 33 is that it maintains its ban on physicians working concurrently in the public and private systems, thereby ensuring that no mass exodus of physicians to a parallel system would endanger the overall quality of the public system. Bill 33 states that private insurance contracts purchased by Québec citizens “must

⁴¹ Boychuk 2006, 15.

⁴² Bill 33 2006.

cover the cost of all services related to the surgery or treatment, which must be provided in a specialized medical centre where only physicians not participating in the health insurance plan practise.”⁴³ This means that Quebeckers who choose to purchase and use private insurance must receive their treatment from a physician working entirely in the private sector at a private facility, or to seek care in another jurisdiction.

Furthermore, this provision of Bill 33 provides the Minister of Health the opportunity to suspend physicians who are found to be working in both the public and private sectors by suggesting that “the Health Insurance Act is further amended to grant the Minister the power, in certain circumstances, to suspend the possibility for a physician to cease to participate in the health insurance plan.”⁴⁴ Lastly, it “amends the Hospital Insurance Act to maintain the prohibition against entering into an insurance contract that covers the cost of an insured hospital service.”⁴⁵

Chapter 2 – Critical Discourse Analysis: Looking Through Three Lenses

At their most basic level, “discourses are specific linguistic patterns (persistent metaphors, structures and narratives) that ‘construct social realities,’ rather than finding them whole, and which define, enact, and fix a specific pattern of social relations.”⁴⁶ However, it would be ill-advised for discourses to be defined solely as texts. Discourses are actually “an integration of sentences—spoken or written—that produce a meaning larger than that contained

⁴³ Bill 33 2006.

⁴⁴ Bill 33 2006.

⁴⁵ Bill 33 2006.

⁴⁶ Mark B. Salter, “Canadian Post 9/11 Border Policy and Spillover Securitization: Smart, Safe and Sovereign?” in *Critical Policy Studies*, Michael Orsini and Miriam Smith (eds.). (Vancouver/Toronto: UBC Press, 2007), 300.

in the sentences examined independently.”⁴⁷ Discourses then are more than just words or sentences strung together. Instead, discourses reflect deeper social and cultural meanings. It is discourse that “both transmits the cultural traditions of society and mediates everyday social and political interactions.”⁴⁸

Critical Discourse Analysis (CDA) is a constantly expanding theoretical approach in the social sciences. It is a theory that has been broadly applied to many intellectual disciplines, as advocates of CDA have not formed an entirely coherent opinion about its use. As Blommaert states, that while there is “some tendency within CDA to identify itself as a ‘school,’”⁴⁹ there are differing opinions about the methodology of using CDA. While some scholars are open to a diversified methodology, others have chosen to follow a stricter guideline about the theory’s proper use.⁵⁰

Perhaps this is why CDA remains under-used in the analysis of public policy development compared to other theories such as institutionalism or rational choice theory. This thesis draws on this approach to understand the implications of the *Chaoulli* decision in a different fashion from the institutionalist-heavy study of public policy. Using CDA to analyze the *Chaoulli* case adds to the growing body of literature about the *Chaoulli* decision by focusing on reactions to the decision and how these reactions were presented for public consumption.

CDA is effective because it allows us to examine what was being said in the wake of the decision. In doing so, CDA can explain the prevailing reactions to the *Chaoulli* decision and the influence they may have had on the Québec government’s response to the case. CDA is powerful because it focuses on the ideas presented as a reaction to the case as opposed to focusing on how

⁴⁷ Frank Fischer, *Reframing Public Policy*, (Oxford and New York: Oxford University Press, 2003), 73.

⁴⁸ Fischer 2003, 90.

⁴⁹ Jan Blommaert and Chris Bulcaen, “Critical Discourse Analysis,” *Annual Review of Anthropology* 29 (2000): 455.

⁵⁰ Blommaert and Bulcaen 2000, 450.

the institutions have shifted. Examination of the *Chaoulli* decision has largely focused on the institutional shifts that helped shape this case, so this use of discourse theory is powerful because it will add another element to the growing body of literature. Before explaining how this theoretical approach will be employed here, this chapter will examine some of the tenets of what constitutes discourses and how CDA has been applied to the study of public policy.

Norman Fairclough, considered one of the founders of the discipline, sketches a strict paradigm by which CDA is to be performed. His paradigm is formed in three dimensions. The first dimension is “discourse-as-text, i.e. the linguistic features and organisation of concrete instances of discourse.”⁵¹ In this dimension “choices and patterns in vocabulary (e.g. wording, metaphor), grammar (e.g. transitivity, modality), cohesion (e.g. conjunction, schemata), and text structure (e.g. episode marking, turn-taking system) should be systematically analysed.”⁵² This is the most basic level of CDA.

The second dimension is “discourse-as-discursive-practice, i.e. discourse as something which is produced, circulated, distributed, consumed in society.”⁵³ Here, the researcher must look at the connection of the “discourse-as-text” to their larger social meaning. To do this, “attention should be given to speech acts, coherence, and intertextuality – three aspects that link a text to its wider social context.”⁵⁴ This dimension is necessary because “particular aspects of the world may be represented differently, so we are generally in the position of having to consider the relationship between different discourses. Different discourses are different perspectives on the world, and they are associated with the different relations people have to the

⁵¹ Norman Fairclough in Jan Blommaert, *Discourse: A Critical Introduction*, (Cambridge: Cambridge University Press, 2005), 29.

⁵² Blommaert 2005, 29.

⁵³ Blommaert 2005, 29.

⁵⁴ Blommaert 2005, 29.

world, which in turn depends on their positions in the world, their social and personal identities, and the social relationships in which they stand to other people.”⁵⁵

Discourse theory further suggests that “the policy process is often governed by arguments and assumptions which do not easily admit of empirical verification or refutation, but that these arguments and assumptions can themselves be studied empirically.”⁵⁶ This empirical analysis is applied at either the macro or micro levels. Under the macro-analysis, “the investigator is able to focus on how political and economic elites construct and maintain a societal-wide hegemonic discourse that makes clear what is on the agenda and what is not, as well as how oppositional groups seek to make their voices heard.”⁵⁷ On the micro-level, “focus turns to the relationships between discourse and specific institutional practices.”⁵⁸ By looking at how discourse is applied to existing institutions, it exposes some of the barriers to shifting policy away from the status quo. Collectively, this analytical structure examines how actors employ discourses to offer radical policy alternatives or to preserve the dominant paradigm.

In public policy formation, alternative discourses are often aided by institutional shifts or seminal political events. Deconstructing policy discourses often expose how they have emerged as “the unintended consequence of a confluence of events and ideas.”⁵⁹ As the *Chaoulli* case highlights, institutional shifts often have the capacity to create new policy discourses or empower prevailing, yet quiet, discourses. The decision of the Supreme Court to challenge the prevailing social paradigm is an example of how these changes provide the fertile discursive domain for

⁵⁵ Fairclough 2003, 124.

⁵⁶ Andrew Stark, “‘Political-Discourse’ Analysis and the Debate over Canada’s Lobbying Legislation,” *Canadian Journal of Political Science* 25.3 (1992): 514-515.

⁵⁷ Fischer 2003, 89.

⁵⁸ Fischer 2003, 89.

⁵⁹ Fischer 2003, 85.

political actors to transform the health care system, through the implementation of alternative policy options, in their favour.

This analytical structure also highlights how discursive politics often are manifested through competing policy frames. Discursive politics are characterized by competing policy discourses which often seek to either maintain the status quo or to develop alternative, sometimes radical, policy options. What is most striking is that these discourses are rarely static with membership constantly evolving, depending on the issues. Since policy is developed in “a severely fragmented governing system linked by loosely organized policy or ‘issue networks,’”⁶⁰ members are often attracted to particular discourses despite very different backgrounds. As White suggests, members include not only political officials and major interest groups who are at the forefront of policy development, but “at different times they also include policy analysts, representatives of think tanks, academics, public interest groups, citizen lobbies, and so forth.”⁶¹

Often times, actors become associated with particular discourses by virtue of ideologies. Since “ideologies reflect basic material and social relations in a society, they also supply people with different social identities. The various groups in society thus orient themselves ideologically in different ways to particular discourses.”⁶² Regardless of how these associations are created, these contending discourses provide a common voice for like-minded individuals to create policy frames which are best able to satisfy their objective of shaping public policy. As Juillet explains, “by weaving a selection of facts, beliefs, and values into a plausible prescriptive narrative, these policy frames, or storylines, allow actors and publics to reduce the complexity of policy

⁶⁰ White 1994, 514-515.

⁶¹ White 1994, 514-515.

⁶² Fischer 2003, 77.

problems, ascribe meaning to problems and events, and crudely assess possible policy alternatives.”⁶³

In light of these competing discourses and policy frames, actors who are attempting to offer alternative policy options are often outnumbered. It is this numerical superiority which favours discourses advocating the maintenance of certain public policies. This superiority discourages frontal attacks on status quo policy options. Indeed, “frontal challenges to norms may result in redoubled resistance to new ideas or an intractable stalemate between competing norms and values.”⁶⁴ Instead, discourses which are successful in challenging the prevailing social paradigm will appeal “to ‘facts’ to challenge the problem definitions, causal relationships, and truth assertions inherent in the old paradigm.”⁶⁵

The third dimension is “discourse-as-social-practice, i.e. the ideological effects and hegemonic processes in which discourse is seen to operate.”⁶⁶ This dimension explains how the process of analyzing texts and examining their role in developing a wider social context act as elements of a power struggle. The “concept of hegemony gives us the means by which to analyse how discursive practice is part of a larger social practice involving power relations: discursive practice can be seen as an aspect of a hegemonic struggle that contributes to the reproduction and transformation of the order of discourse of which it is part (and consequently of the existing power relations).”⁶⁷ It is here where CDA can witness change because hegemonic struggle can be witnessed through discursive changes.

⁶³ Juillet 2007, 259.

⁶⁴ Bhatia 2010, 40.

⁶⁵ Bhatia 2010, 40

⁶⁶ Blommaert 2005, 29.

⁶⁷ Louise Phillips and Marianne Jørgensen, *Discourse Analysis as Theory and Method* (Thousand Oaks, CA: Sage Publications, 2002), 76.

CDA then holds a transformative and democratizing capacity. It is transformative because it can explain how actors formulate discussions as “policy frames” or “storylines” in an attempt to shape the debate to accentuate their arguments and to promote their interests as being the best possible outcomes. CDA’s transformative potential lies in its ability to lead “other actors to redefine their own interests in light of a new understanding of reality.”⁶⁸ In fact, it is through dialogue with other actors advocating different ideas that majority and minority actors are better able to define their own political interests.⁶⁹

Discourses also have the added capacity to empower minority opinions and ideas in the face of overwhelming majority support. Since minority actors are often subjected to the conditions imposed by majoritarian opinion, they are often at odds with the institutional framework through which changes are made. As Bhatia explains, “new ideas are often contradictory to or detached from the dominant paradigm and thus are initially found at the margins of the issue.”⁷⁰ Generally, this is true with respect to the *Chaoulli* decision. For example, proponents of privatizing elements of the health care system had been ostracized for trying to dismantle the public system in Canada. As a result, their ideas were relegated to a minority status and pushed outside of the mainstream of the dominant paradigm.

Critical discourse analysis provides an alternative discursive domain, one which allows minority opinions to advance their ideas within the institutional framework that is proposed by the majority. Discourses can function as “rhetorical devices employed by political actors to deliberately alter the ideational context, to legitimize their initiatives and actions, and to persuade

⁶⁸ Luc Juillet, “Framing environmental policy: aboriginal rights and the conservation of Migratory birds,” in *Critical Policy Studies*, edited by Michael Orsini and Miriam Smith. (Vancouver/Toronto: UBC Press, 2007), 260.

⁶⁹ Juillet 2007, 260.

⁷⁰ Vandna Bhatia, “Social Rights, Civil Rights, and Health Reform in Canada,” *Governance: An International Journal of Policy, Administration, and Institutions* 23.1 (2010): 39-40.

others of their authority, superiority, and suitability.”⁷¹ While the minority actors may not change the actual institutions themselves, they adapt their policy frames to view the institutions in certain ways and expose their ideas to a majority who may not have been exposed previously to this knowledge. CDA therefore is instrumental in explaining how minority actors can add their voices and ideas to challenge the dominant discursive domain.

It is precisely through this transformative and democratizing capacity that critical discourse analysis finds its relevance to public policy formation. Unlike traditional public policy development, discourse theory promotes subjective viewpoints to problems. As White explains, while traditional policy analysis has assumed that careful adherence to scientific methods will produce objective and valid knowledge, there is an expanding segment of observers who are weary of this objectivism.⁷² Instead, people are chronically viewing policy issues through pre-conceived theories and understandings of the policy process. By examining these different preconceptions and understandings of the process, discourse theory can expand debates by bringing in more opinions and offering a myriad of new public policy options.

To establish these three dimensions, “CDA should make a progression from description, to interpretation, to explanation.”⁷³ The first process, description, focuses on examining discourse as texts. Description is “an activity similar to that of participants in the sense that the researcher adopts the participants’ categories in his description, but the researcher (in contrast to the participant) needs to make his/her interpretive framework explicit.”⁷⁴ The second stage is interpretation, which “is concerned with the way in which participants arrive at some kind of

⁷¹ Bhatia 2010, 39.

⁷² Louise G. White, “Policy Analysis as Discourse,” *Journal of Policy Analysis and Management* 13.3 (1994): 506-507.

⁷³ Blommaert 2005, 29.

⁷⁴ Blommaert 2005, 29.

understanding of discourse on the basis of their cognitive, social, and ideological resources.”⁷⁵

This can be problematic, however, as researchers often hold opinions which have been through the dominant discursive and social framework. This is why CDA requires an explanation phase, in which “the researcher draws on social theory in order to reveal the ideological underpinnings of lay interpretive procedures.”⁷⁶ The researcher takes into account the conditions in which these texts are produced to understand how they reflect the society/role they are being used in. This methodology is “framed in a theory of ideological processes in society, for discourse is seen in terms of processes of hegemony and changes in hegemony.”⁷⁷

This approach to discourse analysis further strengthens the definition of discourses as being greater than texts. As Fairclough states, “text analysis is an essential part of discourse analysis, but discourse analysis is not merely the linguistic analysis of texts.”⁷⁸ Instead he sees discourse analysis as an oscillation “between a focus on specific texts” and what he calls “the ‘order of discourse’, the relatively durable social structuring of language which is itself one element of the relatively durable structuring and networking of social practices.”⁷⁹ Fairclough further explains that discourses are “ways of representing aspects of the world – the processes, relations and structures of the material world, the ‘mental world’ of thoughts, feelings, beliefs and so forth, and the social world.”⁸⁰

CDA’s critique lies “on the intersection of language/discourse/speech and social structure.”⁸¹ As Blommaert explains, CDA is about “uncovering ways in which social structure

⁷⁵ Blommaert 2005, 29.

⁷⁶ Blommaert 2005, 30.

⁷⁷ Blommaert 2005, 30.

⁷⁸ Norman Fairclough, *Analyzing Discourse: Textual Analysis for Social Research*, (London: Routledge, 2003), 3.

⁷⁹ Fairclough 2003, 3.

⁸⁰ Fairclough 2003, 124.

⁸¹ Blommaert 2005, 25.

relates to discourse patterns (in the form of power relations, ideological effects, and so forth).”⁸² When CDA treats these as “problematic,” it becomes an effective tool in evaluating text and applying the results to shape social structures.⁸³ Blommaert and Bulcaen explain that “these dimensions are the object of moral and political evaluation and analyzing them should have effects in society: empowering the powerless, giving voices to the voiceless, exposing power abuse, and mobilizing people to remedy social wrongs. CDA advocates interventionism in the social practices it critically investigates.”⁸⁴

Discourse Analysis: Three Lenses Approach

As the first chapter has suggested, this thesis attempts to validate the claim that two discourses – one focusing on public policy reactions and one focusing on the philosophical role of the state in providing health care are the most dominant discourses which have proliferated in the wake of the *Chaoulli* decision. To establish the parameters of these discourses, this analysis will be developed by examining the texts through three different lenses.

These three lenses are used to examine the words actually being used in academic and media articles, what Fairclough referred to as the “discourse-as-text” (or what will here on be referred to as texts). By applying these three lenses, these articles can yield a great deal of information about the texts. However, it would be wrong to assume that this approach is simply a content analysis. In this sense, entitling this discourse analysis “the three lenses approach” might depart from a strict understanding of discourse analysis as imagined by Fairclough.

However, this thesis uses the “three lenses approach” as a loose term to envelope the entire breadth of critical discourse analysis it plans on achieving. Instead, this thesis attempts to

⁸² Blommaert 2005, 25.

⁸³ Blommaert 2005, 25.

⁸⁴ Blommaert and Bulcaen 2000, 449.

pursue a CDA similar to the three-step approach that Fairclough has highlighted. Although the three lenses, more specifically the analysis of texts, are the majority of the research, they are only the first step in the analysis. As Fairclough states, a proper discourse analysis must move from description to interpretation to explanation. The third chapter of this thesis, which performs the analysis of the texts through the three lenses, is the descriptive stage.

The first lens pertains to whether the discourses are proposing new ideas or reforms to prevailing policy frames or whether they are maintaining the status quo. As such, it will examine the difference between what Bhatia and Coleman have identified as augmentative and transformative discourses.

The second lens will examine the reliance on “rights-talk.” This section will highlight some problems with rights discourse, including an ignorance of the reasonable limitations clause, a misinterpretation of rights with values, and using rights as absolute entities that cannot be suppressed. The goal of this lens, in light of the competing nature of a “right” to health and a right to security, is to examine how the literature has approached the Supreme Court’s decision and to what extent it is trying to justify its conclusions via rights talk.

The third lens is a matter of issue framing. The most dominant theme in issue framing is the reliance on creating oppositions and then exploiting them. These exploitations occur where the message is framed to include two or more sides that hold contrasting opinions. Oftentimes, one group holds more power than the other and uses it to subject the other group to their opinion. Framing the message in this way can create oppressors and victims, which leads consumers of these message frames to root for the victim in the face of oppression. The goal of creating these exploitations is to try and create adversity between the different sides of an argument. More specifically, issues are framed to create an “us against them” mentality. This tactic, designed to

draw consumers into the argument, is often used in the media. This lens will establish whether the literature is creating a prevailing sense of a winner and loser in the wake of *Chaoulli* and examine how it affects government responses. First, however, each of these lenses requires some greater explanation.

Lens One: Augmentative vs. Transformative Discourses

One of the primary lenses to distinguish competing discourses is the classification of augmentative vs. transformative discourses proposed by Vandna Bhatia and William D. Coleman.⁸⁵ Bhatia and Coleman suggest that there are two major discourses that apply when examining health care reform, which can be divided into two further sub-categories. While their study focused on discourses which were promoting or resisting reform in Canadian and German health systems, Bhatia and Coleman have developed a methodology for studying discourses that can be applicable beyond their own analysis. Bhatia and Coleman explain that “an augmentative discourse is one developed by policy elites and directed toward a broader mass public in an attempt to defend a dominant policy frame or to justify minor adjustments to policies within that frame.”⁸⁶

This type of discourse focuses on creating changes to a system but not shifting the prevailing policy frame. In the *Chaoulli* case, this would comprise discourses which suggest that the Supreme Court’s decision does not alter the overall policy frame; the policy frame only requires modifications to function effectively. For example, the policy frame in the *Chaoulli* decision is public health care in Canada. The public system is a long-held prevailing frame which is often resistant to change because of its iconic value in the Canadian psyche. Augmentative

⁸⁵ Vandna Bhatia and William D. Coleman, “Ideas and Discourse: Reform and Resistance in the Canadian and German Health Systems,” *Canadian Journal of Political Science* 36.4 (2003): 715-739.

⁸⁶ Bhatia and Coleman 2003, 718.

discourses suggest that while slight changes could be made to elements of the policy frame, the frame itself remains, for the most part, untouched.

Within the realm of augmentative discourses, there are two sub-categories to further explain this type of discourse. The first sub-category is rhetorical discourses. Rhetorical discourses are defined as those “used to reinforce and to further institutionalize a dominant policy frame.”⁸⁷ This conservative type of discourse often stands to protect the status quo. It perceives changes to the dominant policy frame as threatening and attempts to transform elements of this dominant policy frame are often muted by a rhetorical discourse. It is often meant to have a broad appeal, specifically to the citizenry. Furthermore, “it places the normative foundations of the frame in the foreground, emphasizing what the problems faced by society are and how society has agreed to address them. It highlights the agreed upon rules of the system, all the while linking them back to normative foundations.”⁸⁸

The second sub-category of augmentative discourses is instrumental discourses, which are “employed to address small policy failures or inconsistencies within the dominant policy frame.”⁸⁹ Instrumental discourses are only slightly different than rhetorical discourses in that they point out small structural flaws within the prevailing policy frame. Despite admitting that there are small flaws, they do not change the overall nature of the policy frame. Instead, “these failures may include ‘efficiency’ or ‘effectiveness’ problems that policy elites propose to solve through adjustments in the settings of policy instruments, all the while remaining within the normative bounds of the dominant policy frame.”⁹⁰

⁸⁷ Bhatia and Coleman 2003, 719.

⁸⁸ Bhatia and Coleman 2003, 730.

⁸⁹ Bhatia and Coleman 2003, 719.

⁹⁰ Bhatia and Coleman 2003, 719.

Standing in contrast to augmentative discourses are transformative discourses. Transformative discourses are designed to create large structural changes to the dominant policy frame. They are used by policy elites to reform old policy paradigms and to create new ones. Bhatia and Coleman suggest that “policy elites may construct transformative discourses by engaging a wider range of policy actors, in order to convince them of the need to work together to change the core normative and/or cognitive elements of the dominant policy frame.”⁹¹

As sub-categories to this form of discourse are challenging and truth-seeking discourses. The former “is directed outward, seeking to persuade more diverse audiences both to think very differently about policy and to switch allegiances to those proposing new ideas. Challenging discourse may rely on appeals to fear, anxiety or insecurity to elicit desire responses, or they can be ‘reasoned’, where the main action imperative is persuasion using ‘facts.’”⁹² In effect, this type of discourse has a broad scope. Political elites will attempt to persuade the greatest number of political actors to adhere to their chosen policy frame.

The latter, truth-seeking discourses “challenge the moral appropriateness and the underlying norms and beliefs of the policy frame, and seek to develop consensus around a new set of broad, normative parameters for policy making.”⁹³ In this type of discourse, political elites with opposing ideas attempt to persuade one another of the virtues of their proposed policy frames. In turn, they become more open to the ideas of one another in formulating policy frames which are ultimately revealed the most effective. If truth-seeking discourses succeed, the cohesive nature by which they were reached can serve to create strong reforms to status quo policy paradigms. Unlike challenging discourses, this type of transformative discourse has a very limited scope focusing on other policy elites as opposed to appealing en masse to the citizenry.

⁹¹ Bhatia and Coleman 2003, 718-719.

⁹² Bhatia and Coleman 2003, 719.

⁹³ Bhatia and Coleman 2003, 722.

The reasoning behind this lens is to move beyond an institutionalist view of the *Chaoulli* case, which has been the dominant theoretical trend in the literature. In my opinion, while the *Chaoulli* case may have shifted the institution of health care, it did little to change its overall nature. I say this because while the government was forced to remove their ban on private health care, there was no immediate influx of private elements into the public system. Instead, what derives from the case are a series of contending discourses which have established different solutions about how to address the possibility of a growing private market. They essentially fall into two categories: those which look to maintain the dominant policy frame which perpetuates the publicly funded system, and those which look to change it by introducing new ideas, whether they are radical or moderate. In this sense, it is the examination of ideas as opposed to institutions which drives this discourse.

Ideas are often relegated to a secondary role when analyzing heavily entrenched institutions such as social programmes. However, "...Ideas...can have more than a secondary role. Not only can they be crucial to whether change occurs or not, but also their content shapes the very changes that do occur."⁹⁴ This Supreme Court decision emphasizes the value of new and old ideas prevailing through public discourse. In *Chaoulli*, while the institution of the public health care system changed little, these discourses have had a profound effect on expanding the discursive domain surrounding health care and in establishing guidelines for governments to make changes to the system.

Lens Two: The Emphasis of "Rights-Talk"

The issue of rights is a leading theme in the literature and has affected significantly the proliferation of discourses. Charter rights have acted as important legal pillars since their

⁹⁴ Bhatia and Coleman 2003, 735.

codification in 1982. Although Charter rights existed before the repatriation of the Constitution, their use in establishing legal arguments has expanded exponentially ever since. Today, since “...the Charter empowers the country’s courts to enforce its provisions through judicial review, rights claims assume a particularly pronounced stature as they can be more readily invoked to prevent violations of citizen liberties by government actors.”⁹⁵ However, what has changed most drastically is the perception of which rights citizens now possess.

At present, rights have come to encompass what is provided under the Charter of Rights and Freedoms as well as those services provided under legislated social programmes. The most prevalent example of this is the continued explanation of health care as a right. However, the codification of this right under the Charter has never taken place. Instead, the provision of health care by governments to their citizens could be established more succinctly as a value of the majority of Canadian society. As Emmett MacFarlane points out, “The distinction between ‘competing rights’ and ‘competing values’ is not always clear cut.”⁹⁶

Furthermore, Canadians often possess a greater understanding of these “values” than they do of their Charter-established rights. This phenomenon is further confused by a general misunderstanding of Charter rights by the Canadian population. Indeed, as Nik Nanos suggests, “‘Charter values equal Canadian values’ simply doesn’t resonate as a top-of-mind view for Canadians.”⁹⁷ His survey work has identified the majority of Canadians as being oblivious to what rights Canadians possess by virtue of the Charter and what rights they perceive themselves to possess.⁹⁸

⁹⁵ Emmett MacFarlane, “Terms of Entitlement: Is there a distinctly Canadian ‘Rights Talk’?” *Canadian Journal of Political Science* 41.2 (2008): 304.

⁹⁶ MacFarlane 2008, 309.

⁹⁷ Nik Nanos, “Charter values don’t equal Canadian values: Strong support for same-sex and property rights,” *Policy Options* (2007): 51.

⁹⁸ Nik Nanos, 2007.

Since rights are often mischaracterized by the general population, providing the illusion that the breadth of rights is greater than they actually are, partisan political actors often use rights to promote a political agenda. As Knopff states, “...although rights may exist, and can even be the subject of a fundamental popular consensus, the issues covered by their rhetorical cloak in the courtroom are rarely of this fundamental ilk.”⁹⁹ In other words, a reliance on rights to solve legislative issues can lead to greater mischaracterization about the extent to which citizens are protected by rights.

This misunderstanding between rights and values causes further concern because of the possibility of the increasingly absolutist and individualistic tone it brings to public policy debates. As MacFarlane argues, “an absolutist conception of rights makes it exceedingly difficult for elected governments to achieve certain policy goals, even if those goals have broad public support, because the rights invoked to oppose them are viewed as taking precedence.”¹⁰⁰ This is because “the politics of rights moves power up, away from elected representatives to appointed judges.”¹⁰¹ That is not to say that rights should not be used as the fundamental safeguards that they were designed for. In fact, “Constitutional rights provide an avenue for individuals or groups to appeal to values so basic they transcend simple majoritarian preferences.”¹⁰² Instead, it suggests that this perception of rights as maintaining supremacy makes it difficult for politicians to propose policy alternatives.

This difficulty derives from the perception that these policy options, despite appealing to broad social values, are actively trampling individual rights. Given the absolute nature of rights, politicians become unwilling to contravene these rights-based claims for fear of wasting their

⁹⁹ Rainer Knopff, “Populism and the Politics of Rights: the Dual Attack on Representative Democracy.” *Canadian Journal of Political Science* 31. 4 (1998): 700.

¹⁰⁰ MacFarlane 2008, 314.

¹⁰¹ Knopff 1998, 683.

¹⁰² MacFarlane 2008, 324.

political capital.¹⁰³ Conversely, politicians may leave decisions to the courts in an effort to remove themselves from divisive situations. As Hiebert states, “the Charter may diminish political resolve to define pressing social problems and exercise judgement about how best to reconcile these with constitutional standards. The desire to avoid difficult decisions, by waiting for courts to resolve them, may be tempting.”¹⁰⁴

Supreme Court decisions, specifically the way they are portrayed in the media and, to a lesser extent, in academia, have been important in shaping this perception of rights as absolute. While “invoking a right is not an inherently negative act,”¹⁰⁵ this literature has been ineffective in examining how rights are protected. Much of this derives from an insufficient explanation of the reasonable limitations and notwithstanding clauses of the Constitution. These specific clauses were developed so that courts could protect the legislative arm’s ability to shape public policy and maintain equitable programmes by virtue of majoritarian rule and to provide levels of government the opportunity to contravene specific rights if they were deemed to provide a greater social good, respectively. Despite the importance of these two sections, they are still broadly underrepresented in examinations of Supreme Court cases.

In the *Chaoulli* case, the “decision came down to the Court’s reasonable limitations analysis and the majority’s explanation that the ban on private insurance was not proportional to the government’s goal of protecting the public health system.”¹⁰⁶ However, despite the use of the reasonable limitations clause by the Court in levying its decision in the *Chaoulli* case, it has gone virtually unexposed in reactions to the case, largely within the media. That the media and academia have neglected to examine the importance of the reasonable limitations clause “means

¹⁰³ MacFarlane 2008, 325.

¹⁰⁴ Janet L. Hiebert, “Wrestling with Rights: Judges, Parliament and the Making of Social Policy.” *Choices* 5.3 (1999): 4.

¹⁰⁵ MacFarlane 2008, 324.

¹⁰⁶ MacFarlane 2008, 321.

the public is not sufficiently exposed to the notion that rights are often subject to carefully considered limitations by the Court.”¹⁰⁷ As a result, people are often unaware that rights are subject to conditions. Instead, failing to outline the role of the reasonable limitations clause can overemphasize the power of individual rights.

Of greater concern, perhaps, is the representation of the notwithstanding clause in response to Supreme Court decisions. Although the notwithstanding clause is referred to far more often than the reasonable limitations clause, “it is so often portrayed in a simplistic or inaccurate manner that the attention it receives serves only to intensify an absolutist conception of rights.”¹⁰⁸ Despite more frequent reference, the notwithstanding clause is still misunderstood. In fact, only 49 per cent of Canadians realized it existed, while an almost equal 47.7 percent had never heard of it.¹⁰⁹ To further confuse this issue, those who are aware of its existence express serious trepidation about using it. Since rights have taken on a more absolutist tone, governments are more hesitant to use it to protect broad social values in the face of rights based claims because “section 33 is viewed as a way for governments to take away, or override, rights.”¹¹⁰

This lens allows for the division of literature to examine how certain discourses have developed which try to justify their reactions to the *Chaoulli* case on a simple basis of rights. In addition, it allows for a categorization of these articles into three distinctive areas: those which claim the primacy of rights in an absolutist tone, those that address the limitations of rights as proscribed by the Supreme Court, and those that view the case outside of the frame of rights. Essentially, this categorization will divide the articles into those that overemphasize the power of rights, those that examine that courts can limit rights, and those that make no mention of rights.

¹⁰⁷ MacFarlane 2008, 310.

¹⁰⁸ MacFarlane 2008, 314.

¹⁰⁹ Nanos 2007, 54.

¹¹⁰ MacFarlane 2008, 312.

By dividing the literature into these categories, it will examine how different discourses have developed whereby reaction to the *Chaoulli* decision has become a matter of individual vs. collective rights.

Lens Three: Framing of Messages

A final lens with which to view the literature is the issue of message framing. Message framing is an important lens in this research because of the potential impact it has on shaping public opinion. As Iyengar explains, “The importance of framing effects on public opinion is clear. Political stimuli are inherently ambiguous; in matters of principle or fact, political issues are characterized by a multiplicity of interpretations and perspectives.”¹¹¹ In his study of poverty in the United States, Iyengar found that “...political issues are defined primarily through news reports, and since news coverage is inevitably expressed in particular frames, the influence of the media on public opinion can be significant.”¹¹²

This is not to say that the phenomenon is exclusive to media coverage as academia possesses an equal ability to shape public opinion. Message framing is then particularly important because it establishes how authors from the media, academia, or other sectors present their research. Gasher explains that content is “produced or constructed through a series of complex choices about precisely how to depict a given topic – what to include, what to exclude, what to emphasize, what to minimize.”¹¹³ Depending on what they include/exclude and what they emphasize/minimize, authors are capable of drawing people into their conclusions with greater force. This thesis utilizes this lens to examine how discourses presented in the discursive

¹¹¹ Shanto Iyengar, “Framing Responsibility for Political Issues: The Case of Poverty,” *Political Behavior* 12.1 (1990): 20.

¹¹² Iyengar 1990, 21.

¹¹³ Mike Gasher et al., “Spreading the News: Social Determinants of Health Reportage in daily Canadian newspapers,” *Canadian Journal of Communication* 32 (2007): 558.

domain following the *Chaoulli* case were framed and what sort of message these authors were trying to convey to their readers.

Message framing often leads to omissions in an effort to present a particular agenda. This is not always deliberate; in fact, by trying to present a certain message, many important elements of the findings may go missing. This is especially true in the media where they are constrained by space limitations, deadlines, circulation figures and an inherent push to create entertainment value. While this focuses primarily on media representation, this lens is effective in examining all of the literature.

The most important way in which messages are being framed in this analysis is how stories often create and then exploit oppositions.¹¹⁴ These oppositions are used to create an “us against them” mentality. These oppositions are a frequently used tactic by every sector of the literature. This analysis suggests that framing messages as exploitations is usually done in one of three separate narratives. The first is the dangers of modern life. These exploitations commonly include stories “that generate fear, and a concomitant ‘culture of safety’ that is a marked feature of life in advanced industrialized societies with a highly developed mass media.”¹¹⁵ These types of stories generally appeal to a person’s sense that their personal situations can be affected by the media. In the wake of the *Chaoulli* case, and given the nature of Dr. Chaoulli and Mr. Zeliotis’ personal experiences, this narrative has often suggested that the potential limitations of the public health system may ultimately affect each individual’s ability to seek medical care. These accounts rarely take into account geographic limitations, necessary procedures, or availability of staff, among other things. Instead they commonly rely on limited factual information and try to use broad examples to create this fear. An example that Seale suggests is that media “an

¹¹⁴ Clive Seale, “Health and media: an overview,” *Sociology of Health and Illness* 25.6 (2003): 518.

¹¹⁵ Seale 2003, 521.

everyday object turns out to be dangerous – in this case something that is supposed to promote safety. Food scares can work like this – food is an everyday object, necessary for life.”¹¹⁶

A second exploitation is victimhood. Authors, Seale explains, “like to depict victimhood and for this they tend to choose people who represent ourselves at our most vulnerable.”¹¹⁷ In these stories, people are portrayed as being oppressed by much larger and powerful entities. This is perhaps the most prevalent stories in regards to the *Chaoulli* case. In the wake of the Supreme Court’s decision, much of the literature focused on the role of Chaoulli and Zeliotis’ plight to seek care, despite it being outside of the public system. In essence, this literature suggested that Zeliotis was a victim for being unable to seek private care despite his personal health issues. Furthermore, this literature focused on Chaoulli as a victim of a rigid system which impinged on his personal freedom to practice medicine as he saw fit. These stories often appeal to people who feel that they might be the next victim.

A final exploitation relates to stories “about professional and lay heroes. These, in their different ways, are set up to rescue the victims threatened by danger and villainy.”¹¹⁸ These stories often suggest that specific individuals are standing up as heroes, going against the “tyranny” of more powerful entities. They are there to protect the victims, or may be the victims themselves. In the *Chaoulli* decision, both Chaoulli and Zeliotis are heroes; the former is a professional hero and the latter a lay hero. They are perceived as heroic for standing up against the ban on private health insurance in Québec. These stories often appeal to people who admire perseverance in the face of powerful foes.

This lens is important to understand how the media and academia framed their messages. It is worth examining whether one sector tried to emphasize these exploitations more than the

¹¹⁶ Seale 2003, 520.

¹¹⁷ Seale 2003, 522.

¹¹⁸ Seale 2003, 522.

other or whether there was a concentrated effort within each sector themselves to examine these exploitations.

Selection of Sources and Explanation of Methodology

This thesis does not employ a simple content analysis because it is insufficient in understanding the messages being conveyed in each document. Instead, I chose a selection of documents from each newspaper and academic journals and examined their content under the guise of the three aforementioned lenses. The analysis looked to establish whether each article was agreeing or disagreeing with the Supreme Court's decision in the *Chaoulli* case and then looked at how they tried to justify their position. This examination will establish how the media and academia have established two dominant policy frames through which their arguments are established. Once these dominant policy discourses are identified, it will proceed to establish how the Québec government responded to this case and how these discourses were influential in shaping the Québec government's policy response.

The time frame I have chosen to focus on is from 10 June 2005 to 15 June 2006, which coincides with the one-year stay provided to the government of Québec by the Supreme Court. I chose this timeframe because it marks the period from the end of the *Chaoulli* case until the Québec government introduced Bill 33 into the National Assembly of Québec.

One element of this research involved an examination of 45 articles/books that focused on the *Chaoulli* decision. In total, 45 articles were selected. These articles were selected to fit within the same timeline used for newspaper articles. The majority of these articles focussed on the legal decisions of the cases. As the first chapter noted, this thesis will not focus on the legal arguments. However, it is important to point out that, legal arguments constituted the majority of academic articles in this time frame. Therefore, a number of the articles selected focus heavily on

legal decision but oftentimes it is used as a catalyst for a further argument. The majority of these academic articles selected were from two key sources. The first is from Flood, Roach and Sossin.¹¹⁹ The second is a collection of articles composed by faculty and members of Osgoode Hall Law School and printed in the *Osgoode Hall Law Journal*. In addition to these two major sources, this thesis selected sources from *Policy Options*, the *Health Care Quarterly*, the *Canadian Medical Association Journal*, the *Health Law Review*, and the *Journal of Law, Medicine and Ethics*, among others.

In addition to the academic articles used in this research, this thesis will use a mixture of newspapers with both a national and a strictly-Québec circulation. This will help to demonstrate the response to the case from both a provincial and national viewpoint. It is worth noting that oftentimes, people writing for newspapers are not necessarily newspaper writers. In fact, in many situations, there are academics who write for newspapers about their respective fields. This thesis does not try to make the distinction between who is writing for newspapers. Instead, it looks at the overall treatment of the case by the media outlet in question. Instead of examining the background of each contributor to the newspapers, I argue that the treatment of the *Chaoulli* case is made up of writing by newspaper staff and by other contributors whose work appears in the newspaper. Essentially, it will treat anything that is in a newspaper as being from that sector instead of focusing on each newspaper's contributor by their background.

The papers I consulted were: *The Toronto Star*, *The Globe and Mail*, *The National Post*, *Le Droit*, *Le Devoir*, *La Presse*, *The Montreal Gazette*, *The Edmonton Journal*, the *Kitchener-Waterloo Record*, the *Victoria Times-Colonist*, the *Ottawa Citizen*, *Le Soleil*, the *Windsor Star*, the *Calgary Herald*, and the *Vancouver Sun*. In total, 597 newspaper articles were selected for this analysis.

¹¹⁹ Colleen M. Flood, Kent Roach, and Lorne Mitchell Sossin, 2005.

A final point to mention before proceeding, it is important to address the problem of personal bias in research that focuses on the public health system in Canada. Given the revered nature of the Canadian system, the possibility for bias is inherent. Unfortunately, it is difficult to remove bias when using available resources. This thesis attempts to limit bias in this project by incorporating a broad range of sources from across the ideological spectrum and from a number of different sectors (media, academic journals, articles presented by outside organizations). With this guideline in mind, this thesis will use a variety of different source materials, including official government documents/legal decisions, academic papers and mass media accounts (newspaper sources which focused on the public debate surrounding the *Chaoulli* decision) to ensure that this research is addressing opinions from across the political spectrum.

Chapter 3 – Empirical Analysis: Examining Discourses

Employing the theory and the three lenses of analysis described in the second chapter, this chapter will perform an empirical analysis of the texts. As a means of aiding the explanation phase of the proposed discourse analysis to be conducted in the following chapter, this thesis has separated both the media and academic articles into a number of groups or families.

The impetus for developing these groups, in addition to their ability to streamline the research process and to organize the results of the text analysis through the three lenses, is to aid in the interpretive phase of this discourse analysis. This stage of CDA relates to the second and third phases of the methodology originally promoted by Fairclough, specifically discourse as “discursive practice” and as “social practice.”

When trying to interpret texts within the greater frame of “discursive practice,” Fischer argued that political and economic elites are typically those who choose which discourses will

shape the agenda and the coverage of particular social events.¹²⁰ In this sense, the division of these newspaper and academic articles into larger families of parent corporations and editorial boards examines the specific role of these groups in establishing how these discourses, as opposed to others, have proliferated in the coverage of the *Chaoulli* decision.

Additionally, these groupings are particularly important in examining the texts in the greater context of discourse as “social practice.” Blommaert suggests that this phase of textual analysis is to interpret how the development of these discourses by certain economic and political elites is emblematic of a struggle for power.¹²¹ In their attempts to shape the debate, the examination of texts allows for an examination of how these actors are trying to assert their hegemony over the discursive domain which the texts are used in.

Therefore, the grouping of each individual article into larger groups is meant to highlight the interpretive stage of this discourse analysis. Although this chapter focuses on an analysis of the text, the following chapter begins by explaining the relationship of each of these groups in relationship to one another. For now, however, a greater explanation of how these articles will be divided is required.

For newspapers, the 16 newspapers that were chosen will be separated and analyzed based on their parent corporation. This will create 5 groups, which will be explained in greater detail shortly. Of the 16 newspapers employed in this research, the strongest concentration of ownership belongs to the Canwest Global Communications Corporation, which owns *the Ottawa Citizen*, *the Victoria Times-Colonist*, *the Windsor Star*, *the Calgary Herald*, *the Regina Leader-Post*, *the National Post*, *the Montreal Gazette*, *the Vancouver Sun*, and *the Edmonton Journal*. A second ownership group is the Torstar Corporation, which owns *the Toronto Star* and *the*

¹²⁰ Fischer 2003, 89.

¹²¹ Blommaert 2005, 29.

Kitchener-Waterloo Record. A third media group is Gesca Limitée, a subsidiary of the Power Corporation of Canada. It operates *Le Soleil*, *La Presse*, and *Le Droit*. In addition to these media conglomerates, I also selected *The Globe and Mail*, which is owned by CTV Globemedia, one of Canada's largest media companies. Finally, of the 16 newspapers chosen, only one – *Le Devoir* – is independently owned. With this concentration in mind, this thesis will now look at each group and highlight some of the key articles from each.

Creating groups for academic articles was more challenging, however. That being said, this thesis has tried to sketch some rough groups. These groups will be split into a group which composed of articles from: Flood, Roach and Sossin's *Access to Care*, *Access to Justice*; the *Osgoode Hall Law Journal*; IRPP's *Policy Options*; the *Canadian Medical Association Journal*; and then a final group which will focus on the remainder of articles used and will act as an "other" category.

It is important to stress here that not every newspaper or academic article can be viewed through each of the lenses used for this discourse analysis. For example, while certain articles may have played up exploitations in their coverage (the third lens), they may not have addressed the issue of rights (the second lens). If there is not a group title (such as the name of a media corporation), then there were no articles from that group which merited analysis through that lens. In each article, their coverage was for the most part very different. Instead, this section will determine the applicability of the lenses by examining each article and looking at how it applies using the three lenses.

It is also worth re-iterating that this thesis treats people who write for newspapers, whether or not they are academics, as part of the media sector. This is simply because the line between who is writing in each category may become easily blurred throughout this research.

Lens 1: Augmentative vs. Transformative Discourses

Torstar Corporation:

The TORSTAR Corporation owns both *The Toronto Star* and *The Kitchener-Waterloo Record*. The Toronto Star regards the decision more from the perspective of an augmentative discourse than other newspapers (most of whom have viewed the decision as possessing something of a transformative function). Notable examples of this view are from Patrick Monahan¹²² and Tom Walkom.¹²³

Monahan suggests that much of the hysteria surrounding the decision can be attributed to poor preparation on behalf of the Québec government in approaching the Court's decision. He suggests that because the Québec government assumed it would win in the court, and failed to ask the Court what would constitute appropriate remedies to the case, they were ill-prepared to defuse the immediate perception that private health care was the next-step in handling the problems with health care. Instead, Monahan suggests that the Court did not even "recognize or establish a constitutional right to purchase private health insurance," but instead suggested that unless governments could provide care in a timely fashion then they should not be permitted to prevent citizens from purchasing care. For that purpose, Monahan suspects that governments, given the appropriate time to respond, can proactively prepare the system against further court challenges, albeit it with minor changes. In essence, this is a prime example of the instrumental discourse, which suggests that the dominant policy frame need not be altered but instead minor adjustments could be made to satisfy criticisms. Thomas Walkom is in agreement in suggesting that this lack of appropriate direction has basically left public system proponents scrambling to counteract the suggestions of the supporters of the private system. He suggests that once these

¹²² Patrick J. Monahan, 17 November 2005, "Wait-times key to saving medicare," *The Toronto Star*, A27.

¹²³ G. Gherson, 30 September 2005, "Court not asked to fix health care," *The Toronto Star*, A19.

supporters of the public system can identify important areas for change, the notion of private health care and altering the dominant policy frame will seem like a less attractive option for reforming Medicare.

The *Kitchener-Waterloo Record* shared a very similar response to its partner publication, *the Toronto Star*, in that it seemed to focus on the *Chaoulli* decision less as a transformative process than an augmentative one. Chantal Hebert¹²⁴ is openly critical of whether the decision will have a transformative capacity because she is unsure whether a full court will share the same findings as the one in the *Chaoulli* case. She argues that since two justices held out from the original ruling, subsequent rulings may not even share the same decision. Although she believes that there is likely to be many more challenges to the public system in other provincial jurisdictions, she cannot be sure if this decision will hold up in those challenges. “What is certain,” she explains, “is that a court that had achieved unanimity on topics as divisive as the recent federal references on secession and same-sex marriage simply could not find common ground among its members on ways to balance the worthy goal of a public health-care system with the fundamental rights of its patients.”

This belief that the *Chaoulli* decision will have an augmentative impact instead of a transformative one is corroborated by Andrew Mills¹²⁵ and Barry Kay.¹²⁶ These authors suggest that private health insurance has already had a very significant impact in Canada and that it already constitutes over a third of overall health care spending. They go on to suggest that if governments can ensure wait-times and access to care in the public system, there should be little

¹²⁴ Chantal Hebert, 10 June 2005, “Supreme Court opens door to private health care; But when the next medicare challenger comes, court’s decision could be different,” *The Kitchener-Waterloo Record*, A15.

¹²⁵ Andrew Mills, 11 August 2005, “Doctors demand wait-list targets; Fast response needed to ward off privatization, governments told,” *The Kitchener-Waterloo Record*, A1.

¹²⁶ Barry Kay, 16 June 2005, “Private health insurance needn’t have a huge impact,” *The Kitchener-Waterloo Record*, A9.

worry about the possibility of private health insurance becoming increasingly common. They suggest that since the Court technically offered the opportunity for private service but made no prescriptions about how which services those could be. Therefore, governments have the opportunity to circumvent the ruling through legislative action before it ever becomes a problem and causes little concern in maintaining the public system.

However, unlike the *Star*, there was a small element of the *Record's* coverage which suggested that the decision could have a more transformative impact. Steve Martinovich¹²⁷ seems to think that the *Chaoulli* decision, in granting an opening for private health insurance, could have a very positive effect on health care by reducing wait-times in the public system. He suggests that the growth of a parallel private market would allow those who desperately need service to pay for care to physicians who have opted out of the system, arguing that now that a market is feasible, certain physicians will take the opportunity to move outside of the system. What is most interesting here is that, considering the fear from a number of pundits who suggest that physicians would work concurrently between the two systems, he rests on the idea that a fully parallel market would satisfy these concerns without ever causing doctors to work in both the public and private system.

Canwest Global:

The *Ottawa Citizen* took a mixed-reaction to the case in two of the three lenses. Despite the different reactions of their editorial writers over the issues of rights, they all seemed to suggest the *Chaoulli* decision was going to have a transformative effect on the Canadian health care system, with one even going as far as to suggest that it would “Change Canada.”¹²⁸ These

¹²⁷ Steven Martinovich, 11 June 2005, “Court ruling a victory for Canadians; Supreme Court ruling granting a parallel private health system won't endanger current system,” *The Kitchener-Waterloo Record*, A13.

¹²⁸ Mark Kennedy, 10 June 2005, “The Supreme Court decision that will change Canada,” *The Ottawa Citizen*, A1.

changes are indicative of a transformative discourse. As Mark Kennedy explains “the judgment is truly historic and will transform this country's health system in ways that we still do not comprehend.” His first reaction openly reflected a challenging, transformative discourse. He suggests that “...the door has been opened for a private health care system in one province -- Québec. Residents there will be permitted to buy private insurance to get life-saving treatment faster than they would in the public system. An industry will develop. Private insurers that now sell insurance for dental work and physiotherapy will surely add a gold-plated version -- plans, with pricey premiums, to cover everything from hip replacements to heart surgery.” Kennedy’s coverage of the case actively tries to persuade people that this will challenge the status quo and will change the medical system in the near future.

In *The Victoria Times-Colonist*, one article that stood out was by Mark Milke.¹²⁹ In this article, he satirizes the *Chaoulli* decision by replacing medical coverage with a fictional “Foodcare,” where all food purchases are restricted to government stores and where Chaoulli fought to ensure his clients were able to import rare gluten-free foods if they wanted to. It tries to highlight the *Chaoulli* decision as ridiculous and is a strong example of a truth-seeking, transformative discourse. It openly questions the public reaction to this case by highlighting the absurdity of this decision if it were in a sector other than health. It also addresses the third lens of analysis as it tries to show how victims are being unfairly strong-armed in the health sector because of government involvement.

Generally speaking, the *Victoria Times-Colonist* is openly supportive of the Supreme Court’s decision and weary of the negative reactions it has engendered. However, one voice which has been critical of the Supreme Court’s decision is Sam Shortt.¹³⁰ While he is openly

¹²⁹ Mark Milke, 20 June 2005, “Supreme Court strikes down public Foodcare,” *Victoria Times-Colonist*, A6.

¹³⁰ Sam Shortt, 16 June 2005, “Supreme Court ruling won't improve health care,” *Victoria Times-Colonist*, A12.

critical of the systemic status quo, he believes “...its deficiencies are outweighed by its merits.” He then goes on to explain his personal vision of why the public system is superior to the private system but does not offer any remedies, although this can be untenable in a short article. This falls under the first lens of analysis as a rhetorical, augmentative discourse. While it may be a lone voice, it certainly continues a trend of mixed reactions within media organizations.

The *Windsor Star* is also of mixed reaction to the *Chaoulli* decision. Guy Caron¹³¹ explains that the *Chaoulli* decision is largely indicative of a growing discourse amongst the Canadian public of dissatisfaction with the health care system. Despite arguing that the *Chaoulli* case is not an “outright endorsement of privatization” and that it simply emphasizes the “importance of timely access to care,” he warns of the potential political impacts of the Supreme Court’s decision. In an article largely reflective of an instrumental, augmentative discourse, he states the government must make decisions about the future of the system quickly to offset the potential implications of this case on other issues, most notably the ability of multi-national corporations to enter the Canadian medical insurance industry.

On the other hand, the *Windsor Star*’s editorial board also proposed the possibility of the decision to redefine public health care in Canada.¹³² They argued that “allowing private options and insurance would not change that inequity but it would bridge the divide between the two spectrums and improve health care for everyone regardless of income or status.” Suggesting this would remove the burden on all Canadian citizens, the editorial indicates that the *Chaoulli* decision has a transformative capacity. This perception that the system could benefit from the input of private sources challenges the traditional status quo of the public system.

¹³¹ Guy Caron, 1 September 2005, “Canadians impatient with health care system,” *The Windsor Star*, A8.

¹³² M. Beneteau, 10 June 2005, “Health care: Listen to the Supreme Court,” *The Windsor Star*, A10.

The *Calgary Herald* was more consistent with its message of support for the privatization of health care. Much of the *Calgary Herald's* message came in the form of a challenging, transformative discourse. It actively expressed a desire for the Alberta provincial government to openly challenge the federal government and the tenets of the Canada Health Act. The most overt example¹³³ explains that Alberta has the most important tangible to challenge Ottawa in a fashion similar to the *Chaoulli* decision – wealth. They argue that while the Alberta government has been cautious, it is the likeliest jurisdiction to “take the kind of action that will reduce the number of people dying on waiting lists, and suffering agonies while they wait for procedures that physicians would be more than willing to perform, if they legally could.” They suggest that surgeons should be provided the opportunity to work in both public and private systems, which is arguably one of the most overt examples of support for a parallel private system in all the editorials covered in this research. This editorial actively expresses a transformative discourse and stands as an example of the trend which runs through much of the editorial section of the *Calgary Herald*.

The *National Post* was another paper which took a very one-sided approach to the Supreme Court's decision in the wake of the *Chaoulli* case. Not unlike the *Calgary Herald*, the *National Post* was vocal in its support of the Supreme Court's decision to strike down the ban on private health insurance in Québec. Their editorial policy has consistently advocated a transformative approach to health care and has argued that the Québec decision will not rest at Québec alone. One important example of this is R.L. Taylor Roadhouse,¹³⁴ who suggests that given the decision reached in the *Chaoulli* decision and what it meant for Québec, there is little

¹³³ M. Kirk, 12 November 2005, “Right to wait is no right at all,” *Calgary Herald*, A24.

¹³⁴ R.L. Taylor Roadhouse, 16 November 2005, “The real question on health care,” *National Post*, A17.

chance that other provincial governments would expend the political or financial capital to defend their systems in the face of a Supreme Court challenge to bans on private health care.

Additionally, Victor Dirnfeld and his colleagues¹³⁵ argue that the decision has the power to transform the way Canadians speak about health care by giving enormous authority to physicians. This is a topic that is touched on elsewhere, but was not a prevailing theme in the research. Although deference to physicians is not a new phenomenon, this is a significant point. While space does not permit a full exploration of this point, it is worth noting that 83% of members of the Canadian Medical Association agree with the decision levied by the Supreme Court. Dirnfeld and colleagues further suggest that physicians should take leadership in reforming the system to allow for private elements. They argue that physicians are in a unique position to challenge governments in how they respond to crises in health care. Given their overwhelming support for striking down the ban on private insurance, the editorial suggests that physicians are becoming increasingly fed up with the current policy and now have the legal recourse to achieve reforms.

The *Edmonton Journal* had a mixed-reaction to the case. While some of its coverage suggests that the *Chaoulli* decision could have a transformative capacity, some also suggests a more rhetorical response to the case. Arguing that the case will have a transformative effect, Graham Thomson¹³⁶ explains that the *Chaoulli* decision has provided physicians with the coverage to actively support introducing private elements into the system. Highlighting a decision made at the annual meeting of the Canadian Medical Association (CMA) where two-thirds of members voted in favour of introducing private elements in the absence of timely access to care, Thomson argues that the Court has provided physicians with the support to

¹³⁵ Victor Dirnfeld et al., 16 August 2005, "The doctors' chance to lead," *National Post*, A16.

¹³⁶ Graham Thomson, 18 August 2005, "Doctors signal change in direction," *The Edmonton Journal*, A14.

change the system to meet their professional desires. Thomson argues that this decision by the CMA provides politicians – notably Premier Ralph Klein of Alberta – the opportunity to make changes to their public system that would allow greater private interests. These changes, he argues, may begin as additions to the public system but he fears that any introduction of private forces signals the beginning of a paradigm shift in the state of Alberta’s public care.

Harvey Voogd¹³⁷ stands on the other side of the argument, however. He suggests that despite the ruling levied in the *Chaoulli* decision, the public health system will ultimately stand up to any wholesale change. Instead, he believes that the consistent support shown for single-payer health care will lead the government to respond in a fashion that may introduce elements of private care, but leave the key elements of the public system intact. Speaking from an Albertan perspective, he suggests that “the best defence against the privatization offence is to make sure our public health-care system in Alberta is solidly funded and delivers quality care.” He argues that if these principles can be met, then it will proactively prevent the growth of a parallel, private tier of health care in the province.

The *Vancouver Sun*, much like the rest of the Canwest papers, has taken a mixed-view of the *Chaoulli* decision in its coverage but focused heavily on its transformative possibilities. Echoing much of what has been said in their sister newspapers, Barbara Yaffe had an interesting take on how the *Chaoulli* decision could be a transformative experience.¹³⁸ She suggests that what the *Chaoulli* case has done is to force politicians to tackle the problems and inefficiencies in the public health care system or risk further damage to the public system which Canadians have held sacred. In fact, Yaffe suggests that “not only did politicians refuse to undertake the hard work of overhauling the system to make it more responsive and efficient, they tolerated a de

¹³⁷ Harvey Voogd, 20 June 2005, “Strong public health-care system will withstand privatization force,” *The Edmonton Journal*, A19.

¹³⁸ Barbara Yaffe, 10 June 2005, “Ruling opens the way to real debate on medical care,” *The Vancouver Sun*, A19.

facto two-tier situation.” Yaffe warns that the *Chaoulli* decision is still being viewed prematurely, however. She states that “it doesn't necessarily follow that Canadians will rush to buy private health insurance. Most won't relish the expense and will act only if patients continue to face untenable wait-times.” Instead, she says that the possibility of being forced to seek private care will force citizens to push their politicians into taking actual reform, and this is where the decision's transformative capability lies.

Additionally, Tom Blackwell¹³⁹ explains that the transformative capability is not necessarily a positive thing. Instead, his coverage explains that continued attempts to implement private insurance will only create longer wait-times. He explains that “private health insurance and more independent clinics would do little to speed up the backlogged system, while leaving the poor and disabled to ‘languish and die on public waiting lists.’” In essence, his argument hinges on the possibility that physicians could work outside of the public system in favour of higher earnings and leave their public queues intentionally long to ensure their private practices flourish. Although Blackwell may not prescribe to this notion himself, he pays credence to the possibility that the public system could be negatively transformed by this ruling.

GESCA Limitée:

La Presse responded with mixed reactions, as well. Tommy Chouinard's¹⁴⁰ coverage of the *Chaoulli* decision focused on the immediate response of Québec Premier Jean Charest. Chouinard suggests that the *Chaoulli* decision stands as perfect political cover for the Premier, who has openly supported the idea of supplementary private clinics providing specialized services in the province. By having the support of the Supreme Court, Chouinard believes

¹³⁹ Tom Blackwell, 27 October 2005, “Health-care ruling draws opposing views,” *The Vancouver Sun*, A7.

¹⁴⁰ Tommy Chouinard, 17 June 2005, “Affaire *Chaoulli* Jugement de la Cour suprême : Charest veut un débat sur la place du privé en santé,” *La Presse*, A10.

Charest can pursue these objectives through debate in the National Assembly, without the backlash traditionally associated with advocating private care. This sort of coverage fits into the transformative discourse advocated in the first lens. Essentially, the author is pointing out that while the *Chaoulli* case did not guarantee a shift in the dominant policy frame, with a fiscal-conservative such as Jean Charest in charge there is a greater capacity for this decision to have a transformative capability.

In contrast, *La Presse* also represented the augmentative discourse, which suggested that the *Chaoulli* decision would not drastically change the dominant policy frame. *La Presse*¹⁴¹ points out that proponents of private health insurance who have viewed the case as being the opening of the public system have jumped to conclusions too quickly. Arguing that throughout the entire decision the Court has pointed out that there will remain a need for a robust public health system; *La Presse* suggests that the reaction to the case is simply the work of private care proponents trying to represent their modest victory as a major one. They try to evidence these claims by suggesting, quoting the Court, that many other provinces have already removed the bans on private insurance in their provinces and have had their public systems remain largely, if not fully, intact. Instead, *La Presse* argues that while striking down the ban on private care will have an effect on the public system, limited changes to the nature of the public system will allow it to continue to provide public insurance in a timely fashion.

Le Droit took the view that the *Chaoulli* case would have a transformative capacity by opening the door to private health care and suggesting that Canadians were finally willing to pay to get private care. Sylvain Larocque¹⁴² explains that while it remains to be seen if a parallel private system will grow out of the *Chaoulli* decision, there will no doubt be a growth in private

¹⁴¹ A. Pratte, 11 June 2005, "Le temps d'agir! Pas besoin de délai ni de clause nonobstant," *La Presse*, A24.

¹⁴² Sylvain Larocque, 10 June 2005, "La Cour suprême ouvre la porte à l'assurance-maladie privée au Québec," *Le Droit*, A3.

insurance and insurers in Québec. Arguing that while many other provinces have no bans on private insurance, many provinces still do and this decision would likely create similar challenges in other jurisdictions. *Le Droit* goes on to say that the decision is likely to be celebrated by Canadians because polling information suggests that a majority of Canadians support the Court's ruling.¹⁴³

Alain Dubuc takes a different approach to how this case is transformative by looking at how issues of Charter rights are now going to be the preferred method for attacking elements of the public care system.¹⁴⁴ He argues that while many reports – such as the Kirby and Romanow Reports – have been submitted to Canadian federal and provincial governments over time, little was done about it. It is because the Court's had to step in and make those suggestions and bind them to law that this case becomes so transformative. Governments have long had the tools to make these changes and Dubuc suggests that the Court has shown through this case that it is willing to force government to act.

Le Soleil did not believe the decision was going to have an overtly transformative effect. Instead, much of its coverage has downplayed the significance as possibly changing the system. Instead, they suggest that the system may have small changes but nothing that would change the delivery of public care in Canada. An example of this is from Martin Boyer.¹⁴⁵ For the most part, he believes the case will do very little to change the overall system in Québec. As a result, he warns that much of the initial reactions should be taken very lightly. He suggests that private insurers have been unable to successfully penetrate the markets in other provincial jurisdictions that have no bans on private insurance and suggests that the reaction to the case is far more damaging than the case itself. He further argues that without a successful parallel hospital

¹⁴³ No Author, 9 July 2005, "Santé : une majorité de Canadiens prêts à payer pour éviter l'attente," *Le Droit*, R31.

¹⁴⁴ Alain Dubuc, 10 June 2005, "Quand une loi est absurde..." *Le Droit*, 19.

¹⁴⁵ Martin Boyer, 18 June 2005, "Analyse : Les mythes de l'assurance maladie privée au Québec," *Le Soleil*, A29.

system, private insurance can only cover a limited number of procedures and would not drastically affect some of the more catastrophic and cost-prohibitive surgeries which would remain covered under the public system.

Bernadette Dubuc and her colleagues took a similar view.¹⁴⁶ They argue that while the decision immediately held a transformative capacity, any major transformations could be prevented if one of two actions were immediately taken to stem the tide of private insurance. They argue that the only ways to prevent the public system from an unacceptable increase of private insurance would be for the government to utilize the notwithstanding clause or to begin a massive campaign of reinvestment into the system. Dubuc and his colleagues argue that the most effective way method would be the use of the notwithstanding clause arguing that there is no time to wait in preventing the collective health of the Québec population. They argue that allowing any elements of private insurance to enter the system based on the ruling of only four justices would be an affront to the entire population of the province who rely on the public system.

A final point of reference of this augmentative discourse in *Le Soleil* is from Michel Clair.¹⁴⁷ Clair argues that while the decision has been used by proponents of private care as a rallying cry, it has had little overall impact. What it has done, however, has acted as a wake-up call for people to begin thinking seriously about how to fix an archaic system.

¹⁴⁶ Bernadette Dubuc et al., 2 July 2005, "Analyse: 'Nous ne voulons pas nous retrouver à la merci des assureurs privés...'" *Le Soleil*, A22.

¹⁴⁷ Michel Clair, 11 June 2005, "Analyse Jugement Chaoulli: L'occasion de donner une nouvelle impulsion à notre système de santé," *Le Soleil*, A29.

CTV Globemedia:

The Globe and Mail has also argued that the decision would transform the health care system. As Kirk Makin and colleagues¹⁴⁸ write, “the ruling opens up the likelihood of hybrid health-care systems across the country. These would likely see the public system continue to supply the bulk of medical services, but private insurance would be readily available.” While Makin and his colleagues did not say the decision itself would mark a wholesale change in the system, they do argue that the fundamental elements of the health care system itself would be changed. David Gratzer¹⁴⁹ seems to agree with Makin about how this decision might promote change; he believes it can only be done if political actors and citizens alike begin to speak about the issues in a frank and honest way. He believes the *Chaoulli* decision can have a transformative impact if this is done.

Independent Papers:

Le Devoir argued that this case would have the power to transform the system or, at the very minimum, open up a debate on how to reform health care. Pauline Gravel and Robert Dutrisac¹⁵⁰ argue that the *Chaoulli* decision will have a domino effect by promoting similar challenges in other provincial jurisdictions. Given that a national body such as the Supreme Court actively said that a ban on private health insurance is illegal, Gravel and Dutrisac think that the *Chaoulli* case is going to have a transformative capacity on citizens can use their Charter rights to press for private care. In essence, the decision itself may not necessarily make a huge impact or change much of the nature of the system, but it may create similar challenges in other jurisdictions whereby a national standard which allows private care may be created.

¹⁴⁸ Kirk Makin et al., 10 June 2005, “The new face of medicine,” *The Globe and Mail*, A1.

¹⁴⁹ David Gratzer, 6 December 2005, “Has medicare been replaced?” *The Globe and Mail*, A23.

¹⁵⁰ Pauline Gravel and Robert Dutrisac, 10 June 2005, “Santé: la Cour suprême ouvre la porte au privé Pour l’heure, Québec refuse de recourir à la clause dérogatoire,” *Le Devoir*, A1.

Louise Fecteau¹⁵¹ also sees the *Chaoulli* decision as having a transformative capability, which she welcomes with open arms. This opinion is corroborated by Yves Dugré.¹⁵² Fecteau argues that many of the examples being promoted by detractors of private insurance – longer wait lists in the public system, enriching corporations, stealing physicians – are already taking place because of the inefficiencies of the public system. She argues however that because a ban on private insurance left little opportunity for reform, nothing could be done to change the system to alleviate these problems. However, the *Chaoulli* decision, she argues, has given Canadians the opportunity to start from scratch. While she does not advocate an end to the public system, she believes the only method to fix health care would be to add private elements.

Access to Care, Access to Justice:

A key article from this collection is by Claude E. Forget,¹⁵³ who explains that the battle over health care is inherently ideological. He tries to explain that the roots of health care were developed in a period of socialism (or moderate socialism as best defined by Keynesian economic policy) and therefore possesses elements which best function in a semi-socialist state. He suggests that the point the Court made in the *Chaoulli* decision was that “in Canada, a doctrinaire view about the health care system has been pushed so far that some individuals (particularly those on waiting lists) are paying too heavy a cost.”¹⁵⁴

As a result of these deficiencies in the system, the *Chaoulli* case acts as the breakthrough Canadians require to make them realize that their expectations, of what the system should do, are no longer manageable. He argues that the *Chaoulli* case possesses the keys to transform the

¹⁵¹ Louise Fecteau, 29 June 2005, “Agora: Le choix d'intégrer le privé,” *Le Devoir*, B1.

¹⁵² Yves Dugré, 6 September 2005, “L'apport du privé au système de santé public: un débat s'impose,” *Le Devoir*, A7.

¹⁵³ Claude E. Forget, “Promises, Promises – Setting Boundaries between Public and Private,” in *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin (Toronto: University of Toronto Press, 2005).

¹⁵⁴ Forget 2005, 394.

health care system by introducing elements which are more fitting with the times. Indeed, “while reaffirming the role of the state in regulating health services and ensuring access to health care for our poorest fellow citizens, a sound approach now requires rejecting many of the premises that have supported the particular organization of, and legislation about, health services.”¹⁵⁵ While he does not necessarily agree that further privatization is necessary, he suggests that the *Chaoulli* decision is important because it will help break down the partisan dogma that has prevented reform.

This perception that the *Chaoulli* case holds a transformative capacity is shared by Gregory Marchildon,¹⁵⁶ who suggests that in the wake of the *Chaoulli* case, there is a great possibility for transformation and improvement of the public system. Indeed, he suggests that “the decision certainly provides considerable political ammunition to those individuals and governments currently advocating greater choice through private funding and delivery.”¹⁵⁷ However, he agrees with Forget and believes that the only possibility for change will be the result of the ideological stances of each of the provincial leaders. Using the four Western provinces as an example, he suggests that the possibility for change will be the result of the systems currently in place in each province, all of which prescribe very different rules for their medical systems. Furthermore, while some provinces may choose to defend their systems, others may take a more open stance to the growth of privatization. For that purpose, he fears that the biggest possibility for change will be in Alberta, where there has long been an interest in greater private interest in the health care system.

¹⁵⁵ Forget 2005, 395.

¹⁵⁶ Gregory Marchildon, “Private Insurance for Medicare: Policy history and trajectory in four Western provinces,” in *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin (Toronto: University of Toronto Press, 2005).

¹⁵⁷ Marchildon 2005, 430.

Osgoode Hall Law Journal:

A key article in from the Osgoode Hall Law Journal is by Joan Gilmour. Gilmour argues that “Charter-based challenges to exclusions from provincial health insurance plans will also continue, claiming not that patients should be free to purchase services or insurance privately, but rather that more, or more timely, or more widely available services must be covered under public health insurance plans, on the basis that both the CHA and patients’ Charter rights are breached when provincial health insurance fails to cover medically necessary services.”¹⁵⁸ In this sense, Gilmour believes that the Chaoulli decision is likely to have a transformative effect because it will provide precedence for future legal action against the public health care system if wait-time standards aren’t met. Her comment suggests that she gives this possibility more credence than continued action designed to introduce more private care. Instead, she feels the most substantial transformative capacity of this case is the action of the Supreme Court in attempting to limit wait-time standards.

Flood continues this perception. As Gilmour had argued that future challenges were imminent given the precedence set by the case, Flood argues that “...the consequences of Chaoulli are much worse than originally envisaged; it provides the basis for some governments (at the time of writing: Québec, Alberta and British Columbia) to consider removing the prohibition against doctors working in both the public and private sectors simultaneously.”¹⁵⁹ This perception that other provinces will immediately jump to action in the wake of the *Chaoulli* case may be a little hasty, yet the idea she is trying to convey is that other provinces are openly salivating at the chance to challenge the conditions of the public health care system. This is

¹⁵⁸ Joan M. Gilmour, “Fallout from Chaoulli: Is it Time to Find Cover?” *Osgoode Hall Law Journal* 44.2 (2006): 336.

¹⁵⁹ Colleen M. Flood, “Chaoulli’s Legacy for the Future of Canadian Health Care Policy,” *Osgoode Hall Law Journal* 44.2 (2006): 278.

where Flood sees the transformative capacity of this debate. She states that the greatest impact of this case is in its broadening of the public debate about health care. She suggests that on the “...positive side, Chaoulli has opened the door for politicians and citizens to openly discuss the possibility of a greater role for private health insurance without running the risk of being called heretics. On the negative side, Chaoulli has enabled those who favour privatization to promote a greater role for private financing without having to explain the logistics of such a system.”¹⁶⁰ While not necessarily a fan, Flood sees that transformative capacity of this decision.

Policy Options:

Antonia Maioni and Christopher Manfredi¹⁶¹ believe there are two possibilities for the future of the case, one which would maintain the status quo of the system, and another which could have a transformative impact, however, they do not suggest that one is more likely than the other. They argue that there have been two contending opinions in the wake of the *Chaoulli* case about what the government of Québec’s next step should be. They state “One option is for Québec to maintain the prohibition against private insurance, declaring that it applies despite the Québec Charter (s.52) and notwithstanding the Canadian Charter (s.33). Another option is to remove the absolute prohibition against private insurance and replace it with some form of limited or highly regulated access.”¹⁶² Maioni and Manfredi are hesitant to prognosticate what will happen until either of these two options is selected. However, they believe that if the former is chosen, it is unlikely that there will be any major changes. Conversely, if private insurance is offered as an alternative in Québec, then the *Chaoulli* case will have drastically transformed the landscape of public health care.

¹⁶⁰ Flood 2006, 293.

¹⁶¹ Antonia Maioni and Christopher Manfredi, “When the Charter Trumps Health Care – A Collision of Canadian Icons,” *Policy Options* (Sept. 2005): 52-56.

¹⁶² Maioni and Manfredi 2005, 56.

Ted Marmor, a leading American academic/political scientist who was actually called as an expert witness at the *Chaoulli* decision, echoes the opinion of Dickens. Marmor suggests that much of the initial reaction to the decision was based on the very narrow parameters through which it explained. He argues that it was met with such hesitation and agreement, from opponents and proponents of private health care respectively, because the Court did not provide any additional remedies for the case outside of striking down the ban on private care. He states “There appeared little doubt that private health insurance would be for sale in Québec at some point, though later some scholars expressed doubt. But it seemed just as likely that in other provinces the decision would prompt governmental attention to waiting list problems on the scale of Québec's in recent years. In that respect, the decision appeared to warrant less celebration from advocates of private insurance and justified less fear from defenders of Medicare.”¹⁶³

Canadian Medical Association Journal:

The Canadian Medical Association Journal held a very cohesive view that the case, while not producing large-scale change, would at least augment the status quo of the health care system and would help produce some form of change, albeit minor. Flood and Sullivan sum up this point by suggesting “there are so many ambiguities within the decision that it is unlikely to deeply compromise Medicare. In particular, provincial governments can protect the quality of the public sector in other ways besides a formal ban on the sale of private insurance.”¹⁶⁴ Despite this affirmation that the case did not create a massive shift away from public health care, Kondro goes on to suggest that “there has been a big shift in the public debate around health care....What

¹⁶³ Theodore Marmor, “Canada’s Supreme Court and its National Health Program: Evaluating the Landmark *Chaoulli* Decision from a Comparative Perspective,” *Osgoode Hall Law Review* 44.2 (2006): 315.

¹⁶⁴ Colleen M. Flood & T. Sullivan, “Supreme disagreement: The highest court affirms an empty right,” *Canadian Medical Association Journal* 173.2 (2005): 143.

Chaoulli did was to open up the playing field to legitimize a wider range of alternatives for the direction of Canada's health care system."¹⁶⁵ In effect, the journal suggests that the case does not have the quick change ability that some pundits would suggest. Instead, they collectively argue that the case did have a minor impact by changing the way people spoke about health care and, in that capacity, they would ultimately

Other Health and Law Journals:

Flood and Lewis seem to suggest that the case itself did have a tremendous transformative effect, but that it did not have to do with the delivery of health care. Instead, they suggest that the greatest transformative effect of the case was that it introduced the courts as an effective method of promoting health care reform by forcing governments to adhere to their wait-time standards. They state that "the new role that the courts may play in healthcare is of crucial importance not only to the courts, but to the Canadian public and their governments. For years, health policy analysts have battled the "zombie" ideas of user-pays, private insurance and two-tiers. There is now a new venue for the debate, and health policy analysts cannot ignore it. The Supreme Court decision, however misguided, has brought Medicare to a new crossroads."¹⁶⁶

Béland seems to support the idea that courts are poised to assume an expanded role in the public health care system as a result of this case. Furthermore, he believes that this shift promotes the need for reform. He states that "the public and universal Medicare system must adapt to the changing healthcare needs of the population and to the advancement in health and technology sciences. Canadians have shown increasing dissatisfaction with the system over the last few years. It would be fair to speculate that the split judgment of the Supreme Court reflects

¹⁶⁵ Wayne Kondro, "Chaoulli Decision Resonates One Year Later," *Canadian Medical Association Journal* 175.1 (2006): 18.

¹⁶⁶ Colleen M. Flood and Steven Lewis, "Courting Trouble: The Supreme Court's Embrace of Private Health Insurance," *Healthcare Policy* 1.1 (2005): 34

the general tenor of the nation. Support for public and universal Medicare can quickly dwindle.”¹⁶⁷ Béland’s point highlights increasing dissatisfaction of Canadians with the public system. As this dissatisfaction, the courts are going to become a greater mechanism for politicians to promote change without affecting their political capital. In that, this decision becomes a very transformative decision with a potentially enormous normative impact on public health care.

Lens 2: Rights “Talk”

Torstar Corporation

The *Toronto Star* has exposed an issue of rights that had not been mentioned in a number of other newspapers. Colleen Flood and Greig Hinds¹⁶⁸ explain that what is being overlooked in the *Chaoulli* decision was the right to an appeal. While this does not fall entirely within the spectrum of the second lens of analysis, their examination of rights is one which will have a tremendous impact in the future. They explain that Quebecers have been left without the right to appeal their wait-times, a process which can be taken in neighbouring Ontario – albeit with a number of systemic problems. Flood and Hinds explain that the right to appeal might have changed the entire nature of this case, even preventing it before it could have begun.

In addition to this view of rights, in a separate editorial, Flood¹⁶⁹ goes on to say “the *Chaoulli* decision reflects the triumph of individual rights to purchase private insurance over the collective good.” She suggests that despite the evidence used to reach the decision in *Chaoulli*, primarily from foreign nations, the Court did little to explain the federal situation in those

¹⁶⁷ Béland, Francois. “The Chaoulli Judgement or How to Sell off a Public Right.” *Healthcare Policy* 1.1 (2005): 43.

¹⁶⁸ Colleen Flood and Greig Hinds, 25 July 2005, “You appeal long wait-times for treatment,” *The Toronto Star*, A17.

¹⁶⁹ Colleen Flood, 3 July 2005, “Will private health insurance deliver?; Colleen Flood says examples elsewhere show Canadians won’t really benefit,” *The Toronto Star*, A17.

countries or even explain what their constitution said about rights. Therefore, she deems that this decision to elevate the individual right to purchase insurance was reached without properly using the evidence.

Canwest Global

The *Ottawa Citizen* has also strongly associated the *Chaoulli* decision with the “rights-talk” highlighted in the second lens of analysis. However, their approach to rights took many different forms. On one side, they suggested this case focused on individual rights, specifically the right to security of person. A prime example of this is from Merrilee Fullerton.¹⁷⁰ She argues that the discussion of the privatization in health care had long qualified as a “death-knell” for any politician. She suggests that the *Chaoulli* decision “...underlines the importance of allowing this debate to occur in a more open framework which includes the importance of individual rights.” She believes that by focusing on the issue of rights in this debate, politicians are able to speak their minds and create effective reform in the system by virtue of standing in contrast to the prevailing majority opinion on continuing public health coverage as is. Essentially, she argues that because the *Chaoulli* decision was justified as a violation of personal rights, political actors could justify their approaches to reform through privatization by accentuating their desire to protect individual rights. However, she makes little mention of how the Supreme Court qualifies these rights and what limitations the Court would impose to allow for legislative input in deciding health care’s future.

On the other side of the “rights” debate was Cristin Schmitz¹⁷¹ who argued that the court did not focus specifically on individual rights, but also took into account how the Court can

¹⁷⁰ Merrilee Fullerton, 10 June 2005, “Politicians can now be honest about health care,” *The Ottawa Citizen*, A17.

¹⁷¹ Cristin Schmitz, 20 June 2005, “Supreme Court medicare ruling signals a shift in attitude: experts,” *The Ottawa Citizen*, A4.

qualify rights. She points out that the court did little more than to enforce “negative rights” in its decision. She explains that negative rights “merely require governments to stop doing something, in this case to stop barring patients from spending their own money on medical services.” She explains that the Court stayed within its traditional boundaries by not enforcing “positive rights” and forcing governments to create change at a considerable cost. This examination of rights looks at the collective aspects of rights far more than Fullerton’s and provides a much different perspective on the Court’s decision, despite sharing her perception that the *Chaoulli* case will ultimately create change in some form or another.

The *Victoria Times-Colonist* is actually one of the most homogenous newspapers examined here in that its coverage of regards to the *Chaoulli* decision have, for the most part, been consistent in their coverage. In addition to its editorial section, which is overwhelmingly supportive of the Supreme Court’s decision to strike down the private insurance ban, it ran a number of articles examining (and sometimes celebrating) the growth of private clinics in British Columbia.

One example of this is from Les Leyne,¹⁷² whose article focused on private clinics in B.C., he evokes the *Chaoulli* decision as justifying the growth of a parallel system in their province. He characterizes the *Chaoulli* decision as being a key force in preventing the provincial government from shutting down these private clinics in B.C., despite having no jurisdiction in their provincial affairs. It is a prime example of the second lens of analysis as it suggests that the right to maintain these clinics was affirmed by the Supreme Court in the *Chaoulli* decision, and that subsequent government action against these clinics (despite the reasonable limitations outlined by the Court in its decision) would violate those rights.

¹⁷² Les Leyne, 2 November 2005, “Clinic renews the two-tier debate,” *Victoria Times-Colonist*, A8.

The *Calgary Herald* was also active in suggesting the *Chaoulli* decision was incomplete in that it was limited to Québec.¹⁷³ It states that the Supreme Court should be congratulated for affirming these rights to Canadians but if the Court is going to create uniform national rights for other issues – notably same-sex marriage – then it ought to provide all Canadians with an equal right to seek private medical care. It makes an attempt to distinguish between a Canadian's right to publicly funded care and a Canadian's right to buy health services they need. They argue that this difference in rights was the fundamental distinction in the *Chaoulli* case, but that it ought not to be wrong to have the right to both a collective and individual right.

The *National Post*'s coverage was in regards to the distinctions between the Québec and Canadian Charters. As Cathy Gulli highlights,¹⁷⁴ Québec was fertile ground for this sort of legal challenge because its Charter did not possess a caveat to the personal security clause which identified fundamental justice (as it does in the Canadian Charter). As a result of this, Justice Marie Deschamps was able to justify her decision to strike down a ban at the provincial level because the letter of the law suggested the individual right of personal security trumped collective rights such as health care in Québec. Gulli explains that this caveat, or lack thereof, creates drastically different conditions in Québec. She continues to state that given the transferability of precedence in Canadian law, this then ought to be extended to all Canadian citizens under the auspices of equality.

¹⁷³ No Author, 10 June 2005, "A Supreme shot in the arm: Right to buy private health care should be extended here, too," *Calgary Herald*, A22.

¹⁷⁴ Cathy Gulli, 10 June 2005, "What makes Québec's different charter of human rights: Fewer restrictions," *National Post*, A3.

Access to Care, Access to Justice:

Stanley Hartt¹⁷⁵ argues that Canadians have come to believe that publicly funded health care is an inherent right in our citizenship. He believes that this association has led to a negative reaction to the *Chaoulli* decision and that this belief might ultimately cause more harm than good in protecting health care. In fact, he believes that political ideologies have caused many problems by overemphasizing the Court's decision as an example of judicial activism. This is wrong because the system is not a constitutional right but instead a construct of Canadian political culture. Therefore, citizens and governments should not try to hide the provincial health care systems from judicial interpretation but instead embrace it as an affirmation of the more important rights provided under the Charter of Rights and Freedoms.

Hartt's argument is very important to the second lens of analysis. While many actors have suggested the there is an inherent right to health care, Hartt correctly identifies the access to public care in this country not as a right but as a value. By giving too much credence to those areas we deem to be inherent rights, we risk trampling on more important rights, such as the right to personal security identified in section 7 of the Charter. He goes on to say that *Chaoulli* may have a powerful transformative ability by reminding Canadians which rights they do possess and which they do not. The *Chaoulli* decision, which is being blown out of proportion considering it possesses no major abilities to change the core elements of the public health system, may be most important because of its ability to get Canadians to think of what they possess as true rights and what they hold dear as Canadian values.

¹⁷⁵ Stanley Hartt, "Arbitrariness, Randomness and the Principles of Fundamental Justice," in *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin (Toronto: University of Toronto Press, 2005).

A second key article, by Allan Hutchinson,¹⁷⁶ focuses on the legal distinctions and powers of the legislative and judicial branches of government. Within this framework, it attempts to highlight the process the Supreme Court took in rendering its decision and to explain how the Court pursued a pragmatic and less legalistic vision, which shaped the debate in a different way. The article therefore focuses on the exact role of the Constitution in this decision and explains exactly how the Court tried to fit their decision into the legal framework, while maintaining some level of judicial interpretation.

The third major article is from Kent Roach.¹⁷⁷ Roach's article serves to define judicial activism as a process and then applies this definition to the outcomes of the *Chaoulli* case. He concludes that this is an open example of judicial activism because the Supreme Court not only ruled on the decision but also attempted to outline a private funding method to be pursued as a remedy. Unlike others who suggest that the Court was simply establishing the most appropriate response based on the Charter, Roach believes that the Supreme Court actively tried to interfere in what is normally a legislative area with the intention of forcing them to take action. He believes this oversteps the boundaries of their mandate and that they are trying to take an active role to shape public policy, a task usually left to the legislative arm of the Canadian government.

He suggests that the *Chaoulli* decision will have drastic impacts on the future of the Canadian health care system by how they reached their decision. Roach states that "the Court in *Chaoulli* avoided many of the complexities of judicial intervention in the health care field because they granted standing to self-appointed critics of the public system and advocates of

¹⁷⁶ Allan Hutchinson, "Condition Critical: The Constitution and Health Care," in *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin (Toronto: University of Toronto Press, 2005).

¹⁷⁷ Kent Roach, "The Courts and Medicare: Too Much or Too Little Judicial Activism," in *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin (Toronto: University of Toronto Press, 2005).

private health care as opposed to those who were actually on a waiting list or otherwise denied needed and urgent medical treatment.”¹⁷⁸ By giving credence to pundits as opposed to those who the decision is meant to protect, Roach believes that the Court has opened a door and set a precedent which will be used in later cases to continue limit the scope of public care until it is entirely unfeasible. As a result of this judicial activism, Roach believes that this case will have an overtly transformative effect, despite the decision being mired in suspect proceedings.

Also in this category are Caroline Pitfield and Colleen Flood,¹⁷⁹ who suggest that one of the most important issues raised in the *Chaoulli* decision was the need for some sort of “safety valve,” where wait-times can be appealed and service can be expedited for those who need it most. Using the example of Ontario, where a wait-times appeal process (the Ontario Health Services Review and Appeal Board) is actually in place, Pitfield and Flood suggest that the implementation of such a program might prevent further constitutional scrutiny of the public health system in Québec. Although they believe the Ontario appeal process to be deficient, they believe that the *Chaoulli* decision may be transformative by allowing greater opportunity for patients to have a say in how quickly they receive their care.

Osgood Hall Law Journal:

The Osgoode Hall Law Journal, while heavily interested in the concept of rights, managed to take a different view of how the case tried to frame them. While most articles read up to this point, focus on the concept of possession of a right to health care, this journal went a step further to explain how the Court had not only established a right to personal security, but also in establishing a right to care that is predicated on economic means. As Jackman explains,

¹⁷⁸ Roach 2005, 185.

¹⁷⁹ Caroline Pitfield and Colleen M. Flood, “Section 7 ‘Safety Valves’: Appealing Wait-times Within a One-Tier System,” in *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin (Toronto: University of Toronto Press, 2005).

“Even if the majority was correct in its scepticism about the adverse effects of legalizing private insurance, by endorsing a right to health care that is contingent on ability to pay, rather than on medical need, the majority’s remedial approach is directly at odds with the underlying equality-based premises of the Canadian Medicare system.”¹⁸⁰ This is a different approach to the concept of rights as outlined in the majority of other publications. That being said, they still maintain a powerful emphasis on the concept of rights.

Policy Options:

While *Policy Options* was not unanimous in their emphasis on rights, they were one of the most effective publications to address the issues of the notwithstanding and the reasonable limitations clauses that the courts and provinces could use to circumvent this judgement. Maioni and Manfredi examine ways in which the Québec government could have circumvented this decision had they found it to be truly necessary. They explain that option is “for Québec to maintain the prohibition against private insurance, declaring that it applies despite the Québec Charter (s.52) and notwithstanding the Canadian Charter (s.33). Another option is to remove the absolute prohibition against private insurance and replace it with some form of limited or highly regulated access.”¹⁸¹

However, they only explain these as options, not necessarily as their preference for the situation. They do, however, believe that these options need to be considered. There are some who suggest that if these limitations on personal rights are reasonable, then they should use these constitutional elements to maintain the status quo system. One such example is Stanley Hartt who suggests that “the catch-22 of a monopoly medical care provider that does not provide

¹⁸⁰ Martha Jackman, “The Last Line of Defence for [Which?] Citizens’: Accountability, Equality, and the Right to Health in Chaoulli,” *Osgoode Hall Law Journal* 44.2 (2006): 360.

¹⁸¹ Maioni and Manfredi 2006, 56.

timely access to care is an untenable interference by the state with a citizen's rights to life and security of the person guaranteed by section 7 of the Charter. However legitimate the goal of preserving the integrity – financial and structural – of the public health care and insurance plans, this objective must be weighed against the individual patient's right to fight for his or her life.”¹⁸²

Other Health and Law Journals:

Jeff King¹⁸³ is of a similar mind to others mentioned here in suggesting that the *Chaoulli* case has the capability to make broad structural changes to the way public health care is delivered in Canada. King argues that much of this is the result of having no social rights, such as the rights to public health care, codified into the constitution. Given the increasing prevalence of rights-based claims when social programs are being perpetually chiselled away by austerity measures, “it is necessary to include social rights among the protected rights because otherwise fundamental socio-economic interests will be unjustly subordinated to classical civil rights.”¹⁸⁴ For instance, the individual right of personal security trumped the collective right of health care. King argues that social rights, or values, such as these need to have broader protections from codified individual rights if they are to be perpetuated. King goes on to argue that what is most disconcerting about this case is that even though the Court struck down the ban on private insurance, it offered no remedy for the problems that would cause. He suggests that “the Court's failure to make the implications of its ruling clear has put Québec, other provinces and the public in doubt about the appropriate way forward.”¹⁸⁵ Therefore, it is not so much what was said in the

¹⁸² Stanley Hartt, “What about the Chaoulli Decision said about Health Care Rhetoric vs. Health Care Reality,” *Policy Options* (February 2006): 44–48. (45)

¹⁸³ Jeff King, “Constitutional Rights and Social Welfare: A Comment on the Canadian *Chaoulli* Health Care Decision,” *Modern Law Review* 69.4 (2006): 619–643.

¹⁸⁴ King 2006, 639.

¹⁸⁵ King 2006, 643.

Chaoulli decision that could drastically shape the future of Canadian health care; it was what was left unsaid.

Gregory Hagen¹⁸⁶ seems to agree that the *Chaoulli* decision will have little major impact on the state of the public system. Hagen argues that even though the Court decided that the right to ban private health insurance is unconstitutional because preventing citizens from seeking private care can cause psychological and physical damage to their person, hence a violation of the personal right to security. Hagen argues that while the precedent is set as a result of the case, because there is no “flourishing private health insurance market, the right has little value.”¹⁸⁷

Furthermore, Hagen argues that while the rights to personal security are well-established, the Court was wrong in how it used the evidence to reach its decision. In fact, he suggests “that the ‘curative power’ of private insurance is not borne out by the evidence and that a single tier public system is more fiscally responsible and efficient than multiple tiers.”¹⁸⁸ Therefore, Hagen argues that the decision may have had some impact on the way rights are addressed when focusing on social programs, but the case itself will have little overall impact on the way the public health system is administered, save for minor changes to allow elements of private insurance to accord to the law of the *Chaoulli* decision. It therefore possesses little more than an augmentative capacity.

Another major article in this category is from Thomas Bateman,¹⁸⁹ who argues that while the *Chaoulli* decision was actually a modest legal move but it had broad political ramifications. Essentially, Bateman argues that the decision didn’t actually guarantee a right to private insurance for citizens; it simply said that governments were unable to prevent people from

¹⁸⁶ Hagen 2005, 34-37.

¹⁸⁷ Hagen 2005, 34.

¹⁸⁸ Hagen 2005, 36.

¹⁸⁹ Thomas M.J. Bateman, “Legal Modesty and Political Boldness: The Supreme Court of Canada’s Decision in *Chaoulli v. Québec*,” *Review of Constitutional Studies* 11 (2005-2006):317-344.

getting it. On the flip side however, it also stopped short of saying that a right to public health care was not a given. Bateman states that “The Charter is about rights, equality, and fundamental Canadian values; Canadian health care policy egalitarian, efficient, and not America. The two should thrive in loving embrace.”¹⁹⁰ However, Bateman believes that this loving embrace was not found in the *Chaoulli* case; just the opposite. He frames his message so that the case basically pitted the two Canadian icons in contrast to one another, essentially making a victim out of public health care at the hands of the Charter.

Bateman continues by examining how the Court took a very individualistic portrayal of rights in this case by ignoring the collective benefits of the public health care system. He argues that this is not a new phenomenon. Instead, he suggests that “Understanding rights as markers of individual liberty is among the classic formulations of the purposes of the bill of rights, and Canadian jurists have appealed to this understanding repeatedly.”¹⁹¹ However, he argues that usually the Courts look into issues of reasonable limitations. This has not happened in this case, giving precedence to a strict definition to the right of personal security, an individual right, as it is outlined in the Charter. As a result, this case has the likely impact to make serious changes not only in the way public health care is delivered in Canada, but also how the Charter is used in future conflicts when forced to choose between individual and collective rights.

Lens 3: Message Framing

Torstar Corporation:

The *Toronto Star* has framed their message much like their competitors. However, the exploitations that they draw on are considerably different. The *Star* has tried to explain that the

¹⁹⁰ Bateman 2005-2006, 319.

¹⁹¹ Bateman 2005-2006, 330.

biggest rift worth noting is mostly within the Court itself. Errol P. Mendes¹⁹² suggests that one of the largest problems with this decision has been over the level of judicial intervention by the court into social policy. Mendes explains that the Court is often split on whether or not they have the constitutional right to wade into social policy, something which was undertaken in the *Chaoulli* case. What makes this even more precarious is that despite the Court influencing social policy, they provide nothing to qualify what the next step should be, instead leaving it up to the federal and provincial legislatures.

Canwest Global:

The *Ottawa Citizen's* coverage has focused heavily on the third lens of analysis by characterizing the *Chaoulli* decision as highlighting the system's potential for creating victims by virtue of poor coverage and extended wait-times. Strong proponents of this concept are Kazi Stastna and Irwin Block.¹⁹³ In their coverage of the *Chaoulli* decision, they focused entirely on the defendants in the case, Jacques *Chaoulli* and his witnesses. Their article focuses on the defendants' arguments with no counter-balance from the government's argument. An example of this is quoting defence lawyers Philippe Trudel and Bruce Johnston, who argued that "When the state is the sole payer into the health care system, the only way to limit costs is to ration services, which is what led to the current problem of untenable wait-times." They claim that private care may not be affordable by all, but it will alleviate stresses in the public system and will shorten wait-times for all. This would in turn allow fewer victims to be plagued by extensive waiting times, a problem which *Chaoulli* is quoted as directly attributing to patient deaths.

¹⁹² No Author, 17 June 2005, "Our top court comes under scrutiny," *The Toronto Star*, A23

¹⁹³ Kazi Stastna and Irwin Block, 10 June 2005, "Champions of private health care take pride in ruling," *The Ottawa Citizen*, A3.

This declaration was echoed in greater detail in a further editorial comment.¹⁹⁴ This comment suggested that the Supreme Court's decision to stay its ruling for 12 months in favour of allowing a government response was tantamount to putting "administrative convenience over the most basic human right -- that of security of the person." By staying the decision, the comment argues, those who are in dire need of service and seek private care in the interim are subject to penalty. This stay, in essence, has the possible effect of killing those who need service the most.

The Windsor Star framed much of their message as battle between heroes and oppressors, an exploitation commonly used in the third lens of analysis. Doug Williamson¹⁹⁵ examines how George Zeliotis qualifies as an unlikely challenger to the public health care system. Quoting Zeliotis as saying "'What they were doing to me at the time was unacceptable to me as a citizen,'" Williamson describes Zeliotis' experience as one of a David vs. Goliath struggle. Even though he qualifies Zeliotis as still being in favour of elements of the public system, Williamson has highlighted Mr. Zeliotis' unlikely role in allowing for a more open debate about the virtues of private medicine playing a role in Canada. This characterization places a heroic quality on Zeliotis.

This message framing, of heroes vs. oppressors, was echoed in an editorial article which suggested that provincial health ministers have avoided honest debate about how to change the system in the wake of the *Chaoulli* decision.¹⁹⁶ This article explains that when provincial health ministers met to establish wait-times benchmarks, they avoided making any real reforms. It argues that "What's most troubling about these phantom benchmarks is they mask the sorry state

¹⁹⁴ S. Anderson, 6 August 2005, "Another deadly delay," *The Ottawa Citizen*, B6.

¹⁹⁵ Doug Williamson, 29 December 2005, "Senior toppled 'sacred cow': Wait time sparked court case yt," *The Windsor Star*, A5.

¹⁹⁶ No Author, 14 December 2005, "Health care: Leaders avoid honest debate," *The Windsor Star*, A8.

of our beleaguered Medicare system, providing cover for campaigning federal politicians who refuse to tackle the issue honestly or responsibly. Our leaders are fumbling this critical file because they are afraid of alienating voters who still believe, against all evidence, in the myth of affordable and universal Medicare.”

Finally, the *Calgary Herald* strongly framed their message in the form of exploitations. Michelle Lang¹⁹⁷ ran an entire series on victims of the public system as it presently stood, including an exposé on the “underdog” efforts of George Zeliotis in successfully challenging the public system. By framing these exploitations in this fashion, they are actively challenging the public to question their traditional perceptions of the system.

Much of the coverage in the *National Post* focused on the role of exploitations. Framing their message as a battle between public and private forces, the Post consistently tried to expose the good vs. evil mentality in their coverage of the *Chaoulli* case. One example of this coverage is from Chris Haines,¹⁹⁸ who characterized the *Chaoulli* decision as “historic and an excellent starting point for Canada to end the persecution of choice in health care.” Arguing that people are not given the adequate choice to protect themselves medically, he viewed the *Chaoulli* decision as a prime example of how the government is acting as an oppressor over its own citizens in the field of medicine.

Echoing this dissatisfaction is an editorial suggesting that victimhood is an all-too-present part of the public system in Canada and the actions of George Zeliotis have shaken loose a system in dire need of reform.¹⁹⁹ Arguing that “Canada's vaunted public health care system produces intolerable inequality,” this editorial praises Zeliotis in his efforts to challenge the system and for

¹⁹⁷ Michelle Lang (with a file from Tony Seskus), 12 September 2005, “Insurance eases cost of private health care: Court ruling opens door for coverage Series: Private Health Care: On the Brink,” *Calgary Herald*, A4.

¹⁹⁸ Chris Haines, 10 June 2005, “The right decision on health care,” *National Post*, A21.

¹⁹⁹ No Author, 14 June 2005, “The hip that changed health care history: Informed sources,” *National Post*, A20.

not retreating to another jurisdiction for the surgery, but instead on pursuing legal action. This sentiment is echoed about Jacques Chaoulli in an editorial by Jane M. Wilson, who heaps praise on Chaoulli for his persistence in proposing private alternatives to care in Canada.²⁰⁰ These are additional examples of how coverage can make heroes out of lay people or professionals, a key element of the third lens of this discourse analysis.

Not unlike many of the newspapers, the *Montreal Gazette* was consistent in its treatment of George Zeliotis as a victim of an unforgiving public health care system. Looking through the third lens of analysis, as Kazi Stastna and Irwin Block explain,²⁰¹ Zeliotis viewed the *Chaoulli* decision as a vindication of his struggle to attain professional medical care when he needed it. They argue that it was a combination of his “fighting nature and tenacious optimism that sustained him through eight long years and two defeats in the lower courts.” Treating him as a saviour to the millions of Canadians who are stuck behind expanding wait-times, the editorial heaps a heroic praise on the Montreal patient. Equal praise is levied onto Jacques Chaoulli as a heroic figure for health reform. They go on to explain that the achievement of Zeliotis and Chaoulli will be welcomed by legislators who can use their exploits as a springboard to having a “rational discussions of the issues.”

The *Gazette* also took an interesting approach to the issue of victimhood in the wake of the *Chaoulli* decision. As Aaron Derfel argues,²⁰² doctors who had opted out of the public system to practice private medicine were bereft of a market in the lead-up to the *Chaoulli* decision. He argues that these physicians were victims of another side of the public system which gave these physicians the opportunity to relinquish their responsibilities in the public system but

²⁰⁰ Jane M. Wilson, 16 June 2005, “Health reform desperately needed,” *National Post*, A21.

²⁰¹ Kazi Stastna and Irwin Block, 10 June 2005, “Decision from highest court brings tears of joy to plaintiffs who spent hundreds of thousands,” *The Montreal Gazette*, A3.

²⁰² Aaron Derfel, 11 June 2005, “Shot in arm for private hospitals,” *The Montreal Gazette*, A1.

were not given adequate opportunity to practice medicine if they did. In that sense, these doctors were victims of a lack of choice but that the *Chaoulli* decision would offer great hope for their plight.

The *Vancouver Sun* also heavily framed their message surrounding the decision as one which will create victims. Arguing the private clinics have long been successful in other jurisdictions,²⁰³ they have actively supported the possibility of increasing the number of private clinics within British Columbia. Using the Shouldice Clinic in Ontario as an example, the Sun suggests that the decision has provided citizens with the opportunity to jump the logjams of the public system and receive coverage which could drastically eliminate personal suffering. They go on to say that “there isn’t a scintilla of proof that health services delivered by the private sector degrades the public health care system but there is a growing body of evidence that it can make it better.” This sentiment is echoed even further by Gerald Bryant,²⁰⁴ who argues that preventing citizens from seeking care that could drastically improve their lives is a violation of our rights as citizens.

GESCA Limitée:

La Presse also exposes a very interesting view of the victimhood aspect of the third lens of analysis. While most papers have pointed out patients languishing on wait-lists as being the real victims of the public system, Jana Havráňková²⁰⁵ explains that the *Chaoulli* case is actually the saviour for all Canadians, who are victims to the dogmatism associated with advancing the prospects of private care. Havráňková argues that by the *Chaoulli* decision allows people to

²⁰³ No Author, 22 December 2005, “Finding *health care* efficiency in specialization,” *The Vancouver Sun*, A16.

²⁰⁴ Gerald Bryant, 6 December 2005, “We need the best *health care* money can buy,” *The Vancouver Sun*, A10.

²⁰⁵ Jana Havrankova, 14 June 2005, “Qui a peur du ‘privé’ en santé? Le jugement de la Cour suprême est une victoire pour ceux qui veulent sortir du dogmatisme,” *La Presse*, A23.

speak frankly about the prospects of private care and opens up the possibility for debate on how to reform the system.

CTV Globemedia:

The *Globe and Mail* was much like many other papers in equating the actions of Dr. Jacques Chaoulli and framing his struggle as one of a professional “hero” trying to take on a virtually unbeatable foe in the public health care system. While this does not necessarily mean that the *Globe and Mail* supported his actions, they still exposed the hero vs. foe message in their coverage. For instance, Ingrid Peritz²⁰⁶ highlights how supporters of Chaoulli have come to view him as a hero for his work in snapping the ban on private insurance. She even quotes him in saying that his struggle was similar to that of Gandhi. However, Peritz is quick to point out that Chaoulli has a fair number of detractors who fear that the effects of the *Chaoulli* decision will damage the system in general.

Barrie McKenna²⁰⁷ goes even further than Peritz in explaining how Chaoulli’s struggle has endeared him to a segment of the population. After describing Dr. Chaoulli’s professional history up to the decision by the Supreme Court, McKenna likens the treatment of the physician in the aftermath to a “superstar” based on the treatment he has received from the American medical community and North American think tanks. Chaoulli, he argues, is enjoying the fame that his struggle has created and McKenna explains how Chaoulli has been thrust into the limelight as the de facto leader of the privatization push in Canada. Essentially, this message is framed as if Chaoulli is receiving the reward for his struggle against the system.

²⁰⁶ Ingrid Peritz, 10 June 2005, “Praise, censure for MD’s crusade,” *The Globe and Mail*, A9.

²⁰⁷ Barrie McKenna, 22 June 2005, “Private-health activist a ‘superstar’,” *The Globe and Mail*, A12.

Access to Care, Access to Justice:

A first example of this category is from Bernard M. Dickens.²⁰⁸ The focus of this article is to highlight the debates between political actors over the Supreme Court decision in the *Chaoulli* case. Dickens explains that the case has been viewed through a variety of ideological lenses. He believes that one extreme has filed the *Chaoulli* case as a structural shift in the health care policy domain and another has seen it as nothing more than a condemnation of the Québec government for its failures to provide timely, quality health care services. That being said, his argument lies in the simple fact that the different extremes have created a much deeper rift out of the *Chaoulli* case than was desired.

Peter H. Russell²⁰⁹ explains that a decision on a deep-rooted cultural or social program such as health care can create problems of perception. His argument lies in the fact that legal decisions in such instances tend to take on a mythic quality where individuals involved are polarized into sides of a political battleground. This process can serve to muddle the facts and leads to an increased politicization of inherently non-political processes. This is very important for the third lens of analysis. By framing this message as a battlefield scenario, Russell is showing how it has pitted two extremes against one another with very little opportunity to meet in the middle. He fears that this mentality might in fact lead the government of Québec to create a response to this case which aims to mollify those extremes, but leaves many who do not take extreme views as being victimized by their decision.

²⁰⁸ Bernard M. Dickens, "The *Chaoulli* Decision: Less than Meets the Eye – or more?" in *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin (Toronto: University of Toronto Press, 2005).

²⁰⁹ Peter H. Russell, "Chaoulli: the Political versus the Legal Life of a Judicial Decision," in *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin (Toronto: University of Toronto Press, 2005).

Policy Options:

Policy Options was a journal that frequently framed their message to create the perception of victimhood. Well establishing that healthcare is a national identity for Canadians, Stanley Hartt shows that the state still doesn't have the right to prevent Canadians from seeking private care if they are put at risk. He states, "The mere fact that Medicare has become associated with our very identity as Canadians does not justify the state arrogating to itself the monopoly provider role and then not providing timely care."²¹⁰ In Hartt's view, the exploitation is at the hands of the state. He elaborates on this point by suggesting that consecutive governments underfund the health care system "while pompously defending the five principles of the Canada Health Act, provided they repeat often and loudly enough that 'Canada will never have a two-tier health care system.'"²¹¹

Michael Kirby, agreeing in principle to the argument put forth by Hartt, suggests that the process of passing the costs of health care to citizens has long been a method used by provincial governments to maintain their political capital and to control costs. He states that "long waiting times are a result of the rationing of services that every provincial government must address. As it is currently constituted, our system allows governments and providers to shift the consequences of excessive waiting times onto the backs of patients and their families. This gives them a "cost-free" way to control costs."²¹² Not unlike Hartt, Kirby paints a picture of victimhood for Canadian citizens who are mired in wait-times while the government continues to add undue strain on them.

²¹⁰ Stanley Hartt, "What about the Chaoulli Decision said about Health Care Rhetoric vs. Health Care Reality," *Policy Options* (February 2006): 44-48. (44)

²¹¹ Hartt 2005, 44-45.

²¹² Michael Kirby, "The Only Two Options for Funding the Wait-Time Guarantee." *Policy Options* (July-August 2006): 66 .

Canadian Medical Association Journal:

Although they did not agree with Court's majority opinion that suggested Canadians are dying because of waiting lists, Flood and Sullivan empathize with the psychological effects that these lists can have on citizens and believe this constitutes a breach of their personal security. They state that they can "see their reasoning in concluding that the psychological effects of long waits constitute a breach of the Charter's guarantee of security of the person."²¹³ In that sense, Flood and Sullivan also prescribe to the perception that government rationing and long wait-lists create victims out of Canadian citizens.

David Adorn also sees an exploitation created by this case but it is considerably different than other articles in this analysis. Adorn suggests that this decision has basically forced governments to create hard deadline wait times for necessary procedures. Essentially, they must make a table with all possible procedures and if they can't be reached in the necessary time frame then other arrangements are made. He suggests this produces the "difficult but unavoidable task involves drawing lines between services that must be provided to Canadians as a matter of justice and those that can be safely relegated to the private market."²¹⁴ This becomes problematic because there are not enough dollars to ensure that all procedures are met with the same urgency. Therefore, "once it is accepted that not all demand can be supplied through tax dollars, the task becomes one of managing demand in accordance with principles of distributive justice."²¹⁵

²¹³ Flood and Sullivan 2005, 142.

²¹⁴ David Hadorn, "The Chaoulli Challenge: Getting a grip on Waiting Lists," *CMAJ* 171.1 (2005): 271-272. (271)

²¹⁵ Hadorn 2005, 272.

Other Health and Law Journals:

Finally, one of the most the most interesting frames also focused on exploitation, albeit one that stands in direct conflict with other exploitations described earlier. Evans suggests that there is the major victim of this case is the government – at least, the legislative arm of government. He argues that the decision created by the judicial branch of government has left the legislative branch without course of action in regards to international trade treaties. Evans suggests that the government, by virtue of the legal decision created here, cannot prevent the international private insurance companies from entering the market. He states that “if private insurance becomes as solidly entrenched in Canada as it is in the United States, generating a similar scale of administrative waste – “costs without benefits” – we will never get it out again. We will be permanently saddled with another inefficient and inequitable component in our financing mix, a component whose primary functions are to undermine cost control and to redistribute health costs from the healthy and wealthy to the unhealthy and unwealthy.”²¹⁶ Unfortunately, he sees no possible recourse for this problem and instead laments “our great good fortune, when Medicare was being introduced, that the private industry was insufficiently developed to put up much political resistance. Nor were there trade agreements, backed by foreign sanctions, protecting corporate rights to profit against the policies of duly elected democratic governments.”²¹⁷

²¹⁶ Robert G. Evans, “Baneful Legacy: Medicare and Mr. Trudeau,” *Healthcare Policy* 1.1 (2005): 20-25. (25)

²¹⁷ Evans 2005, 25.

Chapter 4 – Explanation of the Critical Discourse Analysis

This section will begin with a quick overview and explanation of the analysis performed in the last chapter and attempt to synthesize what each lens has explained. It will then proceed into an explanation of implications of this research and establish whether the original goals set out were accomplished. Finally, it will give an overview of the Québec government's actual response to the case.

Lens 1: Augmentative & Transformative Discourses

Augmentative Discourse	No Mention/Mixed Reactions	Transformative Discourse
• The Toronto Star • Le Soleil • Canadian Medical Association Journal	• The Kitchener-Waterloo Record • The Windsor Star • The Victoria Times-Colonist • The Edmonton Journal • La Presse • The Regina Leader-Post • The Montreal Gazette • Policy Options	• The Ottawa Citizen • The Calgary Herald • The Vancouver Sun • Le Droit • The Globe and Mail • Le Devoir • The National Post • Access to Care, Access To Justice • Osgoode Hall Law Journal • Other health and law journals.

Fig. 1

Examination of the First Lens

Within the first lens, a dominant trend in both the academic literature and media accounts relates to the potentially transformative impact of the case, regardless of whether it was going to affect public policy or if it was going to change the way health care was viewed in Canada. That being said, there was a broad array of perspectives expressed by academics and in the media. This table was prepared to split the academic and media groupings into three distinct categories: those that believed the case would have a transformative capacity, those who believed it would be augmentative and those who chose not to focus on either or who had mixed reactions within their group. As the table would suggest, the majority of articles viewed the case as being transformative.

Lens 2: The Importance of Rights “Talk”

Emphasis on Rights	No Mention/Little Emphasis on Rights
• The Ottawa Citizen • The Victoria Times-Colonist • The Calgary Herald • The National Post • Access To Care, Access to Justice • Osgood Hall Law Journal • Policy Options • Other law and health journals	• The Windsor Star • The Regina Leader-Post • The Montreal Gazette • The Vancouver Sun • The Edmonton Journal • Le Soleil • Le Droit • Le Devoir • La Presse • The Globe and Mail • The Toronto Star • The Kitchener-Waterloo Record • Canadian Medical Association Journal

Fig. 1

Examination of the Second Lens

The second lens was considerably different than the first. While the first lens saw virtually no consensus emerge in either group in this lens, there is considerable focus from the academic world on emphasizing rights. While they were not entirely homogenous, it does show some consensus on what issues matter. The media, however, found no consensus in this lens. Instead, they were quite spread out. That being said, of all the newspapers that did emphasize the issue of rights were from one Media Corporation: Canwest Global. While it is not an insignificant point that one media organization tended to focus on rights, this is not the purview of this research. This table aims to categorize the articles into those who emphasized rights and those who made no mention of rights. As the table suggests, more emphasis was placed on rights by academic journals than media.

Lens 3: Creating Exploitations through Message Frames

Framed as exploitation	No Particular Frames
• The Ottawa Citizen • The Windsor Star • The Calgary Herald • The Montreal Gazette • The Toronto Star • The Vancouver Sun • La Presse	• The Kitchener-Waterloo Record • Le Devoir • Le Soleil • Le Droit • The Victoria Times-Colonist • The Regina Leader-Post • The Edmonton Journal

• The Globe and Mail • Access to Care, Access to Justice • Canadian Medical Association Journal • Policy Options • Other law and health journals	• The National Post • Osgoode Hall Law Journal
--	---

Fig. 3

Examination of the Third Lens

As for the third lens, it seemed to reflect a similar mixture of opinions, as that seen in the first lens. While a number of media and academic sources did frame their messages to highlight the victim/hero exploitation, there was no consensus amongst either sector. Instead, there seemed to be a fairly even distribution amongst sources from both sides. This table aims to categorize those groupings that chose to frame their messages as exploitations. The table suggests however that neither academia nor media had any consensus on this issue.

Implications of this Analysis

In the aftermath of the *Chaoulli* decision, it can be seen that despite the initial reaction to this case, little has changed in the half-decade since the Supreme Court levied its decision. Bill 33, Québec's response to the case, proactively addressed the issues that led to the *Chaoulli* decision before it could have any major impact in Québec. Furthermore, attempts to emulate the *Chaoulli* decision in other jurisdictions have largely been rebuffed before they even get off the ground, by virtue of provincial governments proactively implementing programs designed to stave off the conditions which led to the Supreme Court's decision, such as the Ontario Health Services and Renewal Board which provides patients with the opportunity to appeal their wait times. Therefore, much of what *Chaoulli* has provided is its ability to expand the debate and allow Canadians to speak frankly about where the public health care system should be heading.

Overall, Bill 33 seemed to tread a very fine line between accommodating the *Chaoulli* decision without damaging the core elements of the public system. What is important to note

about Bill 33 is that while it introduced elements of private insurance into the public system in Québec, it managed to remain entirely feasible under the tenets of the Canada Health Act. Actually, much of what Bill 33 proposes still preserves the supremacy of the public system and leaves a great deal of movement for further infusion of private elements. Critics may even suggest that Bill 33 is a weak response to opening the system to greater private intervention into the system. Some greater explanation is required here.

First, while Québec has opened up their provincial health care system to the infusion of private elements, they are still far from reaching the levels afforded them under the Canada Health Act. Essentially, the Act provides governments with autonomy in developing their public health systems as long as they satisfy five key elements – public administration, comprehensiveness, universality, portability, and accessibility. As Gerard Boychuk explains, “the CHA itself does not mandate a legal prohibition on third-party insurance for insured services. The CHA requires that public health insurance coverage be universally available on uniform terms and conditions without any barriers for reasonable access including barriers of a financial nature.”²¹⁸ Therefore, Québec had the opportunity to introduce an even greater role for private elements into their public system, but chose not to go as far as they were able to under the CHA. Instead, the Québec government tried to impose limitations on how much the private sector could affect the public health care system.

A notable example of this is that Bill 33 maintains its prohibition of physicians working in the private system and billing the government to receive compensation from public monies. This is an important element of Bill 33 because preventing private sector physicians from receiving public compensation is not mandated under the CHA. In other jurisdictions, notably

²¹⁸ Boychuk 2006, 3.

Newfoundland and Labrador, physicians working in the private sector are still able to receive compensation from the public coffers while providing private services.

In Newfoundland, “opted-out physicians receive indirect public compensation for services.”²¹⁹ Furthermore, opted-out physicians in Newfoundland are able to set their own fees, patients are compensated by the provinces for costs up to the provincial fee schedule, and private third-party insurers are allowed to insure for the difference.”²²⁰ Unlike Newfoundland however, opted-out physicians in Québec are unable to bill the public system or even bill their patients to have the services covered up to the public rates. As a result of this prohibition, Bill 33 still creates an effective bulwark against pursuing services through the private system. Instead, while it provides an opportunity for Quebeckers to attain these services, it creates an indirect hindrance to doing so.

So, while Bill 33 effectively provides the opportunity for greater intervention of private care and for individuals to fast track their coverage to have procedures done quickly, it still has created some level of disincentive for doing so by not pushing the extremes of the Canada Health Act. By following this fine line between public and private care, the Québec government has mollified the Supreme Court’s decision in the *Chaoulli* case, but has maintained much of the status quo of their provincial, public health care system. As a result, the *Chaoulli* case has had very little direct impact on the public system.

At the outset, this paper hypothesized the *Chaoulli* decision created mixed reactions about the potential implications of this case. The hypothesis suggested that these mixed reactions would be split between the media and academia. It suggested that the media would share a common viewpoint that the primary result of the *Chaoulli* case would be a discussion of the

²¹⁹ Boychuk 2006, 16.

²²⁰ Boychuk 2006, 6.

fundamental role of the state in delivering health care. It also suggested that academics would view the case as an issue of public policy and would discuss public policy options that governments would take to counteract the Supreme Court's decision to strike down the ban on private health insurance. Furthermore, this paper hypothesized that the Québec government would be guided primarily by one reaction or another instead of trying to incorporate numerous elements into their response to the *Chaoulli* decision.

It seems, however, that this hypothesis did not come to fruition. Instead, this research has argued that the reactions to the case were extremely diverse and that trying to narrow them down to fit into two different, albeit equally important, discourses is unfeasible. There are a number of reasons why this hypothesis was not confirmed through the critical discourse analysis. First, preliminary research was done with such a small sample that any trends identified became less clear once the size of the sample was expanded. Second, trying to develop boundaries around the media and academia as separate, homogenous sectors advocating distinctive opinions was challenging to do in practice. This is because both the media and academia are broad sectors, composed of individuals who hold vastly divergent views. The attempt to coalesce these individuals into broad groups does not take into account the intricacies of each individual's opinions. Finally, in light of what the government of Québec has proposed in Bill 33, it has become clear that its response to this case was the product of compromise between a myriad of divergent opinions, and not the result of one discourse carrying the day. Each of these reasons merits further discussion, to which I now turn.

At the outset of this thesis, and the beginning of this research, a small sample of academic and newspaper articles was chosen to see how opinions and coverage of the *Chaoulli* case diverged from one another. At first glance, it suggested that newspapers tended to focus on the

Supreme Court's decision in the *Chaoulli* case as being about the fundamental role of the state in providing health care. Conversely, it suggested the academic sector had chosen to focus much of their attention on the public policy and political ramifications of the case. However, upon expanding the sample size, it became apparent that these distinctions were no longer clear. The media often addressed issues of public policy, while academics were equally interested in how this case addressed the more fundamental question of whether this would change the role of the state in providing public health care. These distinctions became less pronounced as the sample size grew.

Additionally, while this thesis set out to demonstrate that there were distinct differences between the media and academia, the research has suggested that this distinction is not as clear-cut as the preliminary overview would have suggested. In fact, what became even more apparent was that trying to develop distinct boundaries around the media and academia was an improbable, if not impossible, task. There turns out to be very little homogeneity when looking at these sectors. This can be attributed to three specific elements.

First, newspapers rarely agree with one another on coverage. Different newspapers cover information and events in their own distinctive ways. Inherent in newspaper coverage are ideological preferences, corporate editorial policy amongst newspaper companies, and geographic relevance, amongst others. These elements cause coverage to be different from different writers, different amongst different companies and different amongst different regions. Nowhere did this become more apparent than in examining newspaper coverage from different papers under the same parent company. For example, coverage from the *Calgary Herald* did not reflect coverage from the *Windsor Star*, despite being under the same parent company. Instead,

coverage from every newspaper reflected a number of different elements, and therefore created different reactions to the case.

Second, academics are not a monolithic unit either. Not unlike newspapers, academics are driven by a number of different factors, including their interests, their ideologies, and their expertise. While there may have been some similarities between academics while viewing this case, these were far from homogenous opinions. Instead, like newspapers, each academic article expressed a very different reaction to the case.

Finally, public health care elicits a distinct and individual reaction from nearly every person in Canada. To suggest that opinions would be similar amongst entire groups, based on their professions, is problematic. Instead, what became evident in the research is that in as many articles as this thesis examined, there were nearly as many opinions about what the case meant. It is because of this lack of coherence between the media and academia as distinct and homogenous units that much of what this thesis had originally hypothesized has failed to come to fruition.

Instead, what became apparent is that opinions were largely free of boundaries. This discourse analysis demonstrated that, for example, some academics may have shared the opinions with newspaper coverage instead of with other academics. Or, they may have held views entirely unique to themselves. Essentially, there proved to be little way to associate any opinion within the boundaries established at the outset of this thesis. However, even though this original hypothesis proved to be largely untrue, it is perhaps this broad public debate of the issues amongst all sectors which becomes the most important result of the *Chaoulli* decision.

What these mixed opinions suggested is that the *Chaoulli* decision was instrumental in expanding the discursive domain about health care in Canada. This thesis uses the term discursive domain to define the traditional boundaries into which opinions fall when speaking of

an issue. In this case, the issue is whether governments should continue to block a greater role for private elements in their health care delivery programs. As mentioned elsewhere in this thesis, it had long been taboo to speak about the virtues of private insurance or to diminish the importance of the public system. Much of this reaction is based on the perception that public health care is a key element of what it means to be a Canadian citizen. This iconic persona that is levied on the public health care system has had the negative effect of preventing citizens from speaking frankly about the future of the health care system, even in the face of growing inefficiencies and skyrocketing costs.

What the *Chaoulli* case did was to legitimize the expression of contrary opinions about the health care system. While a number of articles examined in this research defended the system in its present form, they were met with an effective counterattack from those who believe that changes need to be made. Essentially, the *Chaoulli* case shifted and broadened the boundaries of this discursive domain to incorporate ideas that had largely been vilified before the Supreme Court levied the *Chaoulli* decision, specifically the desire for further private intervention in the public system. It changed the boundaries to allow people to speak about implementing private elements into the public system without suffering the backlash that those opinions had previously been met with. With the expansion of this debate and the proliferation of new ideas about the future of Canadian public health care, perhaps politicians will start speaking frankly about the appropriate reforms required for the delivery of health care.

Conclusions: What did the *Chaoulli* decision actually do?

It would be easy to conclude that the *Chaoulli* decision had very little overall impact in shifting the public health care system to one driven by a free-market, private system. In fact, the evidence uncovered here would suggest that while the Québec government made some changes to include private elements into their health care system, it managed to incorporate small reforms to allow private insurance without changing the core pillars of the public system. Despite the rhetoric displayed as an immediate response to the case, it seems that the *Chaoulli* case did not transform the health care system. While the potential doom that was prognosticated in the wake of the *Chaoulli* decision was largely voided by the implementation, the case has been important in a number of other ways. This research has tried to highlight some of these points.

While the thesis had originally hypothesized that reaction to the case would fit neatly into two distinct discourses, the results of this research have shown this to be largely untrue. Instead, what has become clear as a result of this research is that the *Chaoulli* decision provoked a number of differing opinions about what effects the case would have, evidenced by the separate discourses addressed in this research. Furthermore, for better or for worse, this research has shown that much of the initial reaction to the *Chaoulli* decision was predicated on the fear that the long-term viability of public health care was in danger.

Utilizing the three lenses – transformative vs. augmentative discourses, “rights-talk”, and message framing – it became clear that although discourses may have developed, there were no distinctions on where these discourses found their most support. Instead, what developed were contending discourses which generally centred on whether the case would have a long-term impact or whether it was simply a wake-up call from the Supreme Court to politicians to take action in the realm of health care.

These discourses are evidenced by the split reactions on whether this decision would have an augmentative or transformative impact. This thesis originally suggested that the media selected would confer a message suggesting that a fundamental shift in the foundations of health care was imminent, and that the real question here was about the fundamental role of the state in delivering that care. What became apparent upon conducting the analysis was that not only was there no consensus amongst the media, even select newspapers had difficulty providing coherent coverage on that matter. Some newspapers included coverage that viewed this as the beginning of the end of public care and suggested that there would be major transformations to the way Canadians received health care. However, at the same time they were including contrary opinions which argued that this would be met with small legislative reforms and the decision itself would have very little impact. To further confuse this original hypothesis, there was little homogeneity in the academic realm about what the overall impact of the case would be. In fact, the range of opinions offered by the coverage in academic journals was no less diverse than newspapers; perhaps it was even greater.

This lack of homogeneity became even more apparent when discussing issues of rights in both the media and academic accounts. Although I originally hypothesized that the lens of analysis focused on “rights-talk” would reveal a media focused on rights without paying attention to reasonable limitations, this was not the case. Instead, newspapers had diverse opinions about rights were being conveyed in the *Chaoulli* decision. While some made little mention of the reasonable limitations and notwithstanding clauses, it was not ignored by all newspapers. This only corroborates the opinion that it was not plausible to try to associate all newspapers as one distinctive entity. Again, this divergence of opinions is reflected further in

academia as those who tried to reflect issues of rights in their work did not always emphasize the importance of the reasonable limitations and notwithstanding clauses.

Finally, with the third lens of analysis, both newspapers and academia framed their messages to emphasize exploitations. While not all newspapers suggested that victims or heroes were apparent in the *Chaoulli* case, many made mention of the dire nature of the *Chaoulli* case by virtue of stance on whether the public system was on the verge of transformation. This sentiment was echoed heavily by academia.

One area where the original hypothesis stands correct is in its assertion that newspapers tended to focus more on framing their message as one of exploitations than academia. Conversely, academia may have focused more on the scope of rights than newspapers. However, these distinctions are not exclusive as authors from each sector made light of these issues in their reaction to the cases. Although they may have been in the minority, each sector touched on all three lenses of analysis in some capacity.

Essentially, this research proved that much of the initial reaction to this case was largely of an individual nature and newspaper writers and academics, individuals themselves, could not be divided into different camps with clear boundaries. This point should not be surprising in retrospect. Health care still ranks as the primary issue for Canadians when asked what public policy issue is most important to them. As a result, Canadians have very personal opinions about what the next step should be for their public system. Oftentimes, these opinions are shaped by personal experiences with the system, financial capacity to cover private costs, ideological opinions about the role of the state in delivering care and whether collective coverage for citizens is an inherent right as a Canadian, among others. With such a broad range of factors highlighting

each opinion of health care, it was perhaps premature to suggest that clear boundaries could be so easily defined about different professions in explaining how people would react to the case.

Up until the *Chaoulli* decision, speaking of privatization in Canada was ostensibly greeted as being taboo or even led to proponents of private care being vilified. As much of this research has suggested however, a growing discourse has been exposed in the media (specifically newspapers) and from academia which openly supports a greater intervention of private forces in the public system. This is not a new phenomenon. It can be seen as a likely by-product of the lack of reform that was itself partially responsible for the *Chaoulli* decision.

Therefore, despite the difficulty in supporting the original hypothesis, this thesis nonetheless was able to demonstrate the significance of the *Chaoulli* case. For example, while the public system remains largely unchanged in Québec, the *Chaoulli* decision did have one extreme, transformative impact on health care in Québec and, by proxy, Canada. That impact is that the *Chaoulli* decision's most important contribution was that it exposed a growing debate about the effectiveness of allowing additional private elements into the public system and whether Canadian's dogmatic protection of the public system has finally reached its limits. Perhaps this is the most poignant legacy of the Supreme's Court decision in *Chaoulli v. Québec*.

Bibliography

Newspapers

Abraham, C. (14-Jul-05). Private clinic in Toronto to offer costly cancer drugs. *The Globe and Mail*, p. A1.

Allard, P. (12-Nov-05). Couillard cafouille. *Le Droit*.

Allard, P. (23-Jul-05). Pensons-y bien ! *Le Droit*.

Anctil, H. (29-Jun-05). Agora: Des juges en colère. *Le Devoir*.

Anderson, S. (6-Aug-05). Another deadly delay. *The Ottawa Citizen*, p. B.6.

Anderson, S. (21-Sep-05). National: NDP seek to halt private health care. *The Ottawa Citizen*, p. A.4.

Anderson, S. (5-Aug-05). Québec: Top court stays health care ruling. *The Ottawa Citizen*, p. A.3.

Arnold, P. (12-Jun-05). Mature debate at last: Looking for innovative solutions for medicare. *Times - Colonist*, p.D.2.

Asselin, P. (15-Jun-05). Assurance-santé privée. *Le Soleil*.

Bachand, F. (15-Jun-05). Une critique troublante. *La Presse*.

Bagnall, J. (28-Sep-05). Down side of private care Down Under. *The Gazette*, p. A.27.

Balsevich, J. (11-Jun-05). Health reform long overdue. *National Post*, p. A.17.

Barlow, M. (11-Jun-05). Health care ill. *The Globe and Mail*, p. A16.

Béland, F. (29-Jun-05). Agora: La Cour suprême du Canada a raté une belle occasion de se taire. *Le Devoir*.

Béland, F., Contandriopoulos, A.-P., Contandriopoulos, D., Blais, R., Denis, J.-L., & Lamarche, P. (8-Dec-05). Ralph Klein et Jean Charest s'entendent sur la nécessité de réformer la santé. *Le Soleil*.

Bélanger, M. (6-Oct-05). Deux débats sur la santé en novembre. *Le Droit*.

Bélanger, M. (11-Jun-05). Peu de gens au Québec ont les moyens financiers de s'offrir une assurance pour les soins médicaux privés. *Le Droit*.

Bélanger, M. (10-Jun-05). Un jugement qu'aucun politicien au Québec n'aurait eu le courage de voter. *Le Droit*.

Bellavance, J.-D. (21-Sep-05). Layton s'attaque aux cliniques privées. *La Presse*.

Bellavance, J.-D. (19-Sep-05). Les députés fédéraux vont se prononcer sur le suicide assisté. *La Presse*.

Bellavance, J.-D. (10-Jun-05). Paul Martin réitère sa foi dans un système public. *La Presse*.

Bellavance, J.-D. (3-Dec-05). Santé. *La Presse*.

Bellavance, J.-D. (11-Jun-05). Soins de santé privés. *La Presse*.

Bellefleur, Y. (13-Jul-05). Assurance médicale privée. *Le Soleil*.

Bellefleur, Y. (10-Jun-05). Ce que la décision de la Cour suprême change pour les patients. *Le Soleil*.

Bellefleur, Y. (8-Jul-05). Chaoulli retourne en Cour suprême. *Le Soleil*.

Bellefleur, Y. (15-Jun-05). Couillard invite les assureurs à la prudence. *Le Soleil*.

Bellefleur, Y. (11-Jun-05). Couillard prône l'exemple scandinave. *Le Soleil*.

Bellefleur, Y. (17-Sep-05). Jugement Chaoulli. *Le Soleil*.

Bellefleur, Y. (10-Jun-05). Jugement de la Cour suprême sur l'assurance-maladie. *Le Soleil*.

Bellefleur, Y. (22-Jun-05). La privatisation de la santé ne réduirait pas les listes d'attente, selon Dosanjh. *Le Soleil*.

Bellefleur, Y. (22-Nov-05). La santé doit dominer la campagne, souhaite Klein. *Le Soleil*.

Bellefleur, Y. (23-Nov-05). L'arrêt Chaoulli a été mal interprété, jugent des penseurs. *Le Soleil*.

Bellefleur, Y. (18-Aug-05). L'Association médicale canadienne donne son appui à un système de santé privé. *Le Soleil*.

Bellefleur, Y. (3-Dec-05). Le débat sur le privé en santé attendra après les élections, tranche Couillard. *Le Soleil*.

Bellefleur, Y. (15-Aug-05). Le système de santé dans la tourmente, selon les médecins. *Le Soleil*.

Bellefleur, Y. (9-Jul-05). Les Canadiens prêts à payer pour éviter l'attente. *Le Soleil*.

- Bellefleur, Y. (20-Jun-05). Les gens aisés nous aideront à avoir une place plus rapidement... *Le Soleil*.
- Bellefleur, Y. (15-Nov-05). Les poudres du pouvoir ! *Le Soleil*.
- Bellefleur, Y. (3-Dec-05). Santé. *Le Soleil*.
- Bellefleur, Y. (10-Nov-05). Santé : Charest ouvrira la porte au privé. *Le Soleil*.
- Bellefleur, Y. (6-Aug-05). Se mobiliser autour d'une nouvelle politique de la santé et du bien-être. *Le Soleil*.
- Bellefleur, Y. (22-Jul-05). Sondage. *Le Soleil*.
- Bellefleur, Y. (29-Jun-05). Système de santé mixte public-privé. *Le Soleil*.
- Beneteau, M. (29-Nov-05). The campaign: Three vital, local issues. *The Windsor Star*, p. A.6.
- Beneteau, M. (4-Jul-05). Dosanjh erred in CMA blast. *The Windsor Star*, p. A.6.
- Beneteau, M. (10-Jun-05). Health care: Listen to the Supreme Court. *The Windsor Star*, p. A.10.
- Beneteau, M. (12-Aug-05). Health care: The U.S. is a real option. *The Windsor Star*, p. A.8.
- Beneteau, M. (27-Oct-05). Senator predicts better health care. *The Windsor Star*, p. B.1.Fro.
- Bergeron, P. (4-Dec-05). Charest contredit Martin. *Le Soleil*.
- Bergeron, P. (6-Aug-05). Un délai essentiel. *Le Droit*.
- Bernier, M. (14-Jun-05). La Cour suprême et les soins de santé - La majorité désire une liberté de choix. *Le Devoir*.
- Bérubé, G. (18-Aug-05). Le pèlerin. *Le Devoir*.
- Blackwell, T. (3-Dec-05). B.C. private care specialist plans Ontario clinic. *National Post*, p. A1.
- Blackwell, T. (29-Sep-05). Canada a leader in private health care. *Edmonton Journal*, p. A.5.
- Blackwell, T. (27-Oct-05). Court ruling may force competition in health care: Canadians would benefit, senator says. *Edmonton Journal*, p. A.15.
- Blackwell, T. (27-Oct-05). Court ruling will improve health care, Kirby says. *The Ottawa Citizen*, p. A.7.

Blackwell, T. (7-Oct-05). Doctors fear accord will create patchwork of care. *National Post*, p. A.4.

No Author, 14 December 2005, "Health care: Leaders avoid honest debate," *The Windsor Star*, A8.

Blackwell, T. (3-Dec-05). Doctor plans private clinic. *The Windsor Star*, p. A15.

Blackwell, T. (7-Oct-05). Health care 'benchmarks' will lead to patchwork system, CMA warns: *The Ottawa Citizen*, p. A.5.

Blackwell, T. (27-Oct-05). Health-care ruling draws opposing views. *The Vancouver Sun*, p. A.7.

Blackwell, T. (29-Sep-05). Health soaks up more private money. *The Windsor Star*, p. C.15.

Blackwell, T. (29-Sep-05). More health care dollars going to private firms. *Times - Colonist*, p. A.6.

Blackwell, T. (6-Dec-05). Private care OK if no public funds involved. *National Post*, p. A5.

Blackwell, T. (3-Dec-05). Private care is right for Ontario. *The Ottawa Citizen*, p. A4.

Blackwell, T. (29-Sep-05). Private health care growing, study finds. *National Post*, p. A.1.Fro.

Blackwell, T. (29-Sep-05). Private-sector's piece of health pie growing. *The Ottawa Citizen*, p. A.3.

Blackwell, T. (27-Oct-05). Senator foresees competition in health system: Forum on Québec ruling. *National Post*, p. A.5.

Blackwell, T. (27-Oct-05). Senator foresees private care role after Chaoulli: Forum on court decision. *National Post*, p. A.5.

Blanchfield, Mike. (14-Dec-05). Layton accuses opponents of health care 'sabotage'. *The Vancouver Sun*. A4.

Blanchfield, Mike. (14-Dec-05). Layton raises stakes in health-care battle. *Calgary Herald*. A4.

Blatchford, C. (10-Jun-05). PM and Liberals can't have it both ways on health care. *The Globe and Mail*, p. A9.

Boisvert, Y. (22-Aug-05). Deux cours suprêmes, deux modèles. *La Presse*.

Boisvert, Y. (1-Dec-05). La Main du Dr Beauchamp. *La Presse*.

- Boisvert, Y. (11-Jun-05). L'arrogance vertueuse de la Cour. *La Presse*.
- Boisvert, Y. (10-Jun-05). Les juges, la santé et les droits mous. *La Presse*.
- Boivin, S. (29-Jul-05). Pas de hausse de taxes pour la santé. *Le Soleil*.
- Boivin, A. (21-Jun-05). Un jugement à se réapproprier. *Le Devoir*.
- Boyer, M. (18-Jun-05). Les mythes de l'assurance maladie privée au Québec. *Le Soleil*.
- Breton, B. (14-Nov-05). Débat lucide. *Le Soleil*.
- Breton, B. (10-Jun-05). Le leurre. *Le Soleil*.
- Breton, B. (13-Jun-05). L'heure de vérité. *Le Soleil*.
- Breton, B. (22-Aug-05). Nouvelle posologie. *Le Soleil*.
- Breton, P. (8-Nov-05). Claude Castonguay ne croit plus au système de santé public actuel. *La Presse*.
- Breton, P. (23-Nov-05). Sept propositions pour préserver le système. *La Presse*.
- Breton, P., & Chouinard, T. (28-Jul-05). Les syndicats dénoncent le rapport Ménard. *La Presse*.
- Brousseau-Pouliot, V. (23-Jul-05). Les Américains intéressés au marché canadien. *Le Soleil*.
- Brousseau-Pouliot, V. (11-Jun-05). Marcoux, un ancien partisan du privé et du ticket modérateur. *Le Soleil*.
- Brun, H. (10-Jun-05). En toute légitimité, le Parlement doit avoir le dernier mot. *Le Soleil*.
- Brun, H., Demers, D., Garant, P., & Lajoie, A. (17-Nov-05). Il n'y a pas d'«ordre» de la Cour suprême. *Le Devoir*.
- Bryan, J. (11-Jun-05). There's some hope for Medicare. *The Gazette*, p. B.1.BRE.
- Bryant, Gerald. (6-Dec-05). We need the best *health care* money can buy. *The Vancouver Sun*. A10.
- Bueckert, D. (7-Jul-05). Don't delay private care, lawyer urges court: Québec wants time to enforce ruling. *Edmonton Journal*, p. B.5.
- Bueckert, D. (10-Jun-05). Door widens to two-tier health. *Times - Colonist*, p. A.1.FRO.
- Bueckert, D. (13-Jun-05). Ottawa pourra-t-il freiner la tendance ? *Le Soleil*.

- Bueckert, D. (17-Sep-05). Private insurance undermines medicare, expert says. *The Globe and Mail*, p. A14.
- Bueckert, D. (5-Aug-05). Top court stays ruling on private health care. *The Globe and Mail*, p. A7.
- Calderhead, V. (13-Jun-05). Soul of health care. *The Globe and Mail*, p. A12.
- Campbell, M. (25-Oct-05). Website's a start toward cutting medical waits. *The Globe and Mail*, p. A14.
- Carey, E. (3-Dec-05). Private surgery in the city? B.C. doctor plans to open clinic here Dr. Day's practice violates Health Act. *Toronto Star*, p. A24.
- Carey, E., & Talaga, T. (12-Jun-05). Another Morgentaler moment; Supreme Court, in landmark medicare ruling, draws comparisons to '88 abortion argument. *Toronto Star*, p. A.04.
- Caron, G. (1-Sep-05). Canadians impatient with health care system. *The Windsor Star*, p. A.8.
- Castonguay, A. (27-Sep-05). Le NPD, poids lourd de la rentrée. *Le Devoir*.
- Cauchy, C. (10-Nov-05). Legendre se rapproche de Boisclair. *Le Devoir*.
- Cauchy, C. (29-Jul-05). Pas question d'augmenter la TVQ. *Le Devoir*.
- Cauchy, C. (3-Dec-05). Santé: Harper montre patte blanche. *Le Devoir*.
- Cauchy, C. (27-Jul-05). Santé: plus de place au privé. *Le Devoir*.
- Caulfield, T., Downie, J., & Jackman, M. (8-Dec-05). Healthy debate. *The Globe and Mail*, p. A28.
- Cazale, L. (2-Aug-05). Pour l'ajout d'indicateurs de performance. *Le Devoir*.
- Cernetig, M. (10-Jun-05). How retiree's hip made history; Long surgery wait led to court case Montrealer still backs Medicare. *Toronto Star*, p. A.07.
- Chamberland, M. (10-Jun-05). Dr Jacques Chaoulli. *La Presse*.
- Champagne, S., & Mercure, P. (23-Aug-05). Loi sur le tabac Les grands cigaretteurs essuient un revers en Cour d'appel. *La Presse*.
- Champagne, A.-L. (10-Jun-05). Ni les patients ni les assureurs n'y trouvent leur profit. *Le Soleil*.
- Charette, S. (14-Jun-05). Health system can't survive court decision. *The Windsor Star*, p. A.7.

- Chiasson, D. (14-Jun-05). Perils of privatization. *Edmonton Journal*, p. A.15.
- Chodan, L. (10-Jun-05). 'It cannot be concluded ... that an absolute prohibition on private insurance is necessary'. *Times - Colonist*, p. A.17.
- Chodan, L. (18-Jun-05). Supreme Court's health-care ruling has public concerned, poll finds:. *Times - Colonist*, p.A.8.
- Chodan, L. (29-Jun-05). Welcome doctors to health debate:. *Times - Colonist*, p. A.14.
- Chouinard, T. (17-Jun-05). Affaire Chaoulli Jugement de la Cour suprême. *La Presse*.
- Chouinard, T. (10-Jun-05). L'ADQ se réjouit. *La Presse*.
- Chouinard, T. (10-Jun-05). Le PQ réclame la clause dérogatoire. *La Presse*.
- Chouinard, T. (23-Nov-05). PLACE DU PRIVÉ EN SANTÉ. *La Presse*.
- Chouinard, T. (11-Nov-05). Québec dit oui au privé. *La Presse*.
- Chouinard, T., & Breton, P. (29-Jul-05). QUÉBEC REJETTE L'IDÉE D'UNE HAUSSE DE LA TVQ. *La Presse*.
- Chouinard, T. (11-Nov-05). Soins de santé : Québec dit oui au privé. *Le Droit*.
- Clark, C. (20-Aug-05). MPs expected to press Martin for tough stand on health care; Encroachments of private clinics, spending on environment among top caucus issues. *The Globe and Mail*, p. A4.
- Clair, M. (11-Jun-05). Jugement Chaoulli. *Le Soleil*.
- Cloutier, P. (13-Jun-05). Avis partagés sur le privé en santé. *Le Soleil*.
- Coffrey, E. (19-Sep-05). Give private insurance a chance. *National Post*, p. A.15.
- Corbeil, M. (10-Jun-05). L'ADQ se réjouit et le PQ enrage... *Le Soleil*.
- Corbeil, M. (17-Oct-05). Le chef de l'ADQ revient à la charge. *Le Soleil*.
- Corbeil, M. (10-Jun-05). Québec ne s'inquiète pas de la décision. *Le Soleil*.
- Corcoran, T. (10-Jun-05). Health spending boom. *National Post*, p. FP.19.
- Cornellier, M. (26-Nov-05). La fièvre des uns, l'angoisse des autres. *Le Devoir*.

- Cornellier, M. (10-Jun-05). Renforcer le système public pour fermer la porte au privé. *Le Devoir*.
- Corriveau, J. (13-Jun-05). La santé des pauvres est-elle moins importante? *Le Devoir*.
- Cosh, C. (9-Jun-05). Medicare a safety net, not a cage. *National Post*, p. A.1.Fro.
- Côté, C., & Péloquin, T. (10-Jun-05). Inquiétude à gauche, jubilation à droite. *La Presse*.
- Côté, P. (16-Jun-05). Parlons aussi de suicide assisté... *Le Soleil*.
- Cotter, J. (17-Sep-05). Klein's private health plan questioned; Must benefit population as a whole, minister tells doctors during meeting. *The Globe and Mail*, p. A15.
- Clair, M. (11-Jun-05). Il faut se ressaisir. *La Presse*.
- Coyne, A. (22-Jun-05). Again with the 'activism'. *National Post*, p. A.20.
- Coyne, A. (7-Sep-05). Boldly embracing the status quo. *National Post*, p. A.16.
- Coyne, A. (10-Jun-05). A final chance to fix the system. *National Post*, p. A.1.Fro.
- Coyne, A. (12-Nov-05). The Liberals' empty chamber. *National Post*, p. A.20.
- Coyne, A. (26-Oct-05). What \$41-billion buys. *National Post*, p. A.20.
- Coyne, A. (11-Jun-05). What the court did and did not do. *National Post*, p. A.16.
- Crowder, J. (28-Oct-05). Saving Medicare (Letter to the Editor). *The Globe and Mail*, p. A22.
- Dakassien, S. (10-Jun-05). Un bon jugement? *La Presse*.
- David, M. (1-Dec-05). À l'ombre des feds. *Le Devoir*.
- David, M. (12-Nov-05). La troisième Mercedes. *Le Devoir*.
- David, M. (8-Dec-05). Le bonsaï de M. Couillard. *Le Devoir*.
- David, M. (11-Jun-05). Le modèle Couillard. *Le Devoir*.
- David, M. (19-Nov-05). S.O.S. *Le Devoir*.
- Davidson, D. A. (5-Aug-05). The bottom line? More business tax cuts. *Edmonton Journal*, p. A.19.

- Daw, J. (10-Jun-05). Insurers analyze medicare ruling; Judgment against Québec leaves indecision, industry says Big employers might be pressed to expand group plans. *Toronto Star*, p. E1.
- Dawson, A. (10-Jun-05). No two-tier health care:. *The Ottawa Citizen*, p. A.4.
- Dawson, A. (10-Jun-05). PM vows to strengthen public medicine: 'We're not going to have a two-tier' system in Canada. *Calgary Herald*, p. A.7.
- Dawson, A. (10-Jun-05). We won't have two-tier care, Martin insists. *Times - Colonist*, p. A.5.
- Day, B. (10-Jun-05). A blow for citizens' rights. *National Post*, p. FP.19.
- de Bellefeuille, P. (15-Jun-05). Lettres: À qui appartient notre santé ? *Le Devoir*.
- Delisle, N. (21-Nov-05). L'ADQ confirme son virage vers le privé dans le secteur de la santé. *Le Devoir*.
- Delisle, N. (7-Dec-05). Place du privé dans la santé. *Le Soleil*.
- Delisle, N. (15-Jun-05). SANTÉ. *La Presse*.
- Derfel, A. (8-Jun-05). Medicare's future on the line:. *The Gazette*, p. A.1.FRO.
- Derfel, A. (11-Jun-05). Shot in arm for private hospitals:. *The Gazette*, p. A.1.FRO.
- Derfel, A. (19-Nov-05). Strengthen medicare, says man who challenged system in court. *The Gazette*, p. A.8.
- Derfel, A. (10-Jun-05). Supreme Court opens door to two-tier health system; Landmark decision won't be magic pill:. *The Gazette*, p. A.1.FRO.
- Derfel, A., Dougherty, K., & Kennedy, M. (11-Nov-05). Medicare battle looms:. *The Gazette*, p. A.1.FRO.
- Deschamps, M. (10-Jun-05). Les assurances privées ne menacent pas le régime public de santé. *Le Devoir*.
- Descôteaux, B. (10-Jun-05). La brèche. *Le Devoir*.
- Dirnfeld, V., Coffey, E., & Gratzner, D. (16-Aug-05). The doctors' chance to lead. *National Post*, p. A.16.
- Dougherty, K. (14-Jun-05). Liberals table bill to include sustainable development in charter:. *The Gazette*, p. A.10.
- Dubuc, A. (10-Jun-05). Quand une loi est absurde... *La Presse*.

Dubuc, A. (17-Jun-05). Santé: pour éviter les dérives. *La Presse*.

Dubuc, A. (20-Aug-05). Le début de la fin. *Le Soleil*.

Dubuc, A. (17-Jun-05). Santé : pour éviter les dérives. *Le Droit*.

Dubuc, B., Gagné, M., Lessard, M., Leclerc, M., Voisine, M., Gagnon, N., & Fortin, Y. (2-Jul-05). Nous ne voulons pas nous retrouver à la merci des assureurs privés... *Le Soleil*.

Duchesne, A. (10-Jun-05). Quatre provinces permettent déjà les régimes privés d'assurance maladie. *La Presse*.

Duchesne, A. (10-Jun-05). Quelles conséquences pour l'utilisateur? *La Presse*.

Dugré, Y. (30-Aug-05). Comment arrimer le privé au système de santé actuel ? *Le Soleil*.

Dugré, Y. (6-Sep-05). L'apport du privé au système de santé public: un débat s'impose. *Le Devoir*.

Dutil, R. (23-Jun-05). Des médecins hybrides? *La Presse*.

Dutrisac, R. (18-Oct-05). Au menu de la session automnale. *Le Devoir*.

Dutrisac, R. (11-Nov-05). Couillard parle du privé en symbiose avec le public. *Le Devoir*.

Dutrisac, R. (3-Dec-05). Couillard reporte le débat sur la santé après les élections. *Le Devoir*.

Dutrisac, R. (23-Nov-05). Klein et Charest sont sur la même longueur d'onde. *Le Devoir*.

Dutrisac, R. (29-Oct-05). L'évolution selon la Cour suprême. *Le Devoir*.

Dutrisac, R. (10-Nov-05). Santé: Charest ouvre la porte au privé. *Le Devoir*.

English, J. (25-Jun-05). Court rushes in; where politicians fear to tread. *The Record*, p. A.13.

Esmail, N. (10-Jun-05). The writing is on the wall. *National Post*, p. A.22.

Falk, W., & Hirji, N. (19-Oct-05). Good government - or it's free. *National Post*, p. A.20.

Fecteau, L. (29-Jun-05). Agora: Le choix d'intégrer le privé. *Le Devoir*.

Ferguson, C. (10-Aug-05). Une idée pour la santé. *Le Devoir*.

- Ferguson, R. (11-Jun-05). Public system draws strong support; Public system endorsed Ex-ministers tout medicare over private insurance But government urged to improve delivery of care. *Toronto Star*, p. A.01.
- Ferrabee, J. (11-Jun-05). Québec scores health-care win over longtime rival ontario. *The Ottawa Citizen*, p. A.11.
- Fidelman, C. (10-Jun-05). Supreme Court opens door to two-tier health system; 'Gutsy' judgment will spur reform, proponents of private care predict:. *The Gazette*, p. A.1.FRO.
- Fidelman, C. (10-Jun-05). Union officials speak out against providers of private care:. *The Gazette*, p. A.4.
- Fine, S. (5-Dec-05). Private health care has already left the station. Don't expect the leaders to hop aboard; Is medicare dead? What's next? *The Globe and Mail*, p. A7.
- Fischer, D. (8-Dec-05). Walking the line over private health care. *The Ottawa Citizen*, p. A4.
- Fitzsimmons, B. (14-Jun-05). Holding gov't accountable. *Edmonton Journal*, p. A.15.
- Fletcher, S. (15-Jun-05). Tory health care. *National Post*, p. A.19.
- Fleury, R. (12-Jun-05). Le vieux sage de Verchères... *Le Soleil*.
- Flynn, G. (29-Jun-05). Enough with the fear mongering. *National Post*, p. A.18.
- Flood, C. (3-Jul-05). Will private health insurance deliver?; Colleen Flood says examples elsewhere show Canadians won't really benefit. *Toronto Star*, p. A.17.
- Flood, C., & Hinds, G. (25-Jul-05). You appeal long wait-times for treatment. *Toronto Star*, p. A.17.
- Fournier, L. (6-Aug-05). Desjardins Sécurité financière. *Le Soleil*.
- Freeman, A. (11-Jun-05). In Britain, 'it's nice to have the option'; Private health sector has long co-existed with public system. *The Globe and Mail*, p. A4.
- Fullerton, M. (16-Aug-05). French lessons in health care. *The Ottawa Citizen*, p. A.15.
- Fullerton, D. M. (17-Jun-05). Health is an open topic. *The Windsor Star*, p. A.8.
- Fullerton, M. (10-Jun-05). Politicians can now be honest about health care. *The Ottawa Citizen*, p. A.17.
- Gagnon, K. (13-Nov-05). Faire sauter la clôture. *La Presse*.

- Gagnon, K. (29-Jul-05). Le pilote et le virage. *La Presse*.
- Gagnon, L. (14-Nov-05). A pill Québec won't swallow. *The Globe and Mail*, p. A15
- Gagnon, L. (19-Nov-05). Un débat nécessaire. *La Presse*.
- Galloway, G. (11-Jun-05). Dosanjh stays tight-lipped on transfer payments. *The Globe and Mail*, p. A4.
- Galloway, G. (3-Dec-05). Harper vows to rush wait-time solution. *The Globe and Mail*, p. A4.
- Garant, P. (10-Jun-05). Jugement de la cour suprême sur l'assurance-Maladie. *Le Soleil*.
- Gee, James Paul. *An Introduction to discourse analysis: theory and method*, 2nd ed. New York: Routledge, 2005.
- Gherson, G. (10-Jun-05). Allow competition. *Toronto Star*, p. A.27.
- Gherson, G. (29-Jul-05). Boost role of private health care, Québec told; Way to contain costs, advisory committee says Report cites sector's efficiency, ability to innovate. *Toronto Star*, p. A.12.
- Gherson, G. (30-Sep-05). Court not asked to fix health care. *Toronto Star*, p. A.19.
- Gherson, G. (14-Jun-05). Health-care plans can work together. *Toronto Star*, p. A.19.
- Gherson, G. (19-Aug-05). Looking for steps Dosanjh has taken. *Toronto Star*, p. A.23.
- Gherson, G. (10-Jun-05). Medicare ruling a wake-up call. *Toronto Star*, p. A.26.
- Gherson, G. (17-Jun-05). Our top court comes under scrutiny. *Toronto Star*, p. A.23.
- Giorno, G. W. (20-Jun-05). Supreme Court or no Supreme Court, the Canada Health Act is not what's stopping private health insurance, says GUY GIORNO. *The Globe and Mail*, p. A19.
- Giorno, G. W. (26-Sep-05). Advice to the Right Series: Is Conservatism Dead? *National Post*, p. A.17.
- Girard, D. (12-Jul-05). Health-care changes coming; Alberta premier to reveal 'third way' scheme Klein has praised court ruling on private insurance. *Toronto Star*, p. A.10.
- Girard, D. (16-Jul-05). Klein still playing coy on health-care reforms; Nothing revolutionary yet, but he talks about further changes. *Toronto Star*, p. F.02.
- Girard, M. (25-Sep-05). Les mots zen de la semaine. *La Presse*.

- Giroux, R. (29-Nov-05). Bilan des engagements majeurs pris en dix-sept mois. *Le Soleil*.
- Giroux, R. (10-Nov-05). Un dernier débat sans affrontement. *Le Soleil*.
- Gordon, S. (5-Aug-05). Delay granted in key health ruling; Québec receives one-year reprieve
Private insurance ban struck down. *Toronto Star*, p. A.04.
- Gordon, S. (15-Jul-05). Québec won't face suit over hospital waiting lists; Court won't hear
cancer case appeal Women argued treatment took too long. *Toronto Star*, p. A.04.
- Gordon, S. (9-Jun-05). 'Two-tier' medicine decision today; Top court to rule on health laws
Québec man paid for private surgery. *Toronto Star*, p. A.08.
- Gordon, S., & Mills, A. (10-Jun-05). Québec Ruling sparks renewed debate over 2-tier system;
Québec applies for delay Ban on private insurance invalid in. *Toronto Star*, p. A.01.
- Graham, P. (8-Dec-05). Laud Layton for his switcheroo on private health care. *The Vancouver
Sun*, p. A20.
- Gratzer, D. (6-Dec-05). Has medicare been replaced? YES: And it's about time, says physician
and author DAVID GRATZER. *The Globe and Mail*, p. A23.
- Gravel, P., & Cauchy, C. (10-Jun-05). Une véritable arnaque, dit le président de la FTQ. *Le
Devoir*.
- Gravel, P., & Dutrisac, R. (10-Jun-05). Santé: la Cour suprême ouvre la porte au privé. *Le
Devoir*.
- Greenspon, E. (10-Jun-05). As medicare stumbles, the court has to step in. *The Globe and Mail*,
p. A16.
- Greenspon, E. (18-Jun-05). The Court's arrogant judgment on medicare. *The Globe and Mail*, p.
A16.
- Greenspon, E. (12-Aug-05). Don't simply toss cash at a waiting-list fund. *The Globe and Mail*, p.
A12.
- Greenspon, E. (28-Jun-05). Dosanjh has to join the new health debate. *The Globe and Mail*, p.
A14.
- Greenspon, E. (06-Feb-99). "Health-care woes deemed provinces' fault, poll reveals." p. A7.
- Greenspon, E. (16-Nov-05). How Québec deals with its health plight. *The Globe and Mail*, p.
A20.

- Greenspon, E. (13-Jul-05). Mr. Klein's health squib. *The Globe and Mail*, p. A14.
- Greenspon, E. (3-Dec-05). Placing care guarantees in the medicare arsenal. *The Globe and Mail*, p. A30.
- Greenspon, E. (7-Dec-05). Private health care. Let's talk about it. *The Globe and Mail*, p. A26.
- Greenspon, E. (23-Aug-05). The tough questions for public medicare. *The Globe and Mail*, p. A12.
- Greenspon, E. (17-Oct-05). The waiting-time snarl. *The Globe and Mail*, p. A14.
- Greenspon, E. (29-Nov-05). Will the parties talk seriously about issues? *The Globe and Mail*, p. A20.
- Gulli, C. (10-Jun-05). What makes Québec different: One less restriction. *National Post*, p. A.3.
- Gulli, C. (10-Jun-05). What makes Québec different: charter of human rights: Fewer restrictions. *National Post*, p.A.3.
- Gunter, L. (10-Jun-05). Ruling may one day improve health care. *Edmonton Journal*, p. A.16.
- Gunter, L. (4-Dec-05). Smart plays put Tories ahead so far. *Edmonton Journal*, p. A14.
- Haddrall, L. (7-Jul-05). Don't hold up ruling on health insurance doctor asks high court. *The Record*, p. C.11.
- Haddrall, L. (16-Jun-05). Health debate too easily stifled, N.B. premier says. *The Record*, p. D.9.
- Haddrall, L. (12-Aug-05). Hospital waits must be shorter. *The Record*, p. A.8.
- Haddrall, L. (11-Jun-05). Ministers set to defend public health; Provinces to respond to Québec's lifting of ban on private insurance. *The Record*, p. A.1.
- Haddrall, L. (10-Jun-05). Patient in key case thrilled with ruling. *The Record*, p. A.5.
- Haddrall, L. (10-Jun-05). Provinces split after top court rules on private health coverage. *The Record*, p. A.5.
- Haddrall, L. (11-Jun-05). Reactions to the decision run the gamut from distress to relief. *The Record*, p. A.13.
- Haddrall, L. (21-Oct-05). Wait-watching. *The Record*, p. A.12.
- Haddrall, L. (3-Oct-05). Warning offered to improve care. *The Record*, p. A.8.

- Haines, C. (10-Jun-05). The right decision on health care. *National Post*, p. A.21.
- Hajer, Maarten. "Policy without Polity? Policy Analysis and the Institutional Void." *Policy Sciences* 36.2 (2003): 175-195.
- Hamilton, G. (9-Jun-05). Court ruling could lessen wait-times. *National Post*, p. A.8.
- Hamilton, G. (10-Jun-05). Crusading doctor seen as a rebel: Embarked on a 30-day hunger strike in 1996. *National Post*, p. A.5.
- Harding, K. (14-Sep-05). Alberta seeks private insurance proposals; Firms could vie with public-health system. *The Globe and Mail*, p. A4.
- Harding, K. (10-Jun-05). Klein is pleased with ruling, other premiers less positive; B.C.'s Campbell calls for immediate overhaul of Canada Health Act. *The Globe and Mail*, p. A8.
- Hargrove, B. B. (20-Jun-05). Meeting the court's challenge. *National Post*, p. FP.17.
- Harnett, C. E. (10-Jun-05). Campbell says act must be updated. *Times - Colonist*, p. A.5.
- Havrankova, J. (14-Jun-05). Qui a peur du privé en santé? *La Presse*.
- Hebert, C. (10-Jun-05). Court bares flank of a sacred public cow. *Toronto Star*, p. A.25.
- Hebert, C. (10-Jun-05). Supreme Court opens door to private health care; But when the next medicare challenger comes, court's decision could be different. *The Record*, p. A.15.
- Ibbitson, J. (10-Jun-05). Holy medicare, what's a politician to do? *The Globe and Mail*, p. A17.
- Ibbitson, J. (22-Nov-05). Klein's non-partisan health-care warnings. *The Globe and Mail*, p. A1.
- Ibbitson, J. (18-Nov-05). Nothing trumps election timing. *The Globe and Mail*, p. A5.
- Isitt, B. (10-Jun-05). Public health care still the best system. *Times - Colonist*, p. A.17.
- Iverson, J. (21-Sep-05). It comes to this. *National Post*, p. A.4.
- Iverson, J. (18-Oct-05). Layton picks his bus stop. *National Post*, p. A.10.
- Iverson, J. (18-Oct-05). A strategy that can't fail Layton: NDP leader positioning party as defenders of medicare. *National Post*, p. A.7.
- Janigan, M. (23-Jul-05). Satisfaction guaranteed; What if there were a limit to how long people must wait for health care? It's much more than just a pipe dream, MARY JANIGAN reports. *The Globe and Mail*, p. F2.

- Johnson Redden, Candace. "Health Care as Citizenship Development." *Canadian Journal of Political Science* 35.1 (2002): 103-125.
- Johnson, W. (3-Nov-05). Chretien's folly:. *The Gazette*, p. A.25.
- Johnson, W. (15-Jun-05). Radical PQ policies met by silence of the lambs:. *The Gazette*, p. A.27.
- Joyce, G. (12-Nov-05). Wait-times will create parallel health-care system: senator. *Edmonton Journal*, p. A.12.
- Jury, P. (27-Sep-05). En attendant les élections... *Le Droit*.
- Jury, P. (14-Jul-05). La troisième voie de Klein. *Le Droit*.
- Jury, P. (15-Nov-05). Pas dupes. *Le Droit*.
- Kay, B. (16-Jun-05). Private health insurance needn't have a huge impact. *The Record*, p. A.9.
- Kelly, D. (10-Jun-05). Economic institute applauds decision that 'only makes sense'. *National Post*, p. A.6.
- Kelly, D. (30-Nov-05). Enough with the sound bites. *National Post*, p. A.18.
- Kelly, D. (11-Nov-05). Hardly a scandal. *National Post*, p. A.20.
- Kelly, D. (7-Dec-05). Health care's tipping point. *National Post*, p. A20.
- Kelly, D. (14-Jun-05). The hip that changed health care history: Informed sources. *National Post*, p. A.20.
- Kelly, D. (10-Jun-05). Judges cite Morgentaler case:. *National Post*, p. A.3.
- Kelly, D. (28-Jun-05). The man with his head in the sand. *National Post*, p. A.16.
- Kelly, D. (10-Jun-05). Morgentaler case cited: 'People in urgent need ... have no choice but to accept delays'. *National Post*, p. A.3.
- Kelly, D. (15-Jul-05). Private health pioneer Chaoulli loses appeal on \$12,900 fine. *National Post*, p. A.4.
- Kelly, D. (10-Jun-05). A prohibition based on fear:. *National Post*, p. A.23.
- Kelly, D. (6-Jul-05). Québec ducks the high court. *National Post*, p. A.14.
- Kelly, D. (9-Jun-05). The right to live. *National Post*, p. A.20.

Kelly, D. (10-Jun-05). Union leader promises court decision is not the end of public health care. *National Post*, p.A.8.

Kelly, D. (11-Jun-05). Where's leadership on health care? *National Post*, p. A.16.

Kennedy, M. (18-Jun-05). Canadians of two minds on health care reform, poll for CanWest/Global finds:. *National Post*, p. A.5.

Kennedy, M. (18-Jun-05). Canadians of two minds when it comes to health care:. *The Gazette*, p. A.16.

Kennedy, M. (18-Jun-05). Canadians rue medicare's decline, but eager for private system:. *The Ottawa Citizen*, p.A.3.

Kennedy, M. (8-Jun-05). Complaint may change medicare: Supreme court to rule on case Thursday. *Calgary Herald*, p. A.9.

Kennedy, M. (8-Jun-05). Court could 'destroy' medicare:. *Edmonton Journal*, p. A.1.FRO.

Kennedy, M. (10-Jun-05). Court goes where politicians fear to tread. *Edmonton Journal*, p. A.2.

Kennedy, M. (8-Jun-05). Court's private health ruling will be 'really big':. *The Ottawa Citizen*, p. A.4.

Kennedy, M. (8-Jun-05). Decision may alter future of medicare:. *The Windsor Star*, p. A.1.Fro.

Kennedy, M. (10-Jun-05). Doctors back private health-care insurance. *Calgary Herald*, p.A.1.Fro.

Kennedy, M. (6-Aug-05). Doctors approve of two-tier health:. *The Gazette*, p. A.8.

Kennedy, M. (8-Jun-05). Do wait lists violate Charter?:. *Times - Colonist*, p. A.3.

Kennedy, M. (10-Jun-05). Judgment debunks Liberal rhetoric: Argument to hold power appears hollow. *Calgary Herald*, p. A.6.

Kennedy, M. (18-Jun-05). Majority wants right to buy health care: poll. *Edmonton Journal*, p. A.6.

Kennedy, M. (8-Jun-05). Medicare future at stake: High Court to rule on private-care ban legality. *National Post*, p. A.1.Fro.

Kennedy, M. (10-Jun-05). The Supreme Court decision that will change Canada. *The Ottawa Citizen*, p. A.1.Fro.

- Kennedy, M. (10-Jun-05). Where politicians fear to tread: Judges expose health care rhetoric for what it is - a lie. *The Windsor Star*, p. A.1.Fro.
- Kheiriddin, T., & Daifallah, A. (19-Nov-05). The right stuff for Canada. *The Record*, p. A.19.
- Kirk, M. (14-Sep-05). Alberta considers health-care competition. *Calgary Herald*, p. A.4.
- Kirk, M. (7-Dec-05). Common sense from the NDP: Layton's health-care concession reveals more moderate tone. *Calgary Herald*, p. A18.
- Kirk, M. (12-Sep-05). Debate rages over insurance Series: Private Health Care: On the Brink. *Calgary Herald*, p.A.1.Fro.
- Kirk, M. (19-Oct-05). Health queues can be shortened:. *Calgary Herald*, p. A.22.
- Kirk, M. (9-Nov-05). Jack's misdiagnosis. *Calgary Herald*, p. A.20.
- Kirk, M. (12-Nov-05). Right to wait is no right at all. *Calgary Herald*, p. A.24.
- Kirk, M. (10-Jun-05). A Supreme shot in the arm: Right to buy private health care should be extended here, too. *Calgary Herald*, p. A.22.
- Krause, C. (8-Jun-05). 'I feel like Gandhi,' doctor declares:. *National Post*, p. A.4.
- La Haye, D. (11-Jun-05). La décision de la Cour suprême sur la santé ne fait pas l'unanimité. *Le Droit*.
- Laberge, M. (16-Jun-05). L'exemple du Royaume-Uni - Quand public et privé se côtoient en santé. *Le Devoir*.
- Lackner, C. (10-Jun-05). Doctors hail health care ruling as good news for MDs, patients:. *The Ottawa Citizen*, p.F.1.Fro.
- Lackner, C. (14-Jun-05). Gatineau clinic looks to Ontario for patients:. *The Ottawa Citizen*, p. C.1.Fro.
- Lang, M. (18-Sep-05). A look behind the door top court kicked open. *Edmonton Journal*, p. E.7.
- Lang, M. (12-Sep-05). Insurance eases cost of private health care: Court ruling opens door for coverage Series: Private Health Care: On the Brink. *Calgary Herald*, p. A.4.
- Lang, M. (10-Jun-05). Prospect of private care divides patients: Health community in fierce debate. *Calgary Herald*, p. A.8.
- Lang, M. (27-Jul-05). Tories back private medical coverage: Insurance would cover non-emergency health care. *Calgary Herald*, p. A.1.Fro.

Langlois, C. (10-Jun-05). Une bonne nouvelle du point de vue de l'usager, selon le Dr Lamontagne. *Le Droit*.

Larocque, A. (11-Aug-05). Des médecins exigent 3 milliards \$ de plus pour réduire les listes d'attente. *Le Droit*.

Larocque, A. (16-Jun-05). Il est temps de démystifier le système de santé américain. *Le Droit*.

Larocque, A. (13-Jun-05). La place du privé en santé. *Le Droit*.

Larocque, A. (9-Jun-05). L'avenir du système de santé se décide aujourd'hui. *Le Droit*.

Larocque, A. (17-Sep-05). Le jugement Chaoulli sera coûteux pour l'assurance santé des Canadiens. *Le Droit*.

Larocque, A. (16-Aug-05). Le ministre fédéral de la Santé défend le système canadien. *Le Droit*.

Larocque, A. (22-Nov-05). Le régime de santé doit dominer la campagne électorale dit Klein. *Le Droit*.

Larocque, A. (18-Aug-05). Les médecins canadiens prônent un système de santé privé. *Le Droit*.

Larocque, A. (22-Jul-05). Les médecins sont en faveur de l'assurance médicale privée. *Le Droit*.

Larocque, A. (12-Jul-05). Les patients pourraient être affectés si la Cour suprême reporte son jugement. *Le Droit*.

Larocque, A. (3-Oct-05). Ottawa se penche sur le problème des régimes de retraite du secteur privé. *Le Droit*.

Larocque, A. (15-Jul-05). Québec évite un recours collectif. *Le Droit*.

Larocque, A. (3-Dec-05). Québec reporte le débat sur la place du privé en santé. *Le Droit*.

Larocque, A. (7-Dec-05). Québec songe à un délai pour enrichir le débat sur la place du privé en santé. *Le Droit*.

Larocque, A. (26-Nov-05). Saison des idées pour les fédéralistes ? *Le Droit*.

Larocque, A. (22-Jun-05). Santé : la privatisation allongerait les listes d'attente, selon Dosanjh. *Le Droit*.

Larocque, A. (29-Jun-05). Santé : Québec veut 18 mois pour préciser la place à donner au privé. *Le Droit*.

- Larocque, A. (9-Jul-05). Santé : une majorité de Canadiens prêts à payer pour éviter l'attente. *Le Droit*.
- Larocque, A. (11-Jun-05). Soins privés : Couillard prône l'exemple scandinave. *Le Droit*.
- Larocque, A. (11-Jun-05). Un jugement provincial aux répercussions nationales ? *Le Droit*.
- Larocque, A. (13-Jun-05). Une suggestion. *Le Droit*.
- Larocque, S. (10-Jun-05). La Cour suprême ouvre la porte à l'assurance-maladie privée au Québec. *Le Droit*.
- Larocque, S. (9-Jun-05). La Cour suprême se prononce sur l'ouverture d'un système de santé parallèle et privé. *Le Devoir*.
- Larocque, S. (21-Sep-05). Le NPD veut fermer la porte à l'assurance-maladie privée. *Le Soleil*.
- Larocque, S. (21-Sep-05). Le NPD veut une loi pour renforcer le système public de santé. *Le Droit*.
- Larocque, S. (10-Jun-05). Martin a mis l'assurance-maladie en péril, disent les conservateurs. *Le Droit*.
- Laroche, G. (28-Nov-05). Système de santé français: cessons la démagogie. *Le Devoir*.
- Larouche, M. (11-Aug-05). Une coalition de médecins réclame 3 milliards \$ de plus en santé. *Le Soleil*.
- Laurin, G. (13-Jun-05). Mathématiques 101 en santé. *Le Droit*.
- Laurin, G. (15-Jun-05). Un médecin de moins... *Le Soleil*.
- Laverdière, M. (26-Nov-05). Ce n'est pas un ordre, mais est-ce bien une interdiction? *Le Devoir*.
- Leclerc, J.-C. (22-Aug-05). Que manque-t-il, l'argent ou le diagnostic? *Le Devoir*.
- Leduc, G. (10-Jun-05). Un débat qui s'ouvre, selon le père de l'assurance-maladie. *Le Soleil*.
- Legault, J. (29-Jul-05). Battle for public opinion on health care begins. *The Gazette*, p. A.21.
- Legault, F. (30-Jun-05). La raison doit primer. *La Presse*.
- Lemieux, M.-C. (9-Jun-05). La Cour suprême pourrait ouvrir la porte aux hôpitaux privés. *La Presse*.
- Lemieux, M.-C. (5-Aug-05). SOINS DE SANTÉ PRIVÉS. *La Presse*.

- Lesmond, J. (25-Jul-05). Public health's perks. *National Post*, p. A.15.
- Lessard, D. (10-Nov-05). Calmer le jeu. *La Presse*.
- Lessard, D. (30-Nov-05). Fragile complicité. *La Presse*.
- Lessard, D. (10-Jun-05). Le père de l'assurance maladie approuve. *La Presse*.
- Lessard, D. (30-Jun-05). Les Québécois favorables au privé. *La Presse*.
- Lessard, D. (7-Dec-05). SANTÉ. *La Presse*.
- Lessard, D. (10-Jun-05). Un jugement qui surprend les experts. *La Presse*.
- Lessard, D. (7-Dec-05). Un rôle très limité pour l'assurance maladie privée. *Le Droit*.
- Letarte, M. (5-Nov-05). Plus que sept mois de sursis avant l'entrée en vigueur du jugement Chaoulli. *Le Devoir*.
- Lévesque, K. (7-Dec-05). Santé: le recours au privé devra être pénalisé, dit Layton. *Le Devoir*.
- Lévesque, K. (10-Jun-05). Vers un premier hôpital privé. *Le Devoir*.
- Lévesque, L. (13-Oct-05). Les Québécois sont prêts à payer plus pour la santé. *Le Devoir*.
- Lévesque, L. (23-Nov-05). Québec ferait fausse route. *Le Devoir*.
- Lévesque, L. (5-Aug-05). Québec obtient un an de sursis. *Le Devoir*.
- Lévesque, L. (5-Aug-05). Québec a un an de plus pour définir la place du privé en santé. *Le Droit*.
- Lévesque, L. (5-Aug-05). Sursis d'un an pour l'application du jugement Chaoulli. *Le Soleil*.
- Lévesque, P. (15-Nov-05). Le triomphe de la mesquinerie. *Le Devoir*.
- Leyne, L. (2-Nov-05). Clinic renews the two-tier debate:. *Times - Colonist*, p. A.8.
- Luke, P. (11-Jun-05). Health care ills. *The Globe and Mail*, p. A16.
- MacDonald, L. I. (10-Jun-05). Canada's youngest Supreme writes a mean judgment. *The Gazette*, p. A.23.
- MacDonald, L. I. (14-Jul-05). Finding the meaning of health-care manoeuvring. *The Gazette*, p. A.19.

MacDonald, L. I. (5-Dec-05). Harper opens real debate on future of health care. *The Gazette*, p. A31.

MacDonald, L. I. (19-Oct-05). Opposition parties are not locked on the same beam. *The Gazette*, p. A.31.

MacDonald, M. (3-Jul-05). Cream-skimming. *The Ottawa Citizen*, p. A.11.

MacDougall, R. (2-Nov-05). A policy wonk with entrepreneurial flair: Tomorrow Series: Beautiful Minds. *National Post*, p. A.20.

Maioni, A., & Manfredi, C. (10-Jun-05). A blow to champions of medicare. *Toronto Star*, p. A.25.

Makin, K. (11-Jun-05). A steadying hand placed on Ottawa's third rail; ANALYSIS: Judges put onus on governments to deliver proper care, KIRK MAKIN writes. *The Globe and Mail*, p. A4.

Makin, K., Sallot, J., & Seguin, R. (10-Jun-05). The new face of medicine; Supreme Court narrowly opens door to private health insurance. *The Globe and Mail*, p. A1.

Malboeuf, M.-C. (11-Jun-05). La gauche se plaint d'activisme judiciaire. *La Presse*.

Malboeuf, M.-C. (10-Jun-05). Profond désaccord à la Cour suprême. *La Presse*.

Malboeuf, M.-C., & Chouinard, T. (10-Jun-05). La Cour suprême invalide certaines dispositions de l'assurance maladie. *La Presse*.

Marissal, V. (10-Jun-05). Le pavé dans la mare. *La Presse*.

Markusoff, J. (10-Jun-05). 'Alberta government very pleased with this decision'. *Edmonton Journal*, p. A.3.

Markusoff, J. (10-Jun-05). Medicare setback delights Alberta: Supreme Court endorses right to private care. *Calgary Herald*, p. A.1.

Marmor, T. (7-Dec-05). Medicare views. *The Globe and Mail*, p. A26.

Marowits, R. (10-Jun-05). Politicians sewing fear, Québec plaintiff says. *The Windsor Star*, p. A.3.

Martinovich, S. (11-Jun-05). Court ruling a victory for Canadians; Supreme Court ruling granting a parallel private health system won't endanger current system. *The Record*, p. A.13.

- Maryniuk, J. (23-Jun-05). 'Activist' justice. *National Post*, p. A.21.
- Mayeda, A. (10-Jun-05). Why we should have a two-tier health system:. *The Ottawa Citizen*, p. A.4.
- Mayer, A. (17-Aug-05). Correction. *Edmonton Journal*, p. A.2.
- Mayer, A. (19-Aug-05). Is private insurance right prescription. *Edmonton Journal*, p. A.16.
- Mayer, A. (21-Jul-05). Manitoba MD will try to cut health waits: Dr. Brian Postl to head federal push. *Edmonton Journal*, p. A.10.
- Mayer, A. (17-Sep-05). Soaring health costs demand 'drastic' reform:. *Edmonton Journal*, p. A.5.
- Mayer, A. (10-Jun-05). Strong medicine from high court for health system. *Edmonton Journal*, p. A.16.
- McIntyre, J., & McIntyre, M. (17-Jun-05). Poor will suffer. *The Ottawa Citizen*, p. A.15.
- McKenna, B. (22-Jun-05). Private-health activist a 'superstar'; Canadian admired by U.S. conservatives. *The Globe and Mail*, p. A12.
- Mercure, P. (29-Sep-05). Le Privé en Santé. *La Presse*.
- Meunier, H., & Côté, C. (10-Jun-05). [Le système de santé vit-il des heures sombres?]. *La Presse*.
- Milke, M. (20-Jun-05). Supreme Court strikes down public Foodcare. *Times - Colonist*, p. A.6.
- Mills, A. (11-Aug-05). Doctors demand wait-list targets; Fast response needed to ward off privatization, governments told. *The Record*, p. A.1.
- Mills, A. (11-Aug-05). Doctors demand \$3B to cut delays; MDs urge extra \$3 billion to cut wait-times Provinces must push up target dates, MDs say Health minister calls alliance's report helpful. *Toronto Star*, p. A.01.
- Mills, G. (10-Jun-05). Health system shaken; Supreme Court throws out ban on private insurance in Québec. *The Record*, p. A.1.
- Mills, S. G. (10-Jun-05). Timely health care a basic right, Supreme Court says; Ban on private insurance invalid in Québec Ruling sparks renewed debate over 2- tier system. *Toronto Star*, p. A.1.
- Moisan, M. (20-Nov-05). L'ADQ part à la chasse à l'autruche. *Le Soleil*.
- Moisan, M. (18-Nov-05). L'ADQ veut faire payer les prisonniers. *Le Soleil*.

- Moisan, M. (11-Nov-05). Québec en faveur de l'assurance privée en santé. *Le Soleil*.
- Molinari, P. A. (10-Jun-05). Les paradoxes de la société distincte. *La Presse*.
- Monahan, P. J. (17-Nov-05). Wait-times key to saving medicare. *Toronto Star*, p. A.27.
- Moreau, N., & Ansart, D. (21-Nov-05). mythe ou réalité? *Le Devoir*.
- Morgan, S. (10-Jun-05). Un tournant majeur. *La Presse*.
- Morissette, N. (15-Aug-05). La piste du secteur privé est à l'étude. *La Presse*.
- Myles, B. (22-Jun-05). Debout, face aux listes d'attente. *Le Devoir*.
- Myles, B. (29-Jun-05). Santé privée: 18 mois de sursis ? *Le Devoir*.
- No Author. (10-Jun-05). A Supreme shot in the arm: Right to buy private health care should be extended here, too. *Calgary Herald*. A22.
- No Author. (22-Dec-05). Finding *health care* efficiency in specialization. *The Vancouver Sun*. A16.
- No Author. (14-Dec-05). Health care: Leaders avoid honest debate. *The Windsor Star*. A8.
- No Author. (17-Jun-05). Our top court comes under scrutiny. *The Toronto Star*. A23.
- No Author. (14-Jun-05). The hip that changed health care history: Informed sources. *National Post*. A20.
- No Author. (9-Jul-05). Santé : une majorité de Canadiens prêts à payer pour éviter l'attente. *Le Droit*, R31.
- Noël, A. (11-Nov-05). Privatisation des Soins de Santé. *La Presse*.
- Noreau, P.-P. (29-Jul-05). Inévitable débat. *Le Soleil*.
- Normand, G. (11-Jun-05). Québec disposé à faire plus de place au privé en santé. *La Presse*.
- Norris, G. (3-Oct-05). Ottawa se penche sur le problème des régimes de retraite du secteur privé. *Le Devoir*.
- Olsen, T. (24-Jul-05). Slow and steady wins health race. *Calgary Herald*, p. A.5.
- Ouellet, M. (15-Jun-05). Le ministre Couillard et le jugement Chaoulli. *Le Soleil*.

- Ouellet, M. (21-Jun-05). Les médecins et le jugement Chaoulli. *Le Soleil*.
- Palmer, K. (16-Aug-05). Court ruling won't lead to private health care Minister. *Toronto Star*, p. A.04.
- Palmer, K. (20-Aug-05). Doctors' bold move on health care; They back private insurance to force government action. *Toronto Star*, p. F.02.
- Parent, R. (10-Jun-05). Un des requérants sautait de joie. *Le Droit*.
- Patten, S. (14-Jun-05). Supreme Court health-care ruling puts scary prospects in motion:. *Edmonton Journal*, p.A.14.
- Pearson, C. (10-Jun-05). 'End of medicare as we know it': Patient lauds court ruling. *The Windsor Star*, p. A.3.
- Pellerin, B. (16-Jun-05). The conservative case against churches' tax breaks: Counterpoint. *National Post*, p. A.20.
- Pelletier, R. (6-Oct-05). Banque mondiale et FMI en mutation. *La Presse*.
- Péloquin, T. (11-Jun-05). Chaoulli poursuit son combat. *La Presse*.
- Péloquin, T. (10-Jun-05). Le Collège des médecins souhaite des balises strictes. *La Presse*.
- Péloquin, T. (10-Jun-05). Le Dr Chaoulli réclame la mise sur pied d'un système de santé universel fondé sur des assurances privées. *La Presse*.
- Péloquin, T. (11-Jun-05). Selon des rapports de l'OCDE. *La Presse*.
- Péloquin, T., & Chouinard, T. (4-Nov-05). Les libéraux promettent une offre à Layton. *La Presse*.
- Peritz, I. (10-Jun-05). Praise, censure for MD's crusade; Man who challenged Canada Health Act says his struggle was similar to Gandhi's. *The Globe and Mail*, p. A9.
- Petkantchin, V. (10-Nov-05). A made-in-Canada prescription:. *National Post*, p. FP.19.
- Phillips, A. (15-Jul-05). Chaoulli told to pay fine. *The Gazette*, p. A.10.
- Phillips, A. (11-Nov-05). Charest health-care reforms welcome. *The Gazette*, p.A.22.
- Phillips, A. (22-Jul-05). Doctors support private insurance. *The Gazette*, p. A.6.
- Phillips, A. (11-Jun-05). High court ruling bad for medicare. *The Gazette*, p. A.30.

- Phillips, A. (3-Dec-05). Province delays response to health insurance ruling. *The Gazette*, p. A11.
- Phillips, A. (17-Nov-05). Québec medicare plan is not what the Supremes ordered:. *The Gazette*, p. A.29.
- Picard, A. (15-Aug-05). CMA threatens to set up private medical schools. *The Globe and Mail*, p. A1.
- Picard, A. (16-Aug-05). Dosanjh defends public health system; Allowing choice of care 'problematic' idea that would imperil medicare, he tells MDs. *The Globe and Mail*, p. A8.
- Picard, A. (1-Dec-05). Our health care serves up profits. *The Globe and Mail*, p. A29.
- Picard, A. (18-Aug-05). Private health care should be available to all, doctors say; Canadian Medical Association advocates complement to public health-care system. *The Globe and Mail*, p. A4.
- Picard, A. (16-Jun-05). The right choice: honouring Morgentaler. *The Globe and Mail*, p. A19.
- Pratt, S. (25-Aug-05). Canada's doctors misdiagnosed our health-care woes. *The Ottawa Citizen*, p. A.15.
- Pratt, S. (12-Jun-05). Will Klein use court ruling to reform health care?:. *Edmonton Journal*, p. A.18.
- Pratte, A. (9-Nov-05). C'est assez, Jack! *La Presse*.
- Pratte, A. (7-Jul-05). Chaoulli en Cour suprême. *La Presse*.
- Pratte, A. (28-Jul-05). Des désaccords fondamentaux. *La Presse*.
- Pratte, A. (16-Aug-05). Dosanjh défend le système canadien. *La Presse*.
- Pratte, A. (11-Jun-05). D'une religion à l'autre. *La Presse*.
- Pratte, A. (22-Jul-05). Favorables au privé. *La Presse*.
- Pratte, A. (18-Jun-05). Impact mineur. *La Presse*.
- Pratte, A. (22-Jun-05). La privatisation de la santé allongerait les listes d'attente, estime Dosanjh. *La Presse*.
- Pratte, A. (13-Jun-05). Le casse-tête de M. Couillard. *La Presse*.
- Pratte, A. (11-Jun-05). Le temps d'agir! *La Presse*.

- Pratte, A. (17-Sep-05). Les Canadiens vont payer. *La Presse*.
- Pratte, A. (1-Dec-05). Optimiser l'utilisation des fonds publics. *La Presse*.
- Pratte, A. (3-Oct-05). Ottawa se penche sur les régimes de retraite du privé. *La Presse*.
- Pratte, A. (11-Jun-05). Place au privé? *La Presse*.
- Pratte, A. (1-Dec-05). Que faire? *La Presse*.
- Pratte, A. (29-Jul-05). Recourir davantage au secteur privé. *La Presse*.
- Pratte, A. (11-Jun-05). Un jugement controversé. *La Presse*.
- Pratte, A. (10-Jun-05). Une atteinte aux droits. *La Presse*.
- Pratte, A. (2-Oct-05). Une lutte idéologique. *La Presse*.
- Pratte, A. (10-Jun-05). Une souffrance inconstitutionnelle. *La Presse*.
- Prémont, M.-C. (16-Jun-05). Régime public universel de santé du Québec - L'urgence d'agir à la suite du jugement de la Cour suprême. *Le Devoir*.
- Priest, L. (7-Dec-05). Transplant patient to invoke Charter; Bankruptcy or death? Cancer victim who had life-saving surgery in Britain says Ontario should pay. *The Globe and Mail*, p. A17.
- Rachils, M. (13-Jun-05). Community health centres are Medicare's best kept secret. *The Globe and Mail*, p. A13.
- Ricard-Châtelain, B. (11-Jun-05). C'est surtout en chirurgie que ça pourrait changer les choses. *Le Soleil*.
- Ricard-Châtelain, B. (10-Jun-05). Feu vert au privé. *Le Soleil*.
- Ricard-Châtelain, B. (11-Jun-05). Quand la santé devient un bien de consommation. *Le Soleil*.
- Richer, J. (11-Jun-05). Couillard veut s'inspirer du modèle scandinave. *Le Devoir*.
- Richer, J. (10-Jun-05). Le Québec renonce pour l'instant à la clause dérogatoire. *Le Droit*.
- Richer, J. (3-Dec-05). Québec reporte à plus tard le débat sur la place du privé en santé. *La Presse*.
- Richer, J. (29-Jun-05). Soins de santé dans le privé. *La Presse*

- Rioux Soucy, L.-M. (22-Jul-05). Plus d'un médecin sur trois est attiré par le secteur privé. *Le Devoir*.
- Roach, K., Flood, C., & Sossin, L. (16-Sep-05). A way forward for medicare. *Toronto Star*, p. A.23.
- Roadhouse, R. L. T. (16-Nov-05). The real question on health care. *National Post*, p. A.17.
- Robert, L. (25-Aug-05). Système de santé - Une architecture à compléter. *Le Devoir*.
- Roberts, A. (12-Aug-05). Take your doctor's advice: reject 'third way'. *Edmonton Journal*, p. A.19.
- Robitaille, A. (11-Jun-05). De la santé et des proctalgies. *Le Devoir*.
- Rodrigue, I. (15-Jul-05). Québec évite un recours collectif intenté par des cancéreuses. *Le Devoir*.
- Roth, Y. (16-Jun-05). Court activism should not be troubling. *National Post*, p. A.21.
- Ruttan, S. (16-Aug-05). Country needs more private health insurance, doctors say:. *Edmonton Journal*, p. A.1.FRO.
- Ruttan, S. (9-Aug-05). MDs want insurance regulations. *Edmonton Journal*, p. A.3.
- Salvet, J.-M. (18-Oct-05). Le scrutin en tête. *Le Soleil*.
- Sansfaçon, J.-R. (30-Jun-05). Des assurances, et après? *Le Devoir*.
- Sansfaçon, J.-R. (30-Jun-05). En bref: Opposition. *Le Devoir*.
- Sansfaçon, J.-R. (7-Jul-05). En bref: Un délai déraisonnable. *Le Devoir*.
- Sansfaçon, J.-R. (14-Nov-05). La peur du privé. *Le Devoir*.
- Sansfaçon, J.-R. (17-Sep-05). La population subira l'effet du jugement Chaoulli sur l'assurance médicale. *Le Devoir*.
- Sansfaçon, J.-R. (23-Nov-05). Mésentente entre Boisclair et son caucus. *Le Devoir*.
- Sansfaçon, J.-R. (13-Jul-05). Santé: la réponse de Québec. *Le Devoir*.
- Schmitz, C. (15-Jul-05). Breast cancer lawsuit can't touch province:. *The Gazette*, p. A.10.

- Schmitz, C. (15-Jul-05). Class action cancer suit can't name Québec gov't as defendant. *Edmonton Journal*, p. A.7.
- Schmitz, C. (10-Jun-05). Court delivers health care 'wake-up call':. *The Ottawa Citizen*, p. A.1.Fro.
- Schmitz, C. (10-Jun-05). Court ruling will likely spark legal challenges: 'It fundamentally reshapes the landscape'. *Calgary Herald*, p. A.6.
- Schmitz, C. (18-Jun-05). Medicare ruling signals shift in Supreme Court:. *The Gazette*, p. A.16.
- Schmitz, C. (10-Jun-05). New prescription for Canada's care:. *The Windsor Star*, p. A.1.Fro.
- Schmitz, C. (10-Jun-05). Private care boost: High court strikes down Québec ban. *National Post*, p. A.1.Fro.
- Schmitz, C. (15-Jul-05). Ruling protects Québec from lawsuit:. *National Post*, p. A.8.
- Schmitz, C. (20-Jun-05). Supreme Court medicare ruling signals a shift in attitude: experts. *The Ottawa Citizen*, p.A.4.
- Schmitz, C. (18-Jun-05). Supreme Court takes on interventionist attitude:. *National Post*, p. A.12.
- Seguin, R. (11-Nov-05). Québec moves ahead on plans for private health insurance; Minister to table proposed policy next month for public debate. *The Globe and Mail*, p. A9.
- Seguin, R. (29-Jul-05). Québec's Health Minister eschews tax hike; But backs further privatization of medical system. *The Globe and Mail*, p. A6.
- Shortt, S. (22-Jun-05). Public care has benefits. *The Windsor Star*, p. A.8.
- Shortt, S. (15-Jun-05). Ruling won't improve health care. *The Ottawa Citizen*, p. A.15.
- Shortt, S. (16-Jun-05). Supreme Court ruling won't improve health care. *Times - Colonist*, p. A.12.
- Simpson, J. (10-Jun-05). The new face of medicare; Supreme Court narrowly opens door to private health insurance. *The Globe and Mail*, p. A1.
- Simpson, J. (9-Nov-05). Why health-care posturing won't amount to a hill of beans. *The Globe and Mail*, p. A19.
- Singh, A. (23-Jun-05). Tiered health system should work in Canada. *The Windsor Star*, p. A.7.
- Smith, D. (6-Dec-05). Tories give in to health. *The Windsor Star*, p. A6.

- Smith, D. (3-Dec-05). Tory remedy won't cure wait-times. *Calgary Herald*, p. A28.
- Souza, M. D. (5-Aug-05). Private care on hold for a year:. *The Gazette*, p. A.8.
- Souza, M. D. (5-Aug-05). Que. to redefine private health care:. *The Windsor Star*, p. C.1.Fro.
- Souza, M. D. (5-Aug-05). Québec to take year to redefine health care: Supreme Court delays private insurance. *Times - Colonist*, p. A.6.
- Souza, M. D. (5-Aug-05). Québec to redefine role of private health care in province. *National Post*, p. A.8.
- Souza, M. D., & Dougherty, K. (10-Jun-05). Québec doesn't object to decision, Couillard says:. *The Gazette*, p. A.2.
- Souza, M. D., & Dougherty, K. (10-Jun-05). Québec plays for more time to change law:. *The Ottawa Citizen*, p. A.5.
- Sinclair, S. (30-Jun-05). Opening the gate for a Trojan horse. *Toronto Star*, p. A.31.
- Spector, N. (13-Jun-05). Blame the boomers for the Supremes' diagnosis. *The Globe and Mail*, p. A13.
- Spector, N. (14-Nov-05). Some unsolicited advice for the Leader of the Opposition. *The Globe and Mail*, p. A15.
- Spence, J. (16-Jun-05). Insurance selective. *The Ottawa Citizen*, p. A.13.
- Stastna, K., & Block, I. (10-Jun-05). Champions of private health care take pride in ruling. *The Ottawa Citizen*, p.A.3.
- Stastna, K., & Block, I. (10-Jun-05). Court ruling vindicates boosters of private services. *Edmonton Journal*, p. A.2.
- Stastna, K., & Block, I. (10-Jun-05). Decision from highest court brings tears of joy to plaintiffs who spent hundreds of thousands:. *The Gazette*, p. A.3.
- Steinmo, Sven et al., eds. *Structuring Politics: Historical institutionalism in comparative analysis*. Cambridge/New York: Cambridge University Press, 1992.
- Stinson, S. (10-Jun-05). Waiting lists drive demand for change: 'Unreasonably' long. *National Post*, p. A.6.
- Thomson, G. (26-Jul-05). Business trip, vacation awkward mix:. *Edmonton Journal*, p. A.10.

- Thomson, G. (18-Aug-05). Doctors signal change in direction. *Edmonton Journal*, p. A.14.
- Thomson, G. (13-Jul-05). Klein seems ready to drop the other shoe on health-care changes:. *Edmonton Journal*, p. A.15.
- Thomson, G. (14-Jul-05). Pay hike big irritant for some Tories. *Edmonton Journal*, p. A.16.
- Thomson, G. (28-Jul-05). Real health-care reforms coming:. *Edmonton Journal*, p. A.14.
- Thompson, E. (10-Jun-05). Supreme Court opens door to two-tier health system; Purchase of private insurance ruled legal:. *The Gazette*, p. A.1.FRO.
- Travers, J. (4-Aug-05). Court ruling gives PM opportunity to save our health care. *Toronto Star*, p. A.15.
- Tyler, T. (17-Sep-05). Romanow fears 'end of medicare'; Romanow slams health ruling Says buying health care violates Charter Court ruling is 'body blow' to Canada. *Toronto Star*, p. A.01.
- Vaillancourt, H. (14-Jun-05). Lettres: La Cour suprême s'est trompée. *Le Devoir*.
- Vastel, M. (11-Jun-05). Une ouverture plutôt qu'une brèche. *Le Droit*.
- Vallières, C. (18-Jun-05). Bio météo. *Le Devoir*.
- Venne, M. (14-Nov-05). La médecine à deux vitesses n'est pas un droit. *Le Devoir*.
- Venne, M. (13-Jun-05). Mirages de l'hôpital privé. *Le Devoir*.
- Venne, M. (21-Nov-05). Quelque chose de grand... *Le Devoir*.
- Villeneuve, C. (15-Jun-05). La santé, pas une question de richesse. *Le Soleil*.
- Villeneuve, M. (6-Jul-05). Que faire du jugement Chaoulli ? *Le Droit*.
- Villeneuve, M., & Venne, M. (18-Jul-05). Libre opinion: Que faire du jugement Chaoulli? *Le Devoir*.
- Voogd, H. (20-Jun-05). Strong public health-care system will withstand privatization force. *Edmonton Journal*, p. A.19.
- Wale, D. J. (11-Jun-05). Private care, but with safeguards. *National Post*, p. A.17.
- Wale, J. (11-Jun-05). Time to be honest. *The Ottawa Citizen*, p. B.5.

Walkom, T. (11-Jun-05). Dreaded two-tier zombie walks among us still; Most observers thought the concept was dead and buried. *Toronto Star*, p. F.02.

Walkom, T. (24-Sep-05). Flawed logic in two-tier medicine ruling; Europe the model for dual systems. *Toronto Star*, p. H.02.

Walkom, T. (6-Dec-05). Stands on medicare muddled. *Toronto Star*, p. A07.

Walkom, T. (10-Jun-05). Striking at the heart of medicare. *Toronto Star*, p. A.01.

Walkom, T. (5-Nov-05). Trio opens door to two-tier health care; Fought bans on private insurance. *Toronto Star*, p.F.02.

Watson, W. (14-Jun-05). Good decision badly made. *The Ottawa Citizen*, p. A.15.

Watson, W. (16-Jun-05). The Supreme Marxists. *National Post*, p. FP.21.

Weber, B. (10-Oct-01). Privatization Worries Alberta Auditor-General. *The Globe and Mail*, p. A16.

Williamson, D. (26-Dec-05). Court shifts terms of debate: Ruling opens door to 2-tier medical care. *The Windsor Star*. A10.

Williamson, D. (29-Dec-05). Senior toppled 'sacred cow': Wait time sparked court case yt. *The Windsor Star*. A.5

Wilson, D. (13-Jun-05). Trampled by a politician. *The Globe and Mail*, p. A12.

Wilson, J. M. (16-Jun-05). Health reform desperately needed. *National Post*, p. A.21.

Woods, A. (18-Oct-05). Ban private health care or risk defeat, Layton warns Liberals. *Edmonton Journal*, p. A.10.

Yaffe, Barbara. (10-Jun-05). Ruling opens the way to real debate on medical care. *The Vancouver Sun*. A19.

Articles/Books/Government Documents

- Bateman, Thomas M.J. "Legal Modesty and Political Boldness: The Supreme Court of Canada's Decision in *Chaoulli v. Québec*." *Review of Constitutional Studies* 11 (2005-2006):317-344.
- Béland, Francois. "The Chaoulli Judgement or How to Sell off a Public Right." *Healthcare Policy* 1.1 (2005): 40 – 43.
- Bhatia, Vandna. "Social Rights, Civil Rights, and Health Reform in Canada." *Governance: An International Journal of Policy, Administration, and Institutions* 23.1 (2010): 39-40.
- Bhatia, Vandna and William D. Coleman. "Ideas and Discourse: Reform and Resistance in the Canadian and German Health Systems." *Canadian Journal of Political Science* 36.4 (2003): 715-739.
- Blommaert, Jan and Chris Bulcaen. "Critical Discourse Analysis." *Annual Review of Anthropology* 29 (2000): 447-466.
- Blommaert, Jan. *Discourse: A Critical Introduction*. Cambridge: Cambridge University press, 2005.
- Boychuk, Gerard W. "Provincial Approaches to Funding Health Services in the Post-Chaoulli Era." Paper Presented at the CPSA Annual Meeting, York University, Toronto, June 2006.
- Burgess, Susan R. "Beyond Instrumental Politics: The new Institutionalism, Legal Rhetoric, and Judicial Supremacy." *Polity* 25.3 (1993): 445 – 449.
- Canadian Union of Public Employees. *Inside the "Chaoulli" Supreme Court Ruling: What the Decision means, the facts on private insurance, and solutions for wait lists*. CUPE, 2005, 1 – 33.
- Chaoulli, Jacques. "The Long Road to Freedom in Canadian Medicine." *Journal of American Physicians and Surgeons*. 10.3 (2005): 91 – 92.
- Chaoulli, Jacques. "A Seismic Shift: How Canada's Supreme Court Sparked a Patients' Rights Revolution." *Policy Analysis/The Cato Institute* 568 (2006): 1 – 19.
- Chaoulli v. Québec (Attorney General). [2005] 1 S.C.R. 791, 2005 SCC 35.
- Chaoulli & Zeliotis v. Attorney General of Québec & Attorney General of Canada [2000], No.:500-05-035610-979
- Chaoulli v. Attorney General of Québec & Attorney General of Canada [2002], Québec Court of Appeal , R.J.Q. 1205 to 1215

- Chappell, Neena L. "The Future of Health care in Canada." *Journal of Social Policy* 22 (1993): 487-505.
- Coffey, Edwin. "The Case for Increased Privatization of Canadian Health Care." *McGill Journal of Medicine* 11.1 (2008): 75 – 76.
- Davidson, Alan. "Under the Radar: Stealth Development of Two-Tier Healthcare in Canada." *Healthcare Policy* 2.1 (2006): 25 – 33.
- Dean, Sierra. "Canada's Landmark Chaoulli Decision: A Vital Blueprint for Change in the Canadian Health Care System." *Law and Business Review of the Americas* 13.2 (2007): 417 – 449.
- Deber, Raisa and Brenda Gamble. "'What's In, What's Out': Stakeholders' Views about the Boundaries of Medicare." *Longwoods Review* 2.3 (2004): 2-10.
- Derkatch, Colleen and Judy Z. Segal. "Realms of Rhetoric in Health and Medicine." *The University of Toronto Health Journal* 82.2 (2005): 138-142.
- Di Matteo, Livio. "Policy Choice or Economic Fundamentals: What Drives the Public-Private Health Expenditure balance in Canada?" *Health Economics, Policy and Law* 4 (2009): 29-53.
- Dickens, Bernard M. "The Chaoulli Decision: Less than Meets the Eye – or more?" In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Evans, Robert G. "Baneful Legacy: Medicare and Mr. Trudeau." *Healthcare Policy* 1.1 (2005): 20-25.
- Fairclough, Norman. *Analyzing Discourse: Textual Analysis for Social Research*. London: Routledge, 2003.
- Faraday, Fay et al., eds. *Making Equality Rights Real: Securing Substantive Equality Under the Charter*. Toronto: Irwin Law, 2006.
- Fischer, Frank. *Reframing Public Policy*. Oxford and New York: Oxford University Press, 2003.
- Flood, Colleen M. "Chaoulli's Legacy for the Future of Health Care in Canada." *Osgoode Hall Law Journal* 44.2 (2006): 273 – 310.
- Flood, Colleen M., Kent Roach, and Lorne Mitchell Sossin, Eds. *Access to Care, Access to Justice: The Legal Debate over private Insurance in Canada*. Toronto: University of Toronto Press, 2005.

- Flood, Colleen M. et al. "Finding Health Policy 'Arbitrary': The Evidence on Waiting, Dying and Two-Tier Systems." In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Flood, Colleen M., et al. "Introduction: Legislating and Litigating Health Care Rights Around the World." *The Journal of Law, Medicine and Ethics* (2005): 636-640.
- Flood, Colleen M. "Just Medicare: The Role of Canadian Courts in Determining Health Care Rights and Access." *Journal of Law, Medicine and Ethics* (2005): 669-680.
- Flood, C. M. & Sullivan, T. "Supreme disagreement: The highest court affirms an empty right." *Canadian Medical Association Journal* 173.2 (2005): 142-143.
- Forget, Claude E. "Promises, Promise – Setting Boundaries between Public and Private." In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Gasher, Mike et al. "Spreading the News: Social Determinants of Health Reportage in daily Canadian newspapers." *Canadian Journal of Communication* 32 (2007): 557-574.
- Gilmour, Joan M. "Fallout from Chaoulli: Is It Time To Find Cover?" *Osgoode Hall Law Review* 44.2 (2006): 328 – 347.
- Government of Alberta. *Health Policy Framework*. Government of Alberta, 2006.
- Hacker, Jacob S. "Review Article: Dismantling the Health Care State? Political Institutions, Public Policies and the Comparative Politics of Health Reform." *British Journal of Political Science* 34.4 (2004): 693-724.
- Hadorn, David. "The Chaoulli Challenge: Getting a grip on waiting lists." *Canadian Medical Association Journal* 173.3 (2005): 271 – 273.
- Hagen, Gregory R. "Personal Inviolability and Public Health Care: Chaoulli v. Québec." *Health Law Review* 14.2 (2005): 34 – 37.
- Hart, Stanley. "Arbitrariness, Randomness and the Principles of Fundamental Justice." In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Hart, Stanley. "What the Chaoulli Decision said about Health Care Rhetoric vs. Health Care Reality." *Policy Options* (2006): 44 – 48.

- Hiebert, Janet L. "Wrestling with Rights: Judges, Parliament and the Making of Social Policy." *Choices* 5.3 (1999): 1- 36.
- Hutchinson, Allan. "Condition Critical: The Constitution and Health Care." In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Iyengar, Shanto. "Framing Responsibility for Political Issues: The Case of Poverty." *Political Behavior* 12.1 (1990): 19- 40.
- Jackman, Martha. "'The Last Line of Defence for [Which?] Citizens: Accountability, Equality, and the Right to Health in Chaoulli.'" *Osgoode Hall Law Review* 44.2 (2006): 349 – 375.
- Juillet, Luc. "Framing environmental policy: aboriginal rights and the conservation of Migratory birds." In *Critical Policy Studies*, edited by Michael Orsini and Miriam Smith. Vancouver/Toronto: UBC Press, 2007.
- King, Jeff A. "Constitutional Rights and Social Welfare: A Comment on the Canadian Chaoulli Health Care Decision." *The Modern Law Review* 69.4 (2006): 619 – 643.
- Kirby, Michael. "The Only Two Options for Funding the Wait-Time Guarantee." *Policy Options* (July-August 2006): 66 – 73.
- Knopff, Rainer. "Populism and the Politics of Rights: the Dual Attack on Representative Democracy." *Canadian Journal of Political Science* 31. 4 (1998): 683-705.
- Kondro, Wayne. "Chaoulli Decision Resonates One Year Later." *Canadian Medical Association Journal* 175.1 (2006): 17 – 18.
- Lukes, Steven. *Power: A Radical View*. 2nd edition. Palgrave MacMillan: London, 2005.
- MacFarlane, Emmett. "Terms of Entitlement: Is There a Distinctly Canadian 'Rights Talk?'" *Canadian Journal of Political Science* 41.2 (2008): 303-328.
- MacFarlane, Lawrie. "Supreme Court Slaps for-sale Sign on Medicare." *Canadian Medical Association Journal* 173.3 (2005): 269-270.
- Madore, Odette. "Duplicate Private Health Care Insurance: Potential Implications for Québec and Canada." *Library of Parliament – Parliamentary Information and Research Service*. 20 March 2006.
- Maioni, Antonia and Christopher Manfredi. "When The Charter Trumps Health Care – A Collision of Canadian Icons." *Policy Options* (Sept. 2005): 52 – 56.

- Manfredi, Christopher P. and Antonia Maioni. "The Last Line of Defence for Citizens': Litigating Private Health Insurance in *Chaoulli vs. Québec*." *Osgoode Hall Law Journal* 44.2 (2006): 249-271.
- Marchildon, G.P. "The Chaoulli case: A two-tier Magna Carta?" *Healthcare Quarterly* 8.4 (2005): 49-52.
- Marchildon, G.P. "The Douglas legacy and the future of medicare." In *Medicare: Facts, Myths, Problems, Promise*, ed. B. Campbell, G.P. Marchildon. Toronto: Lorimer, 2007
- Marchildon, Gregory. "Private Insurance for Medicare: Policy history and trajectory in four Western provinces." In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Marchildon, G.P. "Three Choices for the Future of Medicare." In *Social Fabric or Patchwork Quilt: The Development of Social Policy in Canada*, ed. R. Blake and J.A. Keshen. Peterborough: Broadview Press, 2006.
- Marmor, Ted. "An American in Canada – Another View of the Supreme Court Decision on Health Care." *Policy Options* (Sept. 2005): 63 – 65.
- Marmor, Theodore. "Canada's Supreme Court and its National Health Program: Evaluating the Landmark *Chaoulli* Decision from a Comparative Perspective." *Osgoode Hall Law Review* 44.2 (2006): 311 – 325.
- Nanos, Nik. "Charter values don't equal Canadian values: Strong support for same-sex and property rights." *Policy Options* (2007): 50-55.
- National Assembly of Québec. *Bill C-33: An Act to Amend the Act Respecting Health Service and Social Services and Other Legislative Provisions*. Québec. 37th Legislature. 13 December 2006.
- Ouellet, Robert. "The Chaoulli Decision : A Debate in which Physicians must be heard." *Canadian Medical Association Journal* 173.8 (2005): 896.
- Pensky, Max. *The Ends of Solidarity: Discourse theory in ethics and Politics*. Albany: State University of New York Press, 2008.
- Phillips, Louise and Marianne Jørgensen. *Discourse Analysis as Theory and Method*. Thousand Oaks, CA: Sage Publications, 2002.
- Pindera, Laureen. "Québec's Proposed Wait Time Guarantees." *Canadian Medical Association Journal* 174.8 (2006): 1075 – 1076.

- Pinker, Susan. "Why does such a big issue rest on the shoulders of two private citizens? FP asks after losing private medicine battle." *Canadian Medical Association Journal* 162.9 (2000): 1348.
- Pitfield, Caroline and Colleen M. Flood. "Section 7 'Safety Valves': Appealing Wait-times Within a One-Tier System." In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Pletch, Adam. "What Now? After Chaoulli: Is Two-Tiered healthcare the new Reality?" *Canadian Healthcare Manager*, August 2005, available from www.chmonline.ca.
- Prémont, Marie-Claude. "Wait-Time Guarantees for Health Services: An Analysis of Québec's Reaction to the Chaoulli Supreme Court Decision." *Les Cahiers de Droits* 47.3 (2006): 1 – 33.
- Quesnel-Vallée, Amélie et al. "In the Aftermath of Chaoulli v. Québec: Whose Opinion Prevailed?" *Canadian Medical Association Journal* 175.9 (2006): 1051 – 1052.
- Ries, Nola M. and Timothy Caulfield. "Legal Foundations for a National Public Health Agency in Canada." *Canadian Journal of Public Health* 96.2 (July-August 2005): 281 – 283.
- Roach, Kent and Robert J. Sharpe. *The Charter of Rights and Freedoms*, 3rd ed. Toronto: Irwin Law, 2005.
- Roach, Kent. "The Courts and Medicare: Too Much or Too Little Judicial Activism." In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Romanow, Roy. "In Search of a Mandate." In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Russell, Peter H. "*Chaoulli*: the Political versus the Legal Life of a Judicial Decision." In *Access to Care, Access to Justice: The Legal Debate over Private Health Care in Canada*, edited by Colleen M. Flood, Kent Roach and Lorne Sossin. Toronto: University of Toronto Press, 2005.
- Salter, Mark B. "Canadian Post 9/11 Border Policy and Spillover Securitization: Smart, Safe and Sovereign?" In *Critical Policy Studies*, edited by Michael Orsini and Miriam Smith. Vancouver/Toronto: UBC Press, 2007.
- Sanmartin, Claudia et al. "Waiting for medical services in Canada: lots of heat, but little light." *Canadian Medical Association Journal* 162.9 (2000): 1305-1310.

Seale, Clive. "Health and media: an overview," *Sociology of Health and Illness* 25.6 (2003): 513-531.

Smith, Miriam. *A Civil Society? Collective Actors in Canadian Political Life*. Peterborough: Broadview Press, 2005.

Solomon, Sam. "Chaoulli's back, now as private health broker: Critics say care model is biggest threat to Québec Medicare yet." *National Review of Medicine* 10.4 (2007). Available online at: http://www.nationalreviewofmedicine.com/issue/2007/05_30/4_policy_politics_10.html

Solomon, Sam. "Chaoulli Copycat cases crop up across country: Using Québec's landmark Supreme Court decision as a precedent, more Canadians challenge single-payer system." *National Review of Medicine* 4.1 (2007). Available online at: http://www.nationalreviewofmedicine.com/issue/2007/01_15/4_policy_politics02_1.html

Stark, Andrew. "'Political-Discourse' Analysis and the Debate over Canada's Lobbying Legislation." *Canadian Journal of Political Science* 25.3 (1992): 514-515.

Taft, Kevin and Gillian Steward. *Clear Answers: The economics and politics of For-Profit Medicine*. Alberta, Canada: Duval House Publishing, 2000.

White, Louise G. "Political Analysis as Discourse." *Journal of Policy Analysis and Management* 13.3 (1994): 506 – 525.

Working Group on Québec's Healthcare System. "Press Release: The Chaoulli Judgement and Private Healthcare Insurance: Seven Proposals to address the Supreme Court's decision." 21 November 2005.

Yeo, Michael and Carole Lucock. "Quality vs. Equality: The Divided Court in Chaoulli vs. Québec." *Health Law Journal* 14 (2006): 129 – 150.