

Chaoulli v. Québec (Attorney General):
Understanding Provincial Reactions to the
Decision

by

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AUTHOR'S DECLARATION

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.
I understand that my thesis may be made electronically available to the public.

Abstract

This thesis focuses on provincial reactions to the Supreme Court decision on 5 June 2005, *Chaoulli v. Quebec (Attorney General)*. In this decision, the Court struck down the government of Québec's ban on private insurance for publicly-insured services, on the grounds it violated the Québec Charter of Human Rights and Freedoms, while the decision on the Canadian Charter ended in a 3:3 tie with one abstention. It is the purpose of this research to examine the reactions of each provincial government to the decision in an attempt to understand why each province responded in its chosen manner. In order to make this determination, four hypotheses were constructed in order to test four separate variables: court interference, current law, ideology, and political calculation. These hypotheses were tested against provincial reactions in the media, legislatures, court documents, and E-mail administered questionnaires. This research finds that each hypothesis had some success in predicting provincial reactions to the decision, with a government's current law and ideology proving to be the most accurate predictors. Based on the evidence gathered, three conclusions were arrived at: first, a government's law and its ideology will often predict how a government will behave; second, that governments are open to Supreme Court decisions in the area of health care, and, finally, that if provincial governments were to make the decision to increase the role of the private sector in health care, political leaders would require public opinion be in support of such a decision rather than act solely on an ideological predisposition to greater private sector involvement.

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Dedication

This project is dedicated to my mother, Helen Sadler. After the passing of my father at the age of thirteen, my mother has successfully worn many hats and has always tried her best as a single parent to provide the best for me. Her constant encouragement to shoot for the stars and the shining example of how to live has helped guide me all these years. Without her endless support, I am not sure any of this would have ever been possible.

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Chapter 1

Introduction

In June 2005, the Supreme Court of Canada, in *Chaoulli v. Québec (Attorney General)*, ruled Québec's ban on private health insurance as an infringement of the Québec Charter of Human Rights and Freedoms. Though not ruled to be a violation of the Canadian Charter of Rights and Freedoms, the ruling prompted media observers to declare the ruling as presaging the end of medicare in Canada.

Dr. Jacques Chaoulli, a doctor who wanted to offer private health services, and Mr. George Zeliotis, a patient who had been on a waiting list in the Québec health system, teamed up to challenge Québec's prohibition of private insurance for publicly-insured services. The two argued that Québec's prohibition of private insurance for publicly-insured services violated both the Canadian Charter of Rights and Freedoms and the Québec Charter of Human Rights and Freedoms. They lost their first trial in 2000, as the trial judge concluded that the impugned laws did not violate the Canadian or Québec Charters.¹ A unanimous Québec Court of Appeal upheld this decision in 2002.² The two previous losses contributed to the surprise many felt when the Supreme Court reversed the Québec courts in a 4:3 finding that the law violated the Québec Charter, while the decision on the Canadian Charter ended in a 3:3 tie with one abstention. In light of the media attention the decision received and the potential ripple effect some governments believed the decision could cause, provincial governments responded swiftly to the decision, both in the media and in their legislatures. Explaining why each provincial government responded in its chosen manner is the focus of the study.

Provincial responses to the decision varied. Premier Ralph Klein openly welcomed the decision continuing with his government's desire to expand the role of the private sector in health care while Premier McGuinty strongly opposed the decision as his government has showed continued

¹ 2000 R.J.Q 786.

² 2002 R.J.Q. 105

support for universal health care, including the enactment of the *Commitment to the Future of Medicare Act, 2004*. Other provinces such as British Columbia responded in a manner inconsistent with previous policies as the government reacted negatively to the decision despite allowing the operation of private clinics within the province.

This study aims to contribute to the understanding of the factors that play critical roles in the decisions taken by provincial governments. What factors would prompt a government to respond in favour or against a court decision striking down a law that is in place? Why would a government react either positively or negatively to a decision that has no bearing on its current law? In examining these questions, the reactions of each provincial government to the *Chaoulli* decision, as reported in the media, given in legislatures, and presented in court documents, will be examined.

There are a number of hypotheses that might be constructed to generate expectations regarding provincial reactions to the verdict handed down in the *Chaoulli* case. Upon an initial review of the verdict, one might be led to believe that all provincial governments would resist, on principle, the Supreme Court handing down a ruling that undermines the role of elected provincial legislatures. Alternatively, one might expect that provincial governments might react in a more pragmatic fashion, in order to defend their own existing policies. An example of this might be that one would expect that provincial governments that already implement a similar ban to the one in Québec would react negatively to the decision. Conversely, provincial governments who do not implement such a ban could be expected to provide little resistance to the ruling. Further, one might expect provincial governments to react based on their ideology, with provincial governments that are in favour of increasing the private sector role in health care praising such a decision while provincial governments that are ideologically in favour of preserving the system opposing. Finally, one might expect public opinion may play a role, as provincial governments may be more likely to oppose the decision when public opinion in their province is not favourable of the decision.

Testing the predicted response of the provincial governments against their actual reactions reveals that a government's current law and its ideology are the most accurate predictor of how a government should react to the *Chaoulli* decision. Most provinces reacted to the decision in a manner consistent with their current law or ideology. Political calculation, while correctly predicting a few government reactions, did not have the same level of accuracy as a predictor of governmental behaviour as a province's current law or ideology.

The few governments that openly supported the Court ruling on a provincial law, a ruling that ultimately undermined the role of provincial legislatures, did so because the decision was in line with their ideology. This response allowed governments that supported the Court's ruling to openly pursue their policy goals in a more vigorous manner than they would have without judicial affirmation from the top court in the country. Finally, testing the hypotheses revealed that a number of provinces also chose to follow their political calculation and react in a manner consistent with public opinion within their province.

To lay the basis for this inquiry, Chapter 2 provides an overview of the case; what the decision was based on, what the decision means for provincial governments other than Québec, and discusses the potential of similar challenges in the future. Chapter 3 reviews the relevant literature in order to provide a better understanding of the debates surrounding the motivations of political actors in general, as well as the effects of a federal system on such motivations, ultimately generating expected governmental behaviour to the decision. Chapter 4 then outlines the predicted responses of each provincial government based on four separate criteria: response to Supreme Court intrusion, current law, ideological disposition, and public opinion.

Reviewing the reactions of each provincial government in the media, legislature debates, court documents and e-mail administered questionnaires is the subject of Chapter 5. The reactions are then

compared and analyzed against the predicted reactions in Chapter 6. This analysis will uncover which hypothesis explains the highest number of provincial reactions. Through this discovery we learn that legislative position, ideology, and political calculation are important factors in determining how provincial governments will react when faced with a difficult decision, with a government's current law and ideology being the most important. This determination will aid us in answering the fundamental question of what explains the provincial governments' reaction to the *Chaoulli* decision. In order to analyze how governments reacted to the verdict, the case itself must first be analyzed, and that is the subject of Chapter 2.

Chapter 2

What Was Actually Decided in the *Chaoulli* Case

A survey of the headlines in major papers the day following the decision, as pointed out by Peter H. Russell, reveals how the decision and its effects on health care in Canada were grossly misrepresented. The Globe and Mail trumpeted “The New Face of Medicare,” while the Toronto Star screamed “Timely Health Care a Basic Right.” This was followed by leading columnists portending that medicare had been dealt a fatal blow.³ The truth is the decision has the *potential* to lead to a major shift in health care strategies in each province, but whether or not it will, will be determined over time and by politicians. The verdict in the *Chaoulli* case has the capability to change the landscape of the debate, and could lead to shifts in health care schemes in different provinces across Canada; however, the decision currently only applies to Québec.

Dr. Chaoulli and Mr. Zeliotis managed to have their case heard by the Supreme Court of Canada although originally losing the case in two lower courts in Québec. The verdict handed down by the Court contained judgments on both the *Québec Charter*, and the *Canadian Charter*. The *Canadian Charter* decision was based on S.7,⁴ with focus on the security of the person. In this decision, the judges were deadlocked at 3-3, with one abstention; thus, the Supreme Court did not find the law to be a violation of the *Canadian Charter*. Justice Deschamps abstained, declining to address the question of whether the law contravened the *Canadian Charter*, believing that deciding if the law contravened the *Canadian Charter* should only take place if the statute does not infringe the *Québec Charter*. Following this line of thinking, Justice Deschamps found that the law did infringe the

³ Russell, Peter H. “Chaoulli: The Political Versus the Legal Life of a Judicial Decision” *Access To Care, Access to Justice*. Toronto: University of Toronto Press, 2005. Pg. 5

⁴ S.7 of the Canadian Charter states “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”.

Québec Charter, thus making it unnecessary to test the *Canadian Charter*.⁵ This tie has led many people to believe that challenges to the *Canadian Charter* will be raised across the country in different provinces; however, it is important to note that Justice Deschamps points out “the appellants do not contend that they have a constitutional right to private insurance.”⁶ However, the decision on the *Québec Charter* contained a more straightforward consequence.

The decision on the *Québec Charter* was based on two separate statutes. The two statutes in question, s. 11 of the *Hospital Insurance Act* and s.15 of the *Health Insurance Act*, prohibit private insurance for health care services available in the public system, which the majority stated violated the right to personal ‘inviolability’ in section 1 of the *Québec Charter*.⁷ The actual legal scope of the decision has been determined quite narrowly. As it stands, due to the lack of a majority ruling on the question of whether a prohibitive ban on private insurance violates the *Canadian Charter*, there is no legal applicability outside of the province of Québec.

Although it may seem intuitive that a provincial prohibition on private health insurance would trigger a Charter challenge, it would not constitute sufficient grounds to trigger the application of fundamental constitutional rights. As Caufield and Ries point out, “the legislative prohibition must be combined with ill-managed wait lists and improperly-resourced public health care systems that increase risk of mortality and serious morbidity”⁸, thus requiring more than a simple prohibition on private health insurance. Supreme Court Justices McLachlin and Major point out in their decision that a ban on private health insurance “might be constitutional in circumstances where health care

⁵ Russell. Pg. 7

⁶ *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 14.

⁷ Russell. Pg. 6

⁸ Caufield, Timothy and Nola M. Ries. “Politics and Paradoxes: Chaoulli and the Alberta Reaction.” *Access To Care, Access to Justice*. Toronto: University of Toronto Press, 2005. Pg. 419

services are reasonable as to both quality and timeliness.”⁹ Some observers see the need for the combination to trigger the application of fundamental constitutional rights as a potential saviour. If provinces put a concerted effort into reducing wait times, it may prevent future challenges on provincial prohibitions, and, thus, prevent provincial bans from being struck down in the same manner as Québec’s.

The verdict in the *Chaoulli* decision does not guarantee that similar challenges will occur in provinces implementing comparable bans. When attempting to determine the likelihood of challenges in other provinces, it is important to note that the decision was ten years in the making, as the case worked its way vertically through the court system, indicating that it would take some time for a challenge to reach the top court in that province. However, although another challenge may take a while to work its way through the court system, until wait times are reduced and resources properly managed in the eyes of the Court, the potential problems deriving from the decision are still present in many of the provinces. Further, as pointed out by Boychuk, “the decision itself is also not a fundamental challenge to the CHA [Canada Health Act], as the CHA does not require (or even suggest) a ban on third-party insurance for insured services.”¹⁰ This point made by Boychuk is an important one, as many observers saw the decision as a challenge to the CHA, not realizing the manoeuvrability provincial governments have within the *Act*. There are a wide variety of means used by various provincial governments to limit the growth of private insurance for publicly-insured services other than an explicit ban, and some governments are looking to implement contingency plans in order to prepare, for what they may view, as the worst case scenario.

⁹ *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 158

¹⁰ Boychuk, Gerard W. "Provincial Approaches to Funding Health Services in the Post-Chaoulli Era." *CPSA* June: (2006): pg. 1

2.1 Future Challenges

Another important factor when evaluating what was decided in the *Chaoulli* decision is the makeup of the Supreme Court during the hearing of the case. If a similar challenge comes before the Court, the Justices who handed down their decision in the *Chaoulli* case would not all still be sitting justices.

Justice Major retired on 25 December 2005, and was one of the four judges who voted to strike down the Québec prohibition. Justice Major was also one of the three justices in favour of a wider view of section 7, which would have meant application of the decision to all of Canada. Therefore, Justice Major's replacement, Justice Rothstein, may play a key role in determining the future of this decision. Also, future challenges may face difficulty in a similar vein, as the two justices who did not take part in the case, Justices Abella and Charron, are seen as less likely to accept the wider view held of section 7, with Justice Abella being the more likely of the two to possibly shift towards such a view.¹¹

A change in the composition of the Court is unlikely to lead to a different outcome. However, provincial governments that institute an explicit ban on private insurance for publicly-insured services cannot rely on the potential makeup of the Court. Those governments who ban private insurance must take action in order to reduce the possibility of similar triggers to those in the *Chaoulli* case from occurring if they intend to prevent the growth of private financing of publicly-insured services.

Therefore, the results of the *Chaoulli* decision are not as grim as those presented in the media immediately following the decision. The decision currently applies only to the province of Québec, and provincial governments implementing similar bans have the opportunity to eliminate aspects of their health care delivery system that may act as triggers, which will protect them if future challenges arise. Each provincial government has a different opinion on how to go about delivering health care, as well as a different opinion on what the decision means and how they will respond to it.

¹¹ Russell. Pg. 13

Chapter 3

Developing Expectations

Since the study's focus is on the reactions provided by each provincial government to the *Chaoulli* decision, and thus the behaviour of provincial governments, it is important to first understand the environment within which these governments operate. This chapter will review the relevant literature in order to provide a better understanding of the debates surrounding the motivations of political actors in general, as well as the effects of a federal system on such motivations, and generate expectations as to how each provincial government should react to the decision. Initially, it will be important to discuss the behaviour of governments in a federal system, paying careful attention to both national and sub-national governments. Such an overview will reveal that provincial governments are protective over any autonomy they have gained since Confederation and act defensively when they perceive the possibility of outside interference into areas falling under their jurisdiction. Similarly, this review will reveal many variables that are considered highly important when evaluating the motivations behind a government's action.

Political calculation as a variable determining governmental behaviour will be examined in order to help identify the role this variable plays in motivating provincial government reactions to the *Chaoulli* decision. This investigation will illustrate that, in accordance with rational-choice institutionalism, once formal electoral rules have shaped the incentives facing political actors, these individuals will respond strategically to the electoral incentives, in this case public opinion, in consideration of the fact that they are rational vote-maximizers in pursuit of electoral office. A review of public opinion data within each province will generate expectations of each provincial government that will be further outlined in Chapter 4. The hypotheses presented in Chapter 4 are

based largely on the expected behaviour of political actors, as determined from research presented in this chapter.

3.1 Canadian Federalism

A discussion of federalism is required because the reactions under examination in the study are coming from sub-national governments in a federal system. When discussing federalism in Canada, it is naturally assumed that the term has a commonly understood meaning. However, Garth Stevenson's struggle to define federalism appropriately in a manner consistent with its practice in the Canadian situation demonstrates how the word is commonly used interchangeably with different meanings. Stevenson's investigation brings about many obstacles, such as definitions containing institutional and legal criteria, which eliminate all but one or two federations from inclusion to definitions that would include almost every country in the world as a federation. A lack of consensus on a single definition has spawned many new attempts to define federalism, a practice that Stevenson does not wish to repeat, made obvious in his statement in noting there is "possibly no single definition of so elusive and controversial a concept [that] could be satisfactory for all purposes."¹²

Although he does not attempt to formulate a new definition, Stevenson does provide one that he feels is suitable for a pursuit in understanding Canadian government. The definition Stevenson offers meets the three criteria he feels are essential: (1) the definition should not be unduly restrictive; (2) it should distinguish between a federal state, a unitary state, and looser forms of association; and lastly

¹² Stevenson, Garth. Unfulfilled Union: Canadian Federalism and National Unity. London: McGill-Queens University Press, 2004. Pg. 8

(3) it should emphasize the political aspects of federalism.¹³ With this criterion in mind, Stevenson defines federalism as,

A political system in which most or all of the structural elements of the state (executive, legislative, bureaucratic, judiciary, army or police, and machinery for levying taxation) are duplicated at two levels, with both sets of structures exercising effective control over the same territory and population. Furthermore, neither set of structures (or level of government) should be able to abolish the other's jurisdiction over this territory or population. As a corollary of this, relations between the two levels of government will tend to be characterized by bargaining, since neither level can fully impose its will on the other.¹⁴

The enquiry will rely on Stevenson's definition during the study.

A definition of federalism has been established, and it is important to understand that Canadian federalism contains both national and sub-national governments operating in both an interdependent and an autonomous manner. The interdependence of the central and unit governments implies that the actions of one government will have consequences for the other, and many of the fields in which one unit concerns itself will cut across formal divisions of responsibility.¹⁵ Alternatively, neither central nor unit governments have hierarchical controls over the other, meaning neither can dictate to the other.¹⁶

Further, as the definition above suggests, Canadian federalism requires judicial review, which must be taken into consideration when evaluating the environment within which each government operates. Each province has its own court system, with its own charter and a court of appeal at its peak, operating within the hierarchical Canadian court structure. The hierarchical design of this structure allows cases that have travelled to the peak of the provincial court system to be elevated to the highest

¹³ Ibid

¹⁴ Ibid

¹⁵ Simeon, Richard. Federal-Provincial Diplomacy: The Making of Recent Policy in Canada. Toronto: University of Toronto Press, 2006. Pg. 3

¹⁶ Ibid

level in the country, the Supreme Court of Canada, which holds the final say on all judicial matters. The process of judicial review will inevitably have significant social, economic, and political implications for the decision-making process of each government.

One of the most important documents that the Supreme Court of Canada relies on when making a decision on legislation is the *Canadian Charter of Rights and Freedoms (Canadian Charter)*.

Although the *Canadian Charter* was developed in order to restore, or increase, national unity, some provincial governments were wary of how these changes may affect their ability to legislate autonomously. A number of provincial governments feared that the *Charter* could have potentially reduced their autonomy and provided the Supreme Court with an opportunity to shift power away from the provincial sphere of authority to the federal sphere. As Smithey points out, “the Charter symbolizes an elevation of the national over the provincial, and every time the Supreme Court exercises its Charter powers, it symbolically reinforces national unity over provincial diversity.”¹⁷

However, this is not the only reason provincial governments are suspicious of the Court. According to Russell, the Court “has a credibility problem because one side, the federal government, appoints them and constitutionally controls their institution.”¹⁸ This arrangement has led to provincial distrust of the Supreme Court, and the powers that the federal and provincial governments are often found wrestling over are derived from the *British North American Act 1867*, now the *Constitution Act 1867*.

The formal divisions of responsibility in Canada find their beginnings in the *Constitution Act 1867(Act)*. The *Act* contains many important sections, but none more important than s. 91 and s. 92, the division of powers, which grants powers to each level of government in Canada. S. 92 provides provincial governments exclusive powers in local affairs, thus not allowing for any interference from

¹⁷ Smithey, Shannon. “The Effects of the Canadian Supreme Court’s Charter Interpretation on Regional and Intergovernmental Tensions in Canada,” *Publius. The Journal of Federalism* 26:2 (Spring 1996) Pg. 86

¹⁸ Russell. Pg. 13

the federal government in the provincial areas of jurisdiction.¹⁹ Due to this separation of powers, it has been said, “some degree of conflict between the two levels of government is probably best viewed as an endemic and almost universal condition.”²⁰

In many cases, federal-provincial conflict can be viewed as conflict between competing organizations. An example of this can be found in the regionalized nature of Canada, as a particular sector of the economy may be largely concentrated within one province, exercising significant economic and political power within that province. When this is coupled with the fact that there are a relatively small number of provinces in Canada, most of which are large, there is the potential that a determined province can influence federal policy or place obstacles in the way of federal initiatives. Alternatively, provincial governments may “seek to expand their revenues through equalization or abatement...or exclude the other level of government from functional areas of jurisdiction over which they have already staked a claim.”²¹ These examples demonstrate how conflict between the two levels of government can be viewed as conflict between competing organizations. Further, a specific area of key competition/conflict between the two levels of government is in the sphere of health care.

One of the areas of jurisdiction granted by s.92 includes what has evolved into the current health care system. Provincial regulation of hospitals is specifically referred to in s.92, while s.92(13) also covers *property and civil rights*, a section controlling the regulation of doctors. This design has allowed provincial governments to develop and implement their own health care schemes, while use of the spending power by the federal government has provided an opportunity for the federal government to overcome constitutional limitations on its role in health care policy. The spending power involves the transfer of money or tax points, rather than jurisdiction, towards programs such as

¹⁹ British North American Act, 1867. <http://www.justice.gc.ca/en/ps/const/loireg/p1t1-1.html> (Accessed 1 November 2006)

²⁰ Stevenson pg. 210

²¹ Ibid 213

health care and education, and has become the main lever of federal influence in areas that are legislatively within provincial jurisdiction.²²

By making financial contributions to these provincial programs, the federal government could influence provincial policies and program standards. While one view of the spending power is that the federal government is attempting to ensure a minimum acceptable level of services in different regions, the provincial governments take a different stance. Provincial governments claim the federal government is unconstitutionally coercing provinces to participate in programs under the federal government's guidelines.²³ Regardless of provincial skepticism, the spending power of the federal government has historically played a role in the development of the Canadian health care system and remains an important source of resources for the provinces today.

The provinces were originally against what they viewed as federal intrusion into provincial jurisdiction; however, inadequate hospital facilities led to both planning and construction grants being provided by the federal government. These grants established the concept of federal-provincial cost sharing for health care services,²⁴ and were a precursor to the federal government's official role in health care, which was established through the enactment of the *Canada Health Act*.

The evolution of universal health care in Canada culminated with the passing of the *Canada Health Act (CHA)* in 1984, which received the unanimous consent of the House of Commons as well as the Senate. The *CHA* set national conditions in health care that all provincial governments were required

²² The Spending Power: Scope and Limitations. Library of Parliament Online. <http://www.parl.gc.ca/information/library/PRBpubs/bp272-e.htm#CONCLUSION> (accessed on 26 March 2007)

²³ *ibid*

²⁴ Vayda, Eugene. "The Canadian Health System: An Overview." Journal of Public Health Policy 7(1986): 205-210 Pg. 205

to meet in order to qualify for federal transfers.²⁵ Still, provincial governments possess the ability to opt-out of the *CHA*, but doing so would mean the loss of any funding provided by the federal government. The level of assistance provided by the federal government makes opting-out of the *CHA* unpalatable for most provinces, thus guaranteeing uniform minimum-conditions across the country for health care.

Consequently, the *CHA* and federal spending power have provided a role for the federal government in health care. Provincial governments have relied on federal transfers in order to cover the cost of health care and without such funding, Canadians would probably not enjoy the universal health coverage they do today. However, a desire for an increase in the *Canada Health Transfer (CHT)*, the current program under which federal funds are transferred to the provinces to assist in the funding of health care, is consistently on the agenda of the Premiers in Canada. As an implication of this, the federal government's reluctance to provide more funds has often led to federal-provincial conflict.

However, the environment that both the federal and provincial governments are accustomed to operating in when dealing with health care may be altered in the *Chaoulli* case due to the federal government's history of supporting universal health care. If the federal government supports the position of the province of Québec, and respects its jurisdiction, then the traditional role of the federal government may change from adversary in the health care arena to supporter, thus altering the environment that both levels of government are accustomed to operating in. Instead, the Supreme Court might replace the federal government as an intruder into provincial jurisdiction by hearing the *Chaoulli* case. Since the provinces are protective of their autonomy, provincial governments could be

²⁵ Canada Health Act Overview. Health Canada. http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/2002/2002_care-soinsbk4_e.html (Accessed October 22nd 2005)

expected to react negatively to the Supreme Court interfering in an area that provincial governments feel is under their prerogative.

3.2 Factors Determining Governmental Behaviour

Determining the motives behind a government's behaviour or action is not an easy task. Many variables must be considered when determining these motives, and although it is impossible to know every thought or process behind a government's action, variables such as a government's goals and objectives, as well as its status should be considered. Richard Simeon provides a list of explanatory variables that should be consulted when explaining the motives behind government decision-making including economic interests, ideology, and status goals.

Economic Interests: An important explanatory variable discussed by Simeon is economic interest. Of the two economic variables listed, rich versus poor and east versus west, only the rich versus poor distinction is useful in explaining the reactions of provincial governments to the *Chaoulli* decision. Economic interests arguably play a significant role in understanding provincial reactions to the *Chaoulli* decision. For example, a rich province such as Alberta, which has been experiencing continual economic growth, may feel that there is a market for a greater role for private insurance in the health care system. Since the population has seen an increase in prosperity, it is possible that there could be a rise in demand for better health care service, resulting in reforms to how health care is administered and how the government focuses its resources. However, a province at the opposite end of the economic scale, such as PEI, which has been experiencing difficult economic situations over a long period of time, may have a population that cannot afford to pay for private insurance and, as such, the public demand for a publicly funded universal health care system may remain strong.

The level of provincial prosperity (which includes the wealth of not only provincial governments, but also citizens) undoubtedly has the potential to influence how a government may react to the decision in the *Chaoulli* case.

The east versus west variable focuses mostly on traditional economic cleavages, such as the east being the centre for manufacturing and the west being the centre for natural resources, and the subsidy problems that have arisen from traditional regional differences. The East/West variable has no applicability to the provincial reactions to the decision as there is no parallel between how the differing economies of the East/West may favour a specific mode of delivering health care, or that these economies would direct a province to react to the decision in any specific manner. This leaves the rich versus poor variable as the only aspect of economic interests to potentially play a role in provincial reactions.

Ideology: Simeon's review of ideology focuses on federal-provincial conflict; however, only the second of the two basic elements of ideology outlined is central to understanding the reactions of provincial governments to the *Chaoulli* decision. The first important element of ideology listed by Simeon includes a prescription relating to the nature of the political system, the proper balance of the governments within it, and the ways the decision process should operate. The second element speaks to the substantive aspects, relating to the policy goals of the actors.²⁶ When examining federal-provincial conflict Simeon points out that "far more important than ideological 'left-right' differences are disparities in viewpoint about the basic nature of the federal system, the appropriate roles and powers of the governments within it, and the proper means of making joint decisions."²⁷ The most important example of these differences in viewpoints is the clash between most of English Canada, at

²⁶ Ibid 168

²⁷ Ibid 170

both the federal and provincial level, and Québec. Although this clash plays a critical role in how a number of policy decisions are developed at both the federal and provincial levels across Canada, it is not the most important ideological factor in determining how a provincial government will behave when there is no existing conflict between provincial and federal governments.

The ideological ‘left-right’ variances that Simeon dismisses as being less important to the study of federal-provincial conflict may in fact be less important for Simeon’s study than the ideological prescription relating to the nature of the political system, as Simeon’s study focuses on government behaviour during conflict between the federal and provincial levels of government. However, this left-right difference may have the potential to play a substantive role in determining the behaviour of each provincial government in regards to their response to the *Chaoulli* decision. The left-right ideological cleavage plays an important role in how governments operate, as many of their policies and perceptions about how governments should function are drawn from this cleavage.

It can be assumed that a left-right ideological dimension can be found in most Western democracies. Survey research has determined that in most Western democracies the majority of voters conceive of politics in such a fashion and can readily place themselves on some type of left-right scale.²⁸ Further, recent research suggests “although ideological cleavages are not as strongly related to class position as they once were, the left-right dimension remains a most significant, if not dominant cleavage in Western democracies,”²⁹ and that “left-right ideological orientations serve as a

²⁸ Inglehart, Ronald, and Klingmann, Hans-Dieter (1976). “Party identification, ideological preference and the left-right dimension among Western mass publics.” In Ian Budge, Ivor Crewe, and Dennis Farlie (eds.). Party Identification and Beyond: Representations of Voting and Party Competitions. London: John Wiley & Sons.

²⁹ Kim, HeeMin, Richard C. Fording. "Voter Ideology, the Economy, and the International Environment in Western Democracies, 1952-1989." Political Behaviour 23(2001): 53-73. Pg. 55

basic reference point for voters' choices of candidates/parties."³⁰ Since the left-right ideological divide is the most basic reference point for a voter, it can also be assumed that it is the most basic reference point for a politician. Thus politicians, and therefore governments, create policies and take actions based on their ideological predisposition, as this lays out a path that politicians believe is the correct course to take, making ideology one of the potential prime motivators behind governmental responses to the *Chaoulli* decision.

Status Goals: The third explanatory variable that Simeon lists to explain government behaviour involves what he terms as "status goals." Simeon points out that all governments want to improve, or at worst maintain, their status among the electorate. When dealing with electoral considerations, Simeon points out that "here we come close to the heart of political competition in the federal system."³¹ Although they do not compete in elections, eleven governments jointly govern the same population; therefore, there is a finite amount of credit to be claimed by each level of government.³² This leads to another kind of competition, considering that the two levels of government are in a constant struggle to "gain credit, status and importance and avoid discredit and blame,"³³ noting that much of this status is garnered through the delivery of popular programs. Both levels of government compete for status in order to maintain high approval rates and ensure a good result for the party at the next election.

The most relevant aspect of Simeon's status goals variable, which could play a critical role in the current study, is that politicians are continuously attempting to improve their status among the

³⁰ Fuchs, Dieter, and Klingemann, Hans-Dieter (1990). "The left-right schema." In M. Kent Jennings et al. (eds.), Continuities in Political Action. Berlin: Walter de Gruyter. 421-436

³¹ Ibid 185

³² Ibid

³³ Ibid

electorate in order to gain votes. Simeon's study does not discuss in detail the role political calculation plays in governmental behaviour, however, Norris focuses her research on this variable in an effort to examine the level of importance the factor of political calculation is in government behaviour.

3.3 Political Calculation: Vote-Maximizing and Rational Choice Institutionalism

While undertaking a comprehensive analysis comparing voting behaviour across many different types of societies, including older and newer democracies, Pippa Norris discusses, in great depth, rational-choice institutionalism, a theory which helps to demonstrate that political calculation is a prime motivator in governmental behaviour. The core theoretical claim in rational-choice institutionalism is that "formal electoral rules generate important incentives that are capable of shaping and constraining political behaviour."³⁴ Electoral rules being defined as "the legislative framework governing elections, as embodied in official documents, constitutional conventions, legal statutes, codes of conduct, and administrative procedures, authorized by law and enforceable by courts."³⁵ This theory helps to identify political calculation and describe its role as a prime motivator of governmental behaviour.

Political actors enter electoral races with the goal of being elected to a legislative body. In a single member plurality system (SMP), this requires the political actor to receive more votes than any other competitor, although a majority is not required. Rational-choice institutionalism predicts that the formal rules of the SMP system will produce a political actor who is essentially a vote-maximizer. The formal rules in the case of the SMP system are that the political actor must receive the most

³⁴ Norris, Pippa. Electoral Engineering: Voting Rules and Political Behaviour. New York: Cambridge University Press, 2004. Pg. 7

³⁵ Ibid

votes, but is not required to win a majority of the votes in order to be the successful candidate. The incentive shaped by the formal rules is gaining office, and behaviour required to do so is for the candidate to become a vote-maximizer. Although political actors may vary in their reasons for attempting to gain public office, the Darwinian theory predicts that political actors who are not vote-maximizers will become less common, because they will be less successful at gaining public office.³⁶ Thus, rational-choice institutionalism predicts that political actors will use political calculation when dealing with a policy choice in an attempt to maintain or gain public popularity.

When reacting to the decision rendered in the *Chaoulli* case, rational-choice institutionalism predicts that one of the prime motivators behind provincial reactions may be political calculation. Provincial governments which might have an ideological predisposition in favour of expanding the private sector's role in health care, or who did not implement an explicit ban on private insurance for publicly-insured services, may base their public reaction on what they perceive will be popular with the electorate in their province. The theory of rational-choice institutionalism thus predicts that the provinces that are most likely to oppose the *Chaoulli* decision are those where public opinion is least supportive of the decision.

3.4 Public Opinion

Further to the argument made by Norris that political actors are vote-maximizers, and thus will respond to public opinion, it follows that governments will also be responsive to public opinion in the hope of performing well in the next election. As noted by Key, “unless mass views have some place

³⁶ Ibid pg. 9

in the shaping of policy, all the talk about democracy is nonsense,”³⁷ however, the impact that public opinion has in Canadian society in reference to the actions of political actors is debatable. The ideal manner in which democracy operates, as stated by Wright et al. is to have elections in which citizens have the opportunity to select leaders who “offer differing futures for government action. Once elected, political leaders have incentives to be responsive to public preferences.”³⁸

Alternatively, politicians who are unresponsive to public opinion or initiate policies that prove unpopular can be replaced at the next election. Of course, this is the ideal situation and a cynic may see the process differently, believing that once politicians are elected into office, they pay little attention to public opinion. This perspective may include the idea that these politicians choose to pursue their own policies; motivated by the belief that since the voting public expects so very little from them in the first place, given their minimal attention to the political sphere, there is no need to make them a priority. Yet, the actual performance of electoral democracy may fall somewhere between these two extremes.³⁹

A review of the literature in the field of public opinion reveals that research has indicated that policies and government reactions are often shaped by public opinion. Burstein suggests that on balance, what the evidence suggests is that “what the people want in those instances where the people care(s) enough about an issue to make its wishes known” the government does.⁴⁰ In today’s society, where a new opinion poll appears to be released daily, governments often have ready access to the desires held by the public, and are able to determine how strong the public deems a certain issue to

³⁷ Key, V.O., Jr. 1961. *Public opinion and American democracy*. New York: Knopf. Pg. 7

³⁸ Wright, Erikson, and McIver. *Public Opinion and Policy Liberalism in the American States*. *American Journal of Political Science*, Vol. 31, No. 4 (1987) pp. 980-1001. Pg. 981

³⁹ Ibid

⁴⁰ Burstein, Paul. 1981. *The Sociology of democratic politics and government*. In Ralph H. Turner and James F. Short, Jr., eds. *Annual Review of Sociology*. Vol7. Palo Alto: Annual Reviews. Pg. 295

be. With this knowledge, governments have the opportunity to create policies that are consistent with popular belief. In the case of provincial government responses to the *Chaoulli* decision, it is likely that provincial governments would have access to public opinion on the ideas involved in the trial. These opinions could potentially help shape each government's response considering that recent literature suggests that governments pay close attention to public opinion when constructing policies or public responses. Although most research has focused on government response to public opinion at the federal level, Wright, Erikson, and McIver have also examined such phenomena at the sub-national level of the system.

Wright, Erikson, and McIver performed a study that aids in identifying the potential importance of public opinion on government reactions. Wright et al. challenged the traditional manner of studying the impact of public opinion on policy by shifting the focus from its effect on the federal government to its effect on policy in most of the US states. The authors felt that "(W)ith 50 separate state publics and 50 sets of state policies, the states provide an ideal laboratory for comparative research."⁴¹ The change in focus makes the authors' study more closely related to the current examination, as it focuses on public opinion across sub-national governments in a federal system.

Their study discovered that across an impressive range of policies there was a strong correlation between public opinion and government policy choice. The authors posit that political mechanisms such as elections tend to create a set of shared values and beliefs among the electorate and their representatives. People tend to vote in favour of individuals that share similar beliefs and values while rejecting those who do not. Recruiting candidates from the same constituencies as the voters they represent should translate into a shared set of ideas and values, as electorates tend to elect legislators that want the same things they do. Of course, legislators also act based on public opinion

⁴¹ Wright et al. Pg. 981

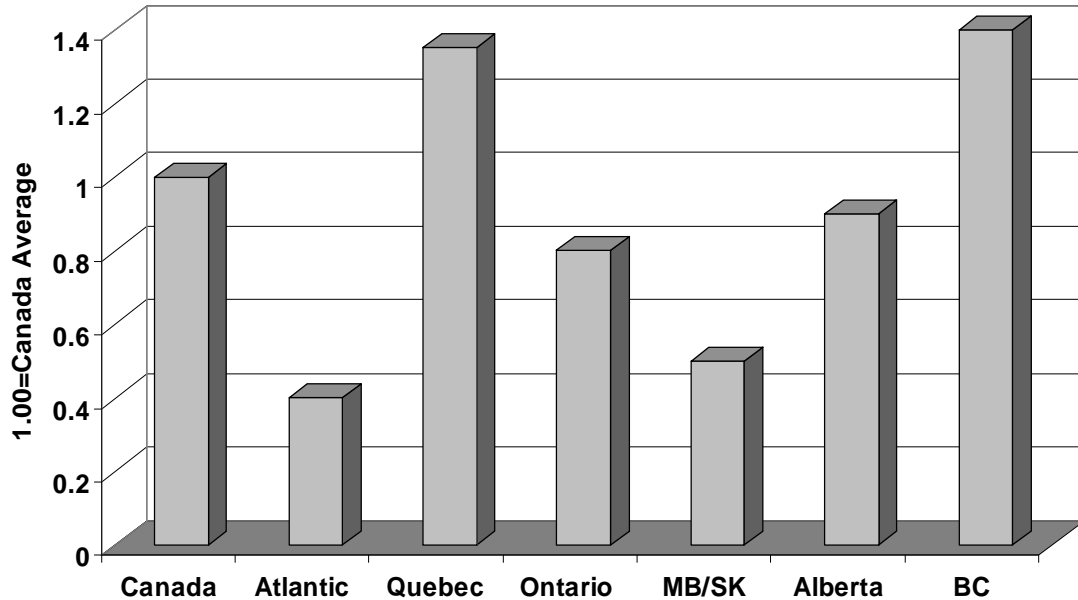
for fear of electoral repercussions.⁴² The demonstrated role of public opinion on policy decisions by Wright et al. may help explain the reactions provided by each provincial government to the *Chaoulli* decision.

Assuming governments are responsive to public opinion, as is suggested by recent literature, public opinion on the *Chaoulli* decision could play a role in how each province reacted to the decision. Public opinion in each province is represented in Tables 1, 2, and 3, as each relates to a separate question regarding the verdict in the case. Table 1 displays the net public opinion in favour of *Chaoulli*.

⁴² Wright et al. Pg. 997

Table 1: Net Public Opinion in Favour of *Chaoulli*

**NET PUBLIC OPINION IN FAVOUR OF CHAOULLI
(Indexed to Canadian Average)**



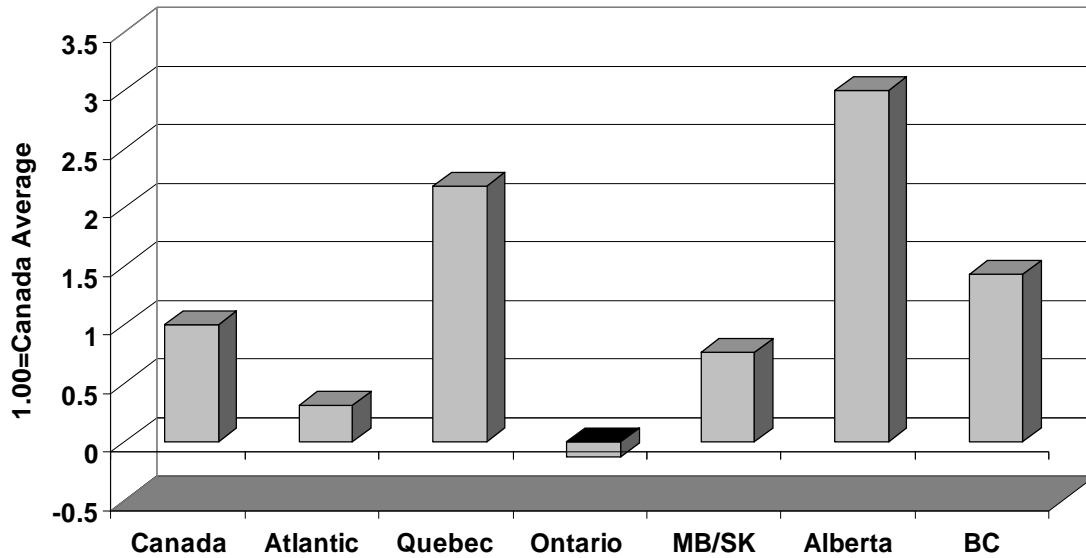
Source: Supplied by Professor Gerard W. Boychuk, University of Waterloo.

The data in Table 1 demonstrate that public opinion on the ruling varied across the provinces, with support in the Atlantic provinces being the lowest, while support in British Columbia was the highest. Based on these results, a hypothesis could be extrapolated predicting that the provinces most likely to oppose the decision are those in which public opinion is least supportive of the decision. In this scenario, one would expect provincial government reaction against the ruling to be the most prominent in the Atlantic provinces, Manitoba, and Saskatchewan given their disapproval. Further, a negative reaction in the British Columbia and Québec is least likely due to the public's approval in each province, with Ontario and Alberta falling somewhere in between.

Table 2 displays the net public opinion based on strongly agreeing or disagreeing with the decision.

Table 2: Net Public Opinion in Favour of *Chaoulli*

**NET PUBLIC OPINION (STRONGLY
AGREE/DISAGREE) IN FAVOUR OF CHAOULLI
(Indexed to Canadian Average)**



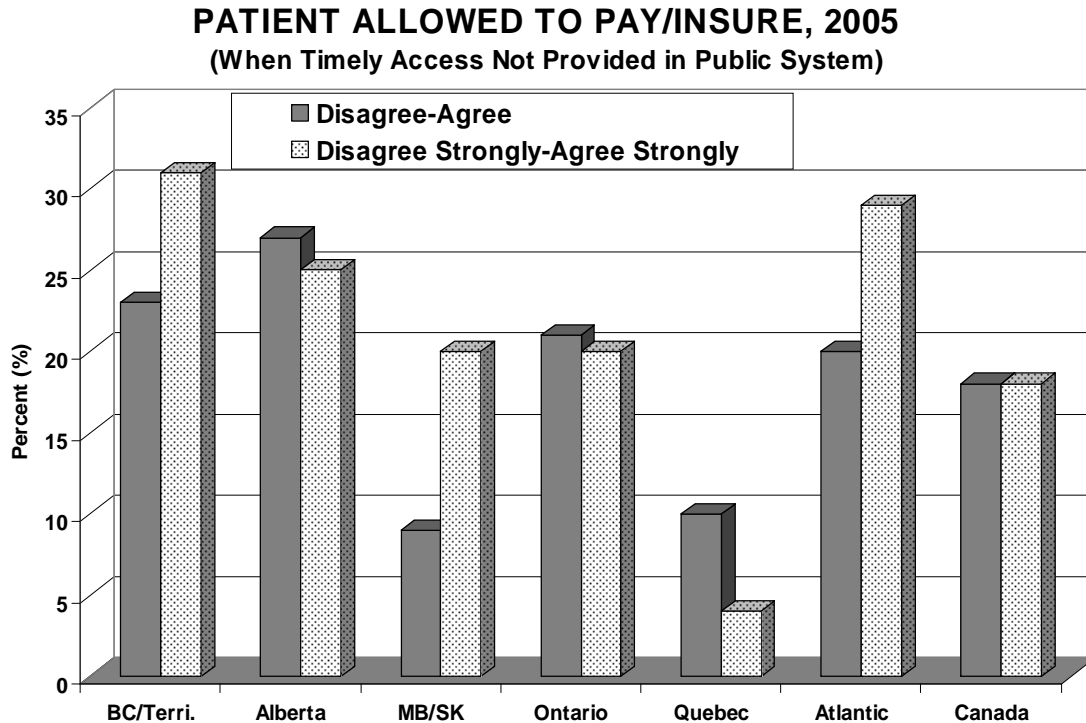
Source: Supplied by Professor Gerard W. Boychuk, University of Waterloo.

This table presents a different perspective of public opinion than that offered in Table 1 as public opinion in Alberta is clearly more supportive than in any other province, while public opinion is clearly the least supportive in Ontario than any other province, with the remaining provinces falling somewhere in between. Public opinion viewed from this angle predicts that Ontario would have a high probability of opposing the decision, while Alberta would have the lowest probability of opposing the decision, leaving the remaining provinces, relative to Alberta and Ontario, to have a medium probability of opposing the decision.

Table 3 examines a different aspect of the decision, focusing on the actual design of healthcare, rather than merely on agreement or disagreement with the decision. Table 3 displays public opinion in each province based on whether a patient should be allowed to pay for insurance when timely

access is not provided in the public system. The table displays both the net opinion and the net strongly agree-strongly disagree opinion.

Table 3: Patient Allowed to Pay/Insure, 2005



Source: Supplied by Professor Gerard W. Boychuk, University of Waterloo.

From the data presented in Table 3, a hypothesis predicting that provinces are reacting to provincial public opinion in respect of allowing third party insurance where services are not offered in a timely manner could be generated. Public opinion in this table presents a different expectation than the previous two tables, as British Columbia appears to be the province with the highest opposition to such a change to the healthcare system with Québec being the least opposed. Thus, public opinion polls have presented three different expectations of government reactions to the decision, which will be outlined in further detail in the following chapter. There will be an analysis completed on each to

determine which of the hypotheses is the best predictor of provincial reactions to the *Chaoulli* decision.

Reviewing recent literature regarding the different aspects of the environment in which the provinces operate in, as well as some of the variables motivating politicians and governments, has created expectations of how each provincial government should react to the decision. The following chapter outlines how each provincial government is expected to react due to their current legislative scheme, their position as a provincial government, their ideological predisposition towards privatized health care, and public opinion within each province.

Chapter 4

Study Outline

The verdict delivered by Supreme Court in the *Chaoulli* case has the potential to change the manner in which a number of provincial governments administer health care. Although the decision currently only applies to Québec, a number of provincial governments have implemented similar bans, and the verdict handed down by the Court could lead to *Chaoulli*-like challenges within these provinces. When the top court in the country hands down a decision affecting the most popular social program in the country, it is expected that provincial governments administering this program will publicly react. Based on the history of protecting provincial jurisdiction, current provincial law regarding private financing in the health care system, provincial ideology, and the influence public opinion holds over each government, it should be possible to predict how each province will react. The manner in which each government reacts should aid in answering the central question of what explains how provincial governments have reacted to the *Chaoulli* decision.

In order to answer this question, four hypotheses have been developed and will be tested, with their results helping to establish the best predictor of government reactions to the *Chaoulli* decision. The four hypotheses are: 1) All provincial governments will react negatively to the decision because elected provincial governments will tend to disagree in principle with the Court making decisions on matters that legislators see as their own prerogative; 2) The further a province moves along the restriction scale⁴³, the more vigorously it should oppose the decision; 3) provincial governments that are more ideologically predisposed to the privatization of health care will welcome the decision; 4) provincial reactions will be driven by public opinion.

⁴³ The Restriction Scale will be explained in detail when viewing Figure 3 below.

Hypothesis #1: The first hypothesis predicts that all provincial governments will react negatively to the decision because elected provincial governments will tend to disagree in principle with the Court making decisions on matters that legislators see as their own prerogative. Since Confederation, provincial governments have believed that matters falling under provincial jurisdiction should be legislated only by the provincial assembly, and should not be subject to modification by any outside entity. The “Provincial Rights Movement,” which began shortly after Confederation, was the initiation of provincial governments to strengthen their power and was based on two principal claims: first, it stood for an expansive understanding of provincial autonomy; and second, it viewed the constitution as a set of formal rules and principles largely independent of broader considerations of liberal democratic theory.⁴⁴ Although it may have been worded differently than how Madison had defined federalism, the substance of the Confederation proposal reflected a comprehension of the Madisonian understanding of the legal basis of federalism. Thus, Section 92 of the *British North American Act* would be written to give the provincial governments “exclusive” authority in local affairs, therefore not allowing interference from the federal government and creating autonomous political societies.⁴⁵

Section 92 was a necessary component of the *BNA Act*. This section provides the “guarantees for local institutions and local laws, which are insisted upon by so many in the provinces”⁴⁶, a feeling echoed in modern day Canada, as the 1990’s saw the growth of the Reform Party, which partly focused on restoring, or gaining power for provincial governments in the West. Although the *Canadian Charter* was developed in order to restore, or increase, national unity, some provincial governments were wary of how these changes may affect their ability to legislate autonomously. A

⁴⁴ Vipond, Robert C. "Constitutional Politics and the Legacy of the Provincial Rights Movement in Canada." *Canadian Journal of Political Science* XVIII:2(1985): Pg. 267

⁴⁵ Ibid 268

⁴⁶ Ibid 273

number of provincial governments feared that the *Charter* could have potentially reduced their autonomy and provided the Supreme Court with an opportunity to shift power away from the provinces to the federal government. However, this is not the only reason provincial governments are suspicious of the Court, as it is appointed by the federal government, thus increasing the likelihood of Justices with a centralist, rather than decentralist view appointed. This arrangement has led to provincial distrust of the Supreme Court.

Therefore, the *Chaoulli* decision represents an occurrence that provincial governments have struggled to prevent since Confederation: an outside entity modifying or rescinding provincial law. Although losing his case in two lower courts, Dr. Chaoulli was able to have the case heard before the Supreme Court of Canada, eventually winning a decision striking down Québec law. The decision currently only applies to Québec. However, due to the provinces' struggle to increase their autonomy, and their distrust of the Supreme Court of Canada, it is expected that all provincial governments will react negatively to the Court interfering in an area provincial governments feel is solely under their prerogative. Tables 4 and 5 demonstrates the predicted outcome for the testing of the first hypothesis:

Table 4: Predicted Reactions to Court Interference in Provincial Jurisdiction (Dichotomous Scale)

Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative	X	X	X	X	X	X	X	X	X	X
Neutral										

Table 5: Predicted Reactions to Court Interference in Provincial Jurisdiction (Relative Scale)

Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative	X	X	X	X	X	X	X	X	X	X
Neutral										
Positive										

Hypothesis #2: The second hypothesis is based on a government's law and predicts that the further a province moves across the restriction scale, based on the potential of a similar ruling in each province, the more vigorously a province should oppose the decision, while those who do not move should react neutrally or positively.

In order to determine the predicted reactions of each provincial government, an examination of how each provincial government regulates physicians must be mapped out. Figure 1 below maps out how strict each provincial government is in the regulation of private insurance coverage for opted-out physicians, while Figure 2 maps out the regulations of private insurance coverage for opted-in physicians, leaving Figure 3 to map out the potential movement for opted-out physicians after the *Chaoulli* decision. These tables will be used to create a *restriction scale*⁴⁷ that will aid in determining the potential effects of the decision in each province.

The restriction scale has been created to designate a point-value based on how each provincial government regulates private financing of publicly-insured services. Provincial governments implementing the most restrictive measures receive a score of 1, with the score increasing as each government becomes more relaxed in its restrictive measures. This scale allows for the examination of current law and to draw a simple picture comparing each provincial government's level of restriction on private insurance. This information is then used in predicting the potential movement each government may have, if a successful court challenge striking down an explicit ban were to occur in that province, thus providing crucial information for this study.

By using the restriction scale to determine the positions of the provincial governments prior to the *Chaoulli* decision, further examination can aid in predicting each province's position after the decision. Therefore, this information helps to determine how high a province's restriction score

⁴⁷ The restriction scale begins on the left with all provinces having explicit bans scoring a 1, and continues to column four indicating no restrictions, which earns a province a score of 4.

would be if there was a similar challenge resulting in the striking down of a provincial ban, allowing us to establish which provincial governments potentially have the most at stake in the case. Mapping out each province's position on the restriction scale prior to the *Chaoulli* decision provides a solid starting point for predicting how provinces will react

Before proceeding to evaluate positions and potential restriction scores, there must be an examination of how each provincial government regulates physicians. Provinces regulate physicians that operate both within and outside of the system. There are many avenues for a province in regards to regulating physicians, and each province varies on their approach, however, through examining each government's method, it appears that provinces vary more on regulating opted-out physicians than they do for opted-in physicians. The regulations for both opted-in and opted-out physicians are examined below.

Opted-Out Physicians

Most provincial governments have suppressed the growth of private insurance for publicly-funded services for opted-out physicians. Prior to the *Chaoulli* decision there were a wide range of ways provincial governments had limited the opportunity for, or the availability of, third-party insurers for publicly-insured services, including regulating private insurance, regulating billing practices, and regulating fees. An examination of the method used by each province to regulate private funding of publicly-insured services for opted-out physicians is necessary in order to determine where each province stands in regards to how they regulate third-party insurance for publicly insured services. This information will help to predict the reaction the provincial government will have to the *Chaoulli* decision, based on their movement along the restriction scale.

The ability for private insurance companies to fund publicly-insured medical services is the aspect of the *Chaoulli* case that has the most direct implication for provincial governments. The potential for private insurance to grow in a province is determined by the degree of the availability of such services. Prior to the Supreme Court's decision, six Canadian provinces (BC, Alberta, Manitoba, Ontario, Québec, and PEI) had a ban on private insurance for publicly-insured services for opted-out physicians. Three of the remaining four⁴⁸ (Nova Scotia, New Brunswick, and Saskatchewan) attempt to hinder the development of private insurance in a variety of ways. Of the five provincial governments implementing explicit bans, Ontario and PEI have measures in place that would limit the scope of private insurance in the absence of an explicit ban,⁴⁹ thus demonstrating even further variance in methods used to regulate opted-out physicians.

The three provinces not implementing an explicit ban on opted-out physicians differ in the regulations regarding non-participating physicians. In Nova Scotia, fees that physicians are allowed to charge are limited to those set in the provincial fee schedule and the fees are reimbursed to the patient. By regulating private insurance in this manner, the government has removed any room, and thus any incentive, for private insurance to develop. Of the three provinces without an explicit ban, Nova Scotia appears to be the strictest in attempting to limit the potential growth of private insurance. New Brunswick and Saskatchewan do not limit the amount that non-participating physicians can bill a patient, thus creating room and incentive, for doctors to provide faster/better service, developing an atmosphere for private insurance to grow.

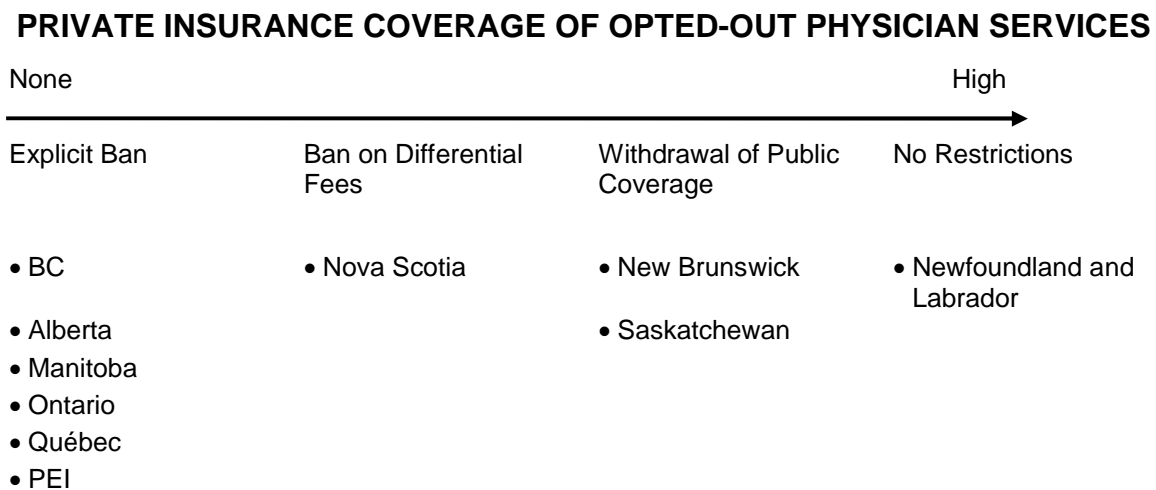
In both Saskatchewan and New Brunswick, opted-out physicians are allowed to bill patients above the provincial fee schedule. However, if this occurs, the government withdraws any public coverage,

⁴⁸ Newfoundland and Labrador currently has no restrictions on private financing of publicly-insured services.

⁴⁹ Boychuk. Pg. 11

forcing the patient to absorb the full cost and thereby leading to the creation of a market for private insurance. The lone province without any restrictions, Newfoundland and Labrador, allows opted-out physicians to set their own fees above the provincial fee schedule, while providing funding for those services up to the amount listed in the fee schedule⁵⁰. This design creates a gap in the cost for the service and thus, an area in which private insurance may flourish by providing insurance to fill such gaps.

Figure 1: Regulation of Private Insurance Coverage, Opted-Out Physicians



Source: Boychuk, Gerard W. "Provincial Approaches to Funding Health Services in the Post-Chaoulli Era." CPSA June: (2006): Appendix Table 1

Opted-In Physicians

The four provincial governments that do not implement an explicit ban on private insurance also differ in terms of their method of regulating participating physicians. As pointed out by Boychuk, “Saskatchewan, Nova Scotia and Newfoundland and Labrador all prohibit opted-in physicians from

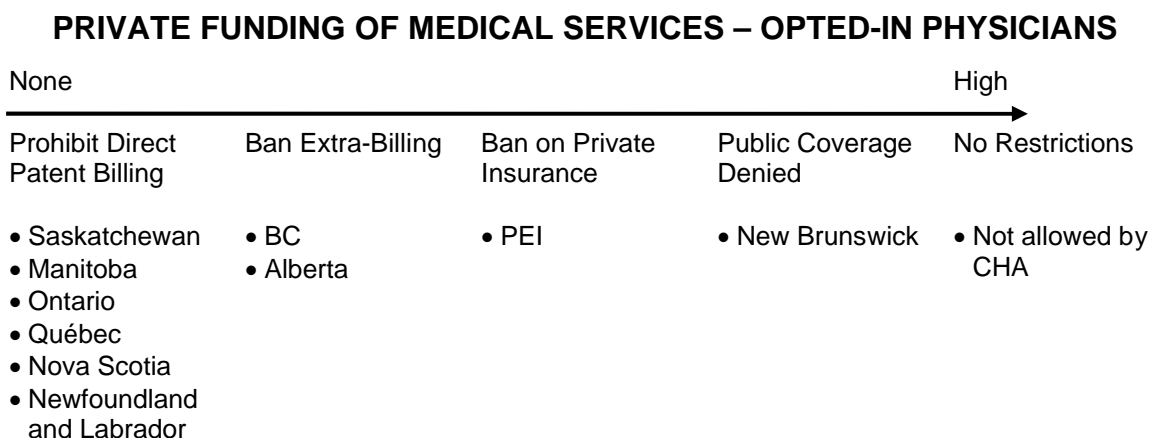
⁵⁰ Ibid Pg. 9

billing patients directly, and as a result, also implicitly ban opted- in physicians from charging differential fees or ‘extra-billing.’”⁵¹ By using this prohibition, Saskatchewan, Nova Scotia and Newfoundland and Labrador basically eliminate any market for privatization and leave little room for the private financing of services. The market that the three governments aim to eliminate can be seen in New Brunswick, which allows opted-in physicians to bill above the provincial fee schedule, but when this is done, withdraws public coverage. Boychuk also notes “PEI also allows all physicians to bill above the provincial rate schedule but withdraws public coverage for such services. Again, this regulation is superfluous in terms of its effect on private insurance in PEI as the latter is explicitly banned.”⁵² Therefore, there is the opportunity for participating physicians to provide publicly-insured services under private insurance, but there is no public subsidization of those services.

⁵¹ Ibid pg. 10

⁵² Ibid

Figure 2: Regulation of Private Funding for Publicly-Insured Medical Services, Opted-In Physicians



Source: Boychuk, Gerard W. "Provincial Approaches to Funding Health Services in the Post-Chaoulli Era." *CPSA June: (2006): Appendix Table 1*

Among the provinces, the variation in the approaches used to regulate private insurance for opted-in physicians, demonstrated in Figure 2, are not as wide ranging as the approaches used to regulate private insurance for opted-out physicians. New Brunswick is the one province that greatly deviates from the norm in this instance. The wide variation in approaches that the provinces take when regulating private insurance makes it difficult to anticipate the overall effect that the *Chaoulli* decision could potentially have across Canada. This is because some provincial governments have additional measures that would limit the scope of private insurance, while others have measures that would make it extremely difficult for private insurance to flourish (Ontario and PEI). Some provincial governments have less stringent measures that would not restrict the growth of private insurance to the same degree as an explicit ban (e.g. British Columbia, Alberta and Québec) while Manitoba, which has an explicit ban but no additional measures should it be struck down, creates a

situation in which private insurance could flourish.⁵³ Mapping out the position of provincial governments on the restriction scale prior to the decision helps to develop expectations as to how each provincial government will react. In order to continue building this picture, attention is now turned to the positions of the provinces after the *Chaoulli* decision

4.1 Post-Chaoulli

Following the Supreme Court decision in the *Chaoulli* case, the health care strategy of a number of provinces could change significantly. Having one public insurer allows for equal access to all citizens, regardless of income, and in order to change this, a challenger would have to convince a court that waiting lists are too long and present a danger to life. Post-*Chaoulli*, the provincial governments implementing explicit bans on private insurance for publicly insured services could potentially face litigation similar to that seen in Québec, and if successful, these challenges could fundamentally change the manner in which provincial governments administer health care schemes. Thus, evaluating the potential movement for a provincial government in the instance of a similar challenge to the province's explicit ban will help predict the type of reaction each provincial government will have to the decision. Each provincial government's predicted change, due to a successful *Chaoulli*-like challenge, is shown in Figure 3.

⁵³ Ibid pg. 11

Figure 3: Regulation of Private Insurance Coverage, Opted-Out Physicians

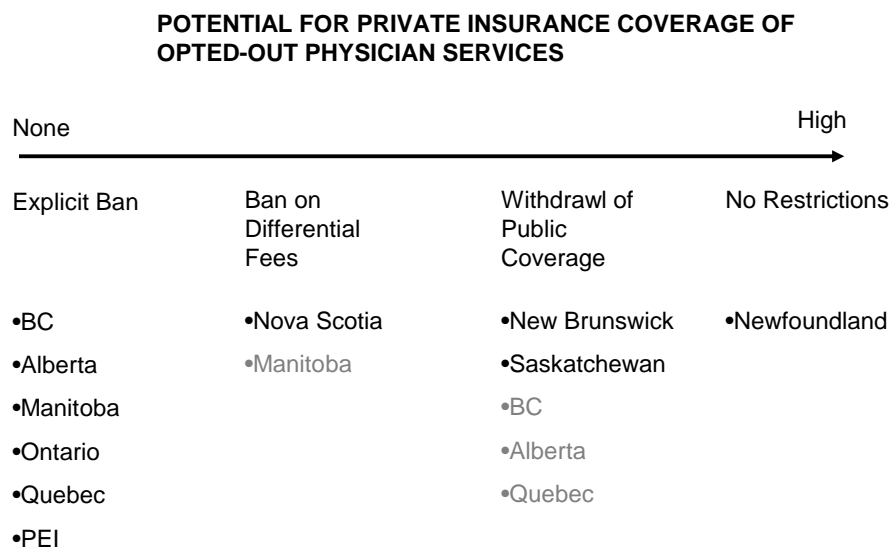


Figure 3 demonstrates the direction along the restriction graph that provinces with an explicit ban would move if such a ban were struck down by the courts. The solid text demonstrates where the province currently lies on the restriction scale, while the shadowed text is used to demonstrate the position the province will take on the scale if the law is struck down. For example, Ontario and PEI would continue to maintain a restriction level of 1 due to contingency and superfluous law already in place in each province, while Alberta, BC, Manitoba and Québec would all find themselves with higher scores.

Examination of Figure 3 predicts that provincial governments with a ban should have a higher probability of opposing the decision, while governments without such a ban will react less strenuously and have a low probability of opposing the decision. Furthermore, Figure 3 also predicts that the higher that a government is on the restriction scale the greater the probability that it will oppose the decision. For example, Manitoba would be considered to have a medium probability of

opposing the decision because it moved only one place on the scale while British Columbia would be considered to have a high probability of opposing the decision because it moved two places on the scale.

4.2 Evaluation of Predicted Provincial Movement

Alberta, British Columbia, Québec & Manitoba

Like Québec, Alberta has a law banning private insurance for publicly insured medical services, found in section 26 of the Alberta Health Care Insurance Act, which dates back to the origins of medicare in 1969.⁵⁴ As is the case in all provinces in Canada, having one public insurer allows for equal access to all citizens, regardless of income and in order to change this, the challenger will have to convince a judge that waiting lists are too long and a danger to life. Ironically, that may be harder to do in Alberta than Québec, given its well-funded public system and the high economic status of the province. However, if such a challenge arises and is successful, Alberta is projected to move from a 1 on the restriction scale to a 3, a significant change in restriction. Due to this fact, one would assume that the government of Alberta would be against a similar successful challenge, with Premier Klein's reaction falling in line with that of the second hypothesis, that is, to react negatively.

British Columbia's situation is very similar to that of Alberta, as it currently has a ban on private insurance for publicly insured services. Like Alberta, a similar successful challenge in BC would project a push from a restriction level of 1 to a restriction level of 3. Such an outcome would

⁵⁴ Marchildon, Gregory P. "Private Insurance for Medicare: Policy and Trajectory in the Four Western Provinces" Access To Care, Access to Justice. Toronto: University of Toronto Press, 2005. Pg. 434

significantly change the manner in which health care is delivered in BC, and according to hypothesis two, such a change would lead to a negative public reaction by the BC government.

In Québec's case, the *Chaoulli* decision deals directly with a Québec law and acting as the defendant in the case clearly demonstrates that the government of Québec would be against the verdict delivered by the Supreme Court. Prior to the decision, Québec had an explicit ban on private insurance for publicly insured services, putting them at a restriction level of 1, however, the verdict handed down by the Supreme Court has projected that Québec will be pushed to a restriction level of 3. Therefore, based on the movement in the restriction scale, the second hypothesis predicts the government of Québec to react negatively to the *Chaoulli* decision.

Finally, the Manitoba government's situation is similar to but not the same as that of Alberta, BC, and Québec. The similarity is that Manitoba also has a ban on private insurance for publicly insured services; however, the difference between its situation and that of the governments of Alberta and BC is that a similar successful challenge in Manitoba would move Manitoba only from a restriction level of 1 to a projected restriction level of 2. However, the second hypothesis predicts that provincial governments with an explicit ban who would find an increase in their restriction level score, would react negatively to the case, regardless of how high the increase. The fact that the government of Manitoba will move a shorter distance across the scale than Alberta, BC, and Québec, dictates, according to the second hypothesis, that the government of Manitoba has a medium probability of opposing the decision. Thus, the government of Manitoba's explicit ban and projected movement on the restriction scale predicts that the government has a medium probability of opposing the decision.

Newfoundland and Labrador, New Brunswick, Nova Scotia, Saskatchewan, Ontario & PEI

Six provinces, Newfoundland and Labrador, New Brunswick, Nova Scotia, Saskatchewan, Ontario and PEI are projected to have their health care strategy unaffected by a similar outcome to a challenge such as the *Chaoulli* case in their province. Currently, New Brunswick, Nova Scotia and Saskatchewan allow for private insurance with some restrictions, with Newfoundland and Labrador being the only province with no restrictions. However, both Ontario and PEI do implement an explicit ban.

Ontario is one of the six provincial governments that implement an explicit ban on private insurance for publicly insured services. However, due to Ontario having contingencies in place, including the *Commitment to the Future of Medicare Act 2004*, Ontario is projected to remain at a restriction level of 1 regardless if a similar ruling were to occur in Ontario. Similarly, PEI has a contingency law in place that would prevent a move further along the restriction scale, putting them in the same position as Ontario. Due to the lack of movement along the restriction scale, neither Ontario nor PEI would increase their restriction score. Although not all six provinces have the same restriction score, each would maintain its *current* score. According to the second hypothesis, this would indicate that all of these provinces would have a low probability of opposing the decision.

Therefore, the Supreme Court decision in the *Chaoulli* case could significantly alter the health care strategies of some provincial governments, while not causing much or any change in others. Based on this hypothesis, there should be very differing reactions between the provincial governments, based on their current policies. Table 6 indicates how each provincial government is expected to publicly react to the decision.

Table 6: Predicted Public Reactions of Each Provincial Government According to the Second Hypothesis

Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative	X	X	X						X	
Neutral or Positive				X	X	X	X	X		X

Hypothesis #3: The third hypothesis predicts that provincial governments that are more ideologically predisposed to the privatization of health care will welcome the decision. Privatized health care occurs in most provinces. It occurs in the form of health care provided outside the realm of provincial insurance programs, such as physiotherapy, dental, and in some cases, optometry. However, some provincial governments have pushed the envelope further than others, allowing for the operation of private clinics that perform services covered under the public health care plan, such as hip and knee replacements, to exist within its provincial borders. The operation of these private clinics provides a provincial government with the designation of ideologically predisposed to the privatization of health care.⁵⁵ Using this guideline, each province is then placed in two separate categories, those that are not ideologically predisposed to privatization (Newfoundland and Labrador, New Brunswick, Nova Scotia, Manitoba, Ontario, PEI, and Saskatchewan) and those that are (Alberta, BC, and Québec). In the case of provincial governments that are not considered ideologically predisposed to the privatization of health care, the third hypothesis predicts that these governments will react negatively to the decision.

⁵⁵ The indicator used to determine whether a provincial government is considered ideologically predisposed to an increase in the role of the private sector in the delivery of health care, is the number of private clinics that government allows to operate within its borders. There are other factors that could be considered, such as rhetorical support, however, these are more difficult to measure, and thus potentially less reliable. The number of private clinics in operation is easily measured and thus the indicator for this study.

British Columbia is an example of one province that employs various private clinics, such as the Cambie Centre. The Cambie Centre provides patients with health care services covered under the public health care scheme, among them such services as hip replacements, which is one of the most backlogged procedures in most provinces. Private clinics such as these have opened and are currently in operation in BC, Alberta, and Québec⁵⁶. By allowing these clinics to open and circumvent the public health plan, these provincial governments have signalled that they are open to the growth of private health care in their province, or at the very least, are ideologically predisposed to an increase in privatization. A ruling such as the *Chaoulli* decision opens the door for these governments to welcome private health care into a more mainstream role, as it now has affirmation from the Supreme Court. Based on the predisposition of these provincial governments, the third hypothesis predicts that these provincial governments will welcome the Supreme Court’s decision in the *Chaoulli* case. Tables 7 and 8 indicate how each provincial government, both ideologically predisposed and not ideologically predisposed, should react to the verdict in the *Chaoulli* decision.

Table 7: Predicted Reaction of Each Provincial Government According to the Third Hypothesis (Dichotomous Scale)

Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative			X	X	X	X	X	X		X
Neutral/Positive	X	X							X	

Table 8: Predicted Reaction of Each Provincial Government According to the Third Hypothesis (Relative Scale)

Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative			X	X	X	X	X	X		X
Neutral										
Positive	X	X							X	

⁵⁶ See Appendix B for a complete list of private clinics in operation in Alberta, BC, Manitoba, and Quebec.

Hypothesis #4: Finally, the fourth hypothesis is that provincial reaction will be driven by public opinion. The predicted outcome is that provincial governments should respond to the *Chaoulli* decision in a manner that reflects public opinion within each province. Due to various polls depicting public opinion on this decision in numerous ways, the fourth hypothesis has been divided into a subset of three separate hypotheses all of which pertain to public opinion. Each of these hypotheses will predict a government's likelihood of opposing the decision as high/medium/low, in relation to the other provinces.

The first of the subset, or hypothesis #4a, predicts that the provinces that are most likely to oppose the decision are provinces in which public opinion is least supportive of the decision. As previously shown in Table 1, support for the decision varied across provinces with the Atlantic provinces, Manitoba, and Saskatchewan being the least supportive of the decision; British Columbia and Québec being most supportive of the decision; and Alberta and Ontario falling somewhere in between. Thus, if hypothesis #4a is correct, relative to the other provinces, there is a high chance that all of the Atlantic provinces, Manitoba and Saskatchewan will oppose the decision; a medium chance that both Alberta and Ontario will oppose the decision; and there is a low chance that British Columbia or Québec will oppose the decision.

Hypothesis #4b predicts that Ontario would have the highest probability of opposing the decision, while Alberta would have the lowest probability of opposing the decision. When public opinion is viewed relative to Alberta and Ontario, the hypothesis predicts that the remaining provinces would all have a medium probability of opposing the decision. Table 2 focuses on net strong opinions rather than only the net opinions (as shown in Table 1), leading to a change in perspective of public opinion in each province.

Finally, hypothesis #4c predicts that provinces are reacting to provincial public opinion concerning allowing third party insurance where services are not offered in a timely manner. Hypothesis #4c focuses on the actual design of healthcare rather than agreement or disagreement with the decision. Table 3 displays public opinion in each province based on whether a patient should be allowed to pay for insurance when timely access is not provided in the public system, and shows both the net opinion and the net strongly disagree-strongly agree opinion. Public opinion in this table presents a different expectation than the previous two tables. In comparison to the other provinces, Québec, Manitoba, and Saskatchewan have the lowest probability of opposing the decision; Ontario has a medium chance of opposing the decision, while the Atlantic provinces, Alberta, and British Columbia have the highest probability of opposing the decision. Table 9 indicates how each provincial government should react to the decision based on the predictions made in hypothesis #4a, #4b, and #4c.

Table 9: Predicted Reactions Based on Public Opinion*

Hypothesis #4a	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
High			X	X	X	X		X		X
Medium	X						X			
Low		X							X	
Hypothesis #4b										
High							X			
Medium		X	X	X	X	X		X	X	X
Low	X									
Hypothesis #4c										
High			X						X	X
Medium							X			
Low	X	X		X	X	X		X		

*High and Medium probability is considered a negative response for the dichotomous scale scoring while Low is considered positive.

However, due to a weakness in the design of hypothesis #2, eight multi-stage hypotheses have been constructed. The multi-stage hypotheses are constructed in order to determine whether combining the

second hypothesis with hypotheses #3 and #4 could increase the predictive capacity of the hypotheses. The weakness in the design of hypothesis #2 is that the hypothesis cannot differentiate between positive and neutral reactions and combining one of the remaining hypotheses in order to aid in predicting whether a province will react positively or neutrally could increase the overall predictive capacity of a hypothesis. Thus, the second hypothesis has been combined with hypothesis #3 and #4, first with the second hypothesis acting as the first stage before application of the third and fourth hypotheses in the first four multi-stage hypotheses, followed by the second hypothesis performing as the second stage in the remaining four. The logic behind such a design would be that provinces may first determine their reaction based on how significant the changes would be for the existing system, then, if the changes do not dictate a negative reaction, they have latitude to consider their ideological position or public opinion.

Table 10 lists how each of the four original hypotheses have been combined to create the multi-stage hypotheses.

Table 10: How the Multi-Stage Hypotheses are Constructed

Hypothesis	Hypothesis Combination
Multi-Stage1	Hypothesis #2+#3
Multi-Stage2	Hypothesis #2+#4a
Multi-Stage3	Hypothesis #2+#4b
Multi-Stage4	Hypothesis #2+#4c
Multi-Stage5	Hypothesis #3+#2
Multi-Stage6	Hypothesis #4a+#2
Multi-Stage7	Hypothesis #4b+#2
Multi-Stage8	Hypothesis #4c+#2

The weakness in the design of the second hypothesis forces each of the hypotheses to be tested twice. As previously noted, the second hypothesis cannot differentiate between a positive and neutral reaction and thus folds both of these reactions together into one category. Due to this limitation, each hypothesis is tested on a dichotomous scale, with each hypothesis having its positive and neutral predictions folded into one category, with a correct prediction scoring a 0 and an incorrect prediction scoring a 2. Following the first test of each hypothesis, hypothesis #1, #3 and #4 will be tested using a relative scale that measures the distance between the prediction and the actual outcome. On this scale, and in order to maintain a comparable set of scores for all of the hypotheses, the relative scale will assign a 0 for a correct prediction, a 1 for a prediction which is incorrect by one column (predicting a positive reaction for a province that has a neutral reaction), and a 2 for the prediction that is incorrect by two columns (a negative prediction where a positive reaction occurs).

Each provincial government's reaction is tested against each hypothesis, the results recorded and compared, leading to the discovery of which of the hypotheses is the most accurate predictor of provincial reactions to the *Chaoulli* decision.

Chapter 5

Provincial Reactions to the Supreme Court Decision in the *Chaoulli* Case

In order to answer the question of what explains how provincial governments have reacted to the *Chaoulli* decision, hypotheses have been developed on how governments are expected to act or react to different facets of the decision. In order to determine if these hypotheses are correct, each one must be tested individually, the results compiled, and then analyzed to establish a pattern of reactions that should help explain how provincial governments reacted to the decision. The reactions of the provincial governments are drawn from four sources, the media, legislature debates, court documents, and, where possible, questionnaires answered by government representatives.

The media being surveyed will be a major newspaper within each province, and in order to provide a national scope, *The Globe and Mail* and *The National Post* will be examined to supplement provincial newspapers. The legislature debates under examination will cover the first two weeks of debates following the verdict being handed down by the Court, allowing for those legislatures not in session at the time of the verdict to be examined when the legislature returns from recess. A complete survey of these sources provides the proper scope and depth to test each hypothesis. Testing the reactions of each government in a variety of ways allows for independent streams of evidence to be combined, analyzed, and will provide an answer to what lead the provincial governments to react in the manner in which they did to the Supreme Court decision in the *Chaoulli* case

This chapter focuses on the reaction that each provincial government delivered in response to the decision, and displays each reaction on a province-by-province basis. In the following chapter, the

provincial government reactions will be analyzed and compared to the predictions made by each hypothesis in order to determine which provincial governments reacted in the predicted manner.

Alberta: It is well known across Canada that the government of Alberta, and its leader, Premier Ralph Klein, have been in favour of expanding the role of the private sector in their health care system for some time. When the decision was delivered, Klein immediately gave the response the public had been anticipating. The Premier's Office issued a public statement the day the verdict was delivered, and Premier Klein also took the liberty of writing an editorial piece, jointly published in the Calgary Herald and the Edmonton Journal a month later, demonstrating the Premier's satisfaction with the decision. The press release states:

The Supreme Court of Canada has ruled that Canadians have the right to timely access to health services. This includes ruling that prohibiting patients from using private financing and private insurance where wait times are excessive, violates the Charter of Rights. The Alberta government is very pleased with this decision. Premier Klein fully supports any change that will allow Canadians more choice in getting timely access to the health care services they want.⁵⁷

The press release clearly points out that the Alberta government is pleased with the decision and that Klein supports the change that the decision made by the Court will make.

The Alberta government was the only government implementing an explicit ban at the time of the decision that reacted positively to the verdict handed down by the Court. As pointed out by journalist Jason Markusoff, "While other provincial governments reacted with anger, frustration or confusion Thursday to the Supreme Court of Canada's rebuke of the nation's medicare system, Alberta

⁵⁷ Alberta Government. News Release, "Premier's Statement, Supreme Court Chaoulli Decision" (9 June 2005)

expressed delight”⁵⁸. Klein also saw the decision as a victory against those in favour of a single-tier universal health care system who, he believes, create myths to scare citizens of the idea of privatization “In rendering their judgment, the Supreme Court also took special care to demolish the myths that the defenders of the status quo have been telling Canadians for years.”⁵⁹ However, the ringing endorsement provided by the Alberta government towards the Court was out of character.

In the past, the government of Alberta has proven to be unwavering in its rejection of the idea of judicial policy-making. Alberta has long been against the Court involving itself in the area of policy-making, demonstrated most clearly during the gay marriage debates, which ultimately led to the implementation of the *Civil Marriage Act*.⁶⁰ Alberta has maintained that areas under provincial jurisdiction should be reserved for the legislature, and Premier Klein even considered invoking the Notwithstanding Clause, which he later found would be of no use, as the legislation fell under the federal government’s purview. Still, in the instance of the *Chaoulli* case, the government of Alberta finally gives a ringing endorsement for judicial activism.

A review of the debates that occurred in the Alberta legislature helps to provide a more full account of the reaction given by the Alberta government. The legislature provides the opportunity for debate about various topics and was the arena in which the opposition MLA’s first had the opportunity to question Premier Klein on his ringing endorsement of the Supreme Court’s decision. The verdict was one of the first topics debated upon the legislature’s return, with Klein being questioned as to why the Alberta government would be encouraging citizens to purchase private insurance that they may not be eligible for due to physical ailments. Klein argued that the only thing the Alberta government had

⁵⁸ Markusoff, Jason. “Alberta Government very pleased with this decision” Edmonton Journal (10 June 2005) A3 at A3

⁵⁹ Ibid

⁶⁰ Civil Marriage Act. Department of Justice Canada http://www.justice.gc.ca/en/news/nr/2005/doc_31376.html (Accessed on 1 November 2006)

adopted was “policy to pursue the investigation into making our system consistent with the Supreme Court of Canada ruling. Now, the Supreme Court of Canada ruled in the case of a Québec patient that that person was entitled to alleviate his pain and his suffering if he wanted to buy private insurance or pay for it out of his own pocket.”⁶¹ The first session was just the beginning of Alberta defending the Court’s decision in the legislature.

British Columbia: The first response provided by the provincial government of British Columbia was to act as an intervener in the case. BC was joined by Ontario and Saskatchewan in an effort to show support for Québec’s position, defending Québec’s law and their legislative authority, against the Court’s interference. The BC Attorney General (AG) noted that the decision should be a legislative and not a legal matter, “determining the mix between public involvement and private involvement in the health care system is a matter uniquely for the Legislature and the executive government to decide.”⁶² The BC AG goes on to point out that if the decision were to come under the purview of the Court, “the concept of constitutionality protected by liberty does not include a right to enter into contracts or practice a profession”, and therefore the individual has not been deprived of his s.7 Charter rights.⁶³ In both Factums, the governments of BC and Ontario affirm their belief that the Court should not have interfered in an area of provincial jurisdiction, pointing out that the matter is better left up to the legislature rather than the court system, and that Québec is within its right to implement an explicit ban on private insurance for publicly-insured services. Publicly stated opposition to the decision followed this act as an intervener.

⁶¹ Alberta Legislature. Alberta Hansard. 15 November 2005. Pg. 4

⁶² BC Intervener Factum, pg. 12

⁶³ Ibid pg. 14

In his immediate public response to the ruling, Premier Gordon Campbell voiced his displeasure for the ruling stating, "I don't think we want two-tier health care, one tier for Québec and another tier for the rest of the country."⁶⁴ Further, Health Minister Abbot pointed out that focus should remain on the public health care system, "We really need to focus in our ministry on the public health care system. That is the key part of our mandate. British Columbia has a world-class health care system but there is always room for improvement in every system, even a \$12.5-billion system."⁶⁵ Therefore, the government acted as an intervener in the case and made clear statements exhibiting its displeasure with the Court's decision, thus demonstrating a negative reaction to the verdict handed down.

Manitoba: The NDP provincial government's response to the ruling is in line with the province's history, as Manitoba has had an explicit ban on private insurance longer than any other western province, a history that dates back to the 1950's.⁶⁶ In Doer's immediate response to the *Chaoulli* decision, he stated that the Supreme Court's decision did not mark the end of Canadian medicare. Instead, he viewed it as an "alarm bell" concerning the importance of reducing waiting lists, especially for elective procedures such as hip and knee replacements.⁶⁷ Further to Doer's comments, Manitoba's Minister of Health Tim Sale demonstrated the concern the decision raises, "we may need to change how we protect medicare but there was determination from the two [Provincial Health Ministers] that I spoke with, and I've certainly heard the same from Saskatchewan, we want to defend

⁶⁴ Bueckert, Dennis. "Top Court OK's Two-Tier Care. Door Open to Private, Parallel Health System." The Province (10 June 2005) A15

⁶⁵ Bailey, Ian. "New Health Minister "Jazzed" at Task Facing Him." The Province (17 June 2005) A3

⁶⁶ Marchildon, Greg. "Private Insurance for Medicare: Policy History and Trajectory in the Four Western Provinces". Access to Care, Access to Justice. Toronto: University of Toronto Press. 2005. Pg. 248

⁶⁷ Cotter, John. "Provinces Respond to Ruling". The Province (9 June 2005)

a universal health care system”.⁶⁸ However, Premier Doer expected a similar challenge to be brought in Manitoba, as Manitoba has the same type of anti-private insurance law as Québec.⁶⁹

With this problem in mind, Doer pointed to the fact that Manitoba already uses private care; Manitoba paid for patients to go to Thunder Bay and North Dakota for radiation treatments in 1999 when waiting lists in Manitoba were more than eight weeks.⁷⁰ That policy, plus improving Manitoba's facilities, means all patients can now be treated in Winnipeg after waiting less than a week. This fact is important to keep in mind, as Justices McLachlin and Major point out in their decision that a ban on private health insurance “might be constitutional in circumstances where health care services are reasonable as to both quality and timeliness.”⁷¹ The Manitoba government’s negative reaction to the decision was not limited to comments made in the media.

To further supplement the statements in the media, Sale reinforced the public reaction of the Manitoba government in the legislature. In his first opportunity to speak on the topic in the legislature after the Court’s decision, Sale was quick to echo Premier Doer’s statements regarding previously using private health, by stating that,

We do contract with private facilities. We contract with Western Surgical Centre for eye cataract surgery, for example, among other procedures. We do not have an ideological block against working with the private sector in order to perform volumes of service that we wish to purchase. It has been done for years under numbers of

⁶⁸ Bueckert, Dennis. “Provinces to discuss how to respond after high court health care ruling” The Province (10 June 2005) C-Health News http://chealth.canoe.ca/health_news_details.asp?news_id=14804&news_channel_id=0. (Accessed 24 August 2006)

⁶⁹ Rabson, Mia. “A \$3-B prescription Doctor’s alliance sets out plan to reduce health-care waits”. Winnipeg Free Press (11 August 2005). A3

⁷⁰ Bueckert, ‘Provinces to discuss how to respond after high court health care ruling’ Canadian Press (10 June 2005) C-Health News http://chealth.canoe.ca/health_news_details.asp?news_id=14804&news_channel_id=0. (Accessed 24 August 2006)

⁷¹ *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 158

government. We are not ideologically bound. What we believe in is
medicare.⁷²

Thus, the Manitoba government's comments in the media and the legislature have clearly been in opposition to the decision rendered by the Supreme Court.

Newfoundland and Labrador: Newfoundland and Labrador is a province in which the Supreme Court's decision did not initiate a great debate about the possibility of introducing private financing for publicly-insured services. Health Minister John Ottenheimer's immediate response to the Supreme Court decision demonstrated no real level of concern for any impact on the province. In his initial response, Ottenheimer pointed out that the decision must be kept in the context of the jurisdiction stating, "It's important to recognize and remember that yesterday's decision out of the Supreme Court of Canada dealt with Québec law, a Québec plaintiff and the Québec Charter of Rights."⁷³ Further, Ottenheimer pointed out that the outcome of the case might benefit Newfoundland and Labrador and the public system, as "This (decision) gives us the opportunity to recommit to public health care and to strengthen (it) in our province. That's what this decision has done for us and, certainly, for me as the minister in this area."⁷⁴ Ottenheimer continued to be the point man for the government of Newfoundland and Labrador on the decision.

Further demonstrating commitment by the Newfoundland and Labrador government, Ottenheimer continued by pointing out that "this government is firmly entrenched in its belief that what is in the

⁷² Manitoba Legislature. 13 June 2005. Pg. 13

⁷³ Gillingham, Rosie. "Province Committed to Public System." The Telegram (11 June 2005) A3

⁷⁴ Ibid

best interest of Newfoundland and Labradorians is a well-funded and well-respected public health-care system.”⁷⁵

New Brunswick: As in Newfoundland and Labrador, the decision handed down by the Court did not initiate a great debate within the province of New Brunswick. Premier Bernard Lord initially stated that his government was not sure what the implications of the decision would be in New Brunswick, beyond greater debate about wait times and private health care. Following this, Lord showed his commitment to the public system,

We certainly want to maintain in New Brunswick a public-funded health-care system that is accessible to all and of high quality. At the same time I don't think we can close our eyes to the fact that there is private sector involvement in health care now already throughout this country. I think it's going to open up a new debate on health care in this country.⁷⁶

However, Lord's commitment to medicare may have appeared stronger in his initial reaction than comments delivered later that month at the Council of Atlantic Premier's meeting.

At the Council of Atlantic Premier's meeting, Premier Lord revealed that his government perceived a greater role for the private sector in the delivery of health care in New Brunswick. Lord pointed out that private insurers are involved in health care and that the debate on private health care should be based on “what role the private sector plays, not whether there is a role.”⁷⁷ Lord's comment exhibited that his government had been clearly pushing for an open debate on exploring the potential role that the private sector could play in improving the health care system. Although pushing to open up the

⁷⁵ Ibid

⁷⁶ Chiarelli, Nina. “Supreme Court Ruling Creates Confusion; Future of Medicare in Doubt after Decision on Private Insurance.” The New Brunswick Telegraph Journal (10 June 2005) A1-A2

⁷⁷ McHardie, Daniel. “Private sector no ‘bogeyman’ to health care.” Time and Transcript (26 June 2005) A1

debate on the role the private sector should play in healthcare, the government of New Brunswick's reaction appears to be best classed as neutral, due to their initial show of support for medicare, followed by Lord's comments at the Council of Atlantic Premier's meeting. The government of New Brunswick did not clearly exhibit either a positive or a negative reaction to the decision.

Nova Scotia: Following the trend set by Newfoundland and Labrador and New Brunswick, the decision in the *Chaoulli* case provided for only slightly higher levels of debate in the province of Nova Scotia. The initial reaction of Premier Hamm was to express that he did not anticipate the decision to have an immediate or drastic impact on the health care system.⁷⁸ Hamm noted that even without the introduction of private financing of publicly-insured services, "all of us are struggling... There's a lot of discussion as to whether in 10 years we'll be able to look after all the seniors that we will have in our provinces. There has to be a move towards a system that realistically will meet the needs of the future. The need is there. The ability to meet the need is in question."⁷⁹

Ontario: The government of Ontario had a ban on private insurance for publicly-insured services and during the Ontario government's intervention in the case, insisted that the matter is legislative and not judicial. Similarly to the Factum provided by the BC Attorney General, the Factum provided by the Attorney General of Ontario concludes that the issue at bar is not a legal matter, but rather a legislative one. In the Factum, the Ontario AG concludes that:

An ideal model of health care is not a principle of fundamental justice because it is not a legal principle; it is a quintessential policy issue on which there is no consensus except on the highest level of abstraction. As such, it is too imprecise to provide any measure of guidance to the judicial system in assessing the competing claims in

⁷⁸ "Atlantic Premiers Welcome Debate on Health Care." Daily News (16 June 2005) pg. 8

⁷⁹ Ibid

the health care system. Consequently, even if there were a deprivation of life, liberty, or security of the person, it has not been shown that such deprivation is not in accordance with the principles of fundamental justice.⁸⁰

In the Ontario Factum, the government affirms their belief that the Court should not have interfered in an area of provincial jurisdiction, pointing out that the matter is better left up to the legislature rather than the court system and that Québec is within its right to implement an explicit ban on private insurance for publicly-insured services.

Since taking over as Premier, Dalton McGuinty has been a staunch supporter of a single-payer system, and has moved to implement measures to protect the current system of delivery in Ontario from private insurance interests. This commitment to a single-payer system was demonstrated by Health Minister Smitherman after the *Chaoulli* decision was handed down, when he stated that “Our government firmly believes in a single-payer, universally accessible health-care system, where the breadth of your wallet is not a determinant in whether you're getting more timely or higher quality access to health-care services.”⁸¹ In line with comments made by Smitherman, Premier McGuinty spoke out and further demonstrated the provincial government’s desire to prevent private insurance from infiltrating Ontario, “We understand that Ontarians are concerned about wait times, but I want them to know they have a government in place that is attacking this in a very aggressive way.”⁸² The Ontario government continued to demonstrate that they do not agree with the decision in the legislature.

Debates within the legislature offered another avenue for the Ontario government to display their negative reaction to the decision made by the Supreme Court and cement their position as a supporter

⁸⁰ Ontario Intervener Factum pg. 18

⁸¹ Editorial. “Tough Choices in health care”. Toronto Star (15 July 2005) A18

⁸² Dawson, Anne and Natalie Alcoba.. “We're not going to have a two-tier health care system': Prime minister speaks out: Opposition blames Martin for \$25B cuts during the Nineties”. National Post (10 June 2005). A4

of a universal health care system. The day the decision was handed down, McGuinty took the opportunity in the legislature to re-affirm Ontario's position. Upon being asked if he could reassure Ontarians that universal, one-tiered, accessible and publicly administered health care would remain protected in Ontario, McGuinty responded,

Ontario's position on medicare is very clear and, in fact, it is now embodied in Ontario law, our Commitment to the Future of Medicare Act. This law protects universal, public medicare. It ensures that all Ontarians have access to quality care, regardless of their ability to pay. Medicare, in combination with our law, the Commitment to the Future of Medicare Act, gives expression to what I think is a universal desire on the part of Ontarians to ensure that we are giving good, quality health care to all Ontarians, regardless of their ability to pay.⁸³

Premier McGuinty further went on to acknowledge that the main factor in the Court's decision had to do with wait times and assured Ontarians that his government would be attacking this problem aggressively. Therefore, after examining comments made in both the media and the legislature, it is clear that the government of Ontario was vocal in its displeasure with the Court's decision.

PEI: In the PEI government's first response to the Court's decision regarding the possible introduction of private financing for publicly-insured services, Premier Binns held that he did not see any room for private payments in PEI's system.⁸⁴ The PEI government is against allowing private funding to infiltrate the public system, however, not all the criticism the PEI government shelled out regarding the decision was directed at the Court, but also addressed what the government saw as the original cause of the problem, a cut in federal funding to the provincial governments. This fact is highlighted when Premier Binns opined that the federal government's lack of funding has pushed the provinces to explore other avenues in order to make the system efficient. In regards to federal

⁸³ Ontario Legislature. Hansard. 9 June 2005, Pg. 29

⁸⁴ Ryder, Ron. "Ruling May Affect PEI, Critics Say." Guardian (11 June 2005) A1

funding, Premier Binns said “I’m going to be calling on the federal government to bring funding back to where it used to be. There was an increase in funds but that just brought us back to where we were in 2000, counting for inflation. Health transfers have been in decline basically since the mid 1990s,”⁸⁵ thus representing a negative reaction demonstrated by the government of PEI. Therefore, the PEI government reacted negatively to the decision, but utilized the opportunity to also show displeasure with the cuts made by the federal government, hinting that this may be the cause for the long waiting lists.

Québec: Naturally, since the case dealt with a law the Québec provincial government had implemented as part of their provincial health care scheme, the government reacted negatively to what they viewed as interference by the Court in an area under their sanction. The Québec government opposed the challenge, and as pointed out in Chapter 2, was successful twice in lower courts before Dr. Chaoulli’s appeal reached the Supreme Court of Canada. Based on the fact that the Québec government acted as a defendant in three court cases against Dr. Chaoulli, it is clear that the Québec government does not agree with the decision handed down by the Supreme Court.

The government’s immediate response showed its disgruntlement with the decision when Premier Charest declared that his government is “going to do what we have to do to preserve the health-care system in which we believe”⁸⁶, demonstrating Québec’s belief in the single-payer model of health care in Canada. However, this is only where the response began, as soon the Charest government’s negative reaction extended to discussions of implementing the Notwithstanding Clause in response to

⁸⁵ Ibid

⁸⁶ CBC News (www.cbc.ca/news/background/healthcare/ruling_reaction.html) (Accessed on May 8th, 2006)

the *Chaoulli* decision.⁸⁷ Mere consideration of such a move demonstrates the degree to which the Québec government was dissatisfied with the decision, and the level of importance this issue holds with the Québec government. Aside from the blanket use of the Notwithstanding Clause in Québec in protest to the adoption of the *Canadian Charter*, the Notwithstanding Clause has only been invoked once in Saskatchewan due to the level of potential political fallout that it carries. Thus, due to the immediate response of the Québec government and discussions invoking the Notwithstanding Clause in response to the decision, the Québec government clearly responded in a negative fashion to the decision.

Saskatchewan: The government of Saskatchewan acted as an intervener in the case although it did not implement a similar ban. When examining the Factum the Saskatchewan Attorney General (AG) provided the Court, it is clear that the position the Saskatchewan government takes is that the *Charter* allows considerable latitude for governments to make significant and highly complicated social policy decisions, and that laws such as this, should be under legislative purview. As well, the Factum demonstrates that the Saskatchewan government feels that the issues are very narrow and that “a general free-standing right to publicly funded health care is not at issue” and that “the Québec laws impugned in this appeal fall within exclusive provincial legislative jurisdiction” as well as not engaging s. 7.⁸⁸ The goal of achieving a universal publicly funded health care system is at the centre of Saskatchewan’s health care legislative history, and it is clear the government does not agree with the interference of the Court in regards to Québec’s law.

When the intervening provinces and Québec were unsuccessful in their defense of the Québec law, the Saskatchewan government delivered its reaction in the media. Premier Lorne Calvert has been

⁸⁷ Markusoff. A3

⁸⁸ Ibid pg. 3

one of the most vocal opponents of the decision from the moment it was rendered, stating that he was very ‘disturbed’ about the possibility of the *Chaoulli* decision “opening the door to an Americanized health-care system in Canada.”⁸⁹ Following this, Calvert speculated on the ‘legislative tools’ that might be available at both levels of government to ‘strengthen’ the universal, single-payer system.⁹⁰ However, Calvert also pondered aloud “how a decision based on the Québec charter and affects a Québec issue, what implications that will have for Saskatchewan, and (the) provinces generally, these at this moment are in some ways unclear to me”, demonstrating that Saskatchewan, although clearly opposing the decision, had not yet figured out a legislative response to the decision.

The government of Saskatchewan continued to react negatively to the decision. Premier Calvert was very specific in pointing out “if there are measures that we will need to take to preserve the system, I want to look at every opportunity,”⁹¹ demonstrating that the government did not want to consider allowing any further opening of private insurance to the public health care system under any circumstances. Considering the list of the statements made in the media by the government of Saskatchewan, it is clear that, although not containing any explicit ban on private insurance, the government of Saskatchewan reacted negatively to the decision.

⁸⁹ Ibid

⁹⁰ Kyle, Anne and Pamela Cowan.. “Public health his priority” Leader-Post (10 June 2005).

A1

⁹¹ Ibid

5.1 E-Mail Administered Questionnaires

Following the public reactions, an e-mail administered questionnaire was sent out to each province. In the cases of Newfoundland and Labrador and Nova Scotia, both provincial governments answered the questions asked via the e-mail administered questionnaire regarding their reactions to the decision, while the province of Alberta responded only to the e-mail, not the questionnaire attached.⁹² E-mail was chosen as the method of interviewing due to the advantage of being able to rapidly survey, an attribute well documented in previous research.⁹³ E-mail surveys can be done faster than telephone surveys and are inexpensive since they eliminate postage, printing, and/or interviewer costs.⁹⁴ For the e-mail interview, a set of default questions was constructed for each provincial government, with minor changes made for specific provinces where appropriate. The questionnaires were sent to the Premiers and Health Ministers of each province on 17 June 2006, with follow up emails sent to provinces that did not provide a response on 4 July 2006. Research demonstrated it be a strategic initiative to include a letter outlining the project with the questionnaires, as this has been demonstrated to help elicit responses from elites.⁹⁵ Aside from the three provinces that responded to the e-mail, and the provinces that did not respond to either the first or follow-up email, “gatekeepers” provided responses on behalf of their government, indicating that either the government was too busy or the issue was too sensitive to comment on.

⁹² See Appendix C for a list of questions asked of each government and the responses provided.

⁹³ Kittleston, Mark J. 1995. “An Assessment of the Response Rate via the Postal Service and E-mail.” Health values 18:27-29

⁹⁴ Schaefer, David R. and Don A. Dillman. “Development of a Standard E-Mail Methodology: Results of an Experiment.” The Public Opinion Quarterly, 62(1998): 378-397

⁹⁵ Peabody, Robert L. "Interviewing Political Elites." Political Science and Politics 23(1990): 451-455.

Gatekeepers are individuals who guard the door to the elite, protecting them from the hassle of having to respond or interact with every individual that would like a moment of their time. The researcher should anticipate gatekeepers when attempting to conduct interviews with elites and have a strategy to circumvent them prepared.⁹⁶ The suggested step to overcome gatekeepers is to travel to the elite's office,⁹⁷ however, elites in this study were located all across Canada, thus removing any possibility of travelling to their office. Due to the work of gate-keepers, the response rate to the questionnaires was low. In the Case of Alberta, Health and Wellness Minister Iris Evans responded to the initial e-mail, but did not address any of the questions in the questionnaire, instead focusing on reiterating the message of the government of Alberta's strategy for the Third-Way.

In the case of Newfoundland and Labrador, Karen Stone, Legislative Consultant for the Department of Health and Community Services stated simply that the government did not feel that the Supreme Court overstepped its boundaries in striking down a law approved by a provincial legislature.⁹⁸ In the response provided by the province of Nova Scotia, Jim Houston, Director of Intergovernmental Affairs, Nova Scotia Department of Health, when faced with the exact same question, merely stated, "The Supreme Court of Canada is the highest court in the nation. Its decisions are final and binding."⁹⁹ Thus, although these provincial governments did not react negatively to the decision as predicted, they did not react positively either. However, there is no concrete explanation for why these provincial governments reacted in the manner they did. There is the possibility that provincial governments have come to accept that laws may be challenged in the Supreme Court, and that a ruling striking down legislation, if provided, cannot be challenged and is simply a matter of governing in modern Canada.

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Ibid

Now that each provincial government has provided their reactions, each reaction must be analyzed against the predictions made in Chapter 3. This analysis will take place in the following chapter.

Chapter 6

Findings

This chapter compares the reactions of the provinces with the predicted reactions generated by the four hypotheses outlined in Chapter 4. Following this, the chapter combines these four hypotheses into a set of multi-stage hypotheses in order to test their combined predictive capacity.

Hypothesis #1:

The first hypothesis predicted that all provincial governments would react negatively to the decision because elected provincial governments would tend to disagree in principle with the Court making decisions on matters that legislators see as their own prerogative. The scores this hypothesis received are displayed in tables 11 and 12 below, in both dichotomous and relative scores respectively.¹⁰⁰ As noted earlier, a dichotomous score is used in order to provide an opportunity to have all of the original four hypotheses' scores comparable, as hypothesis #2 folds the dependant variable into two categories rather than three. However, a relative scale will also be used to measure the accuracy of the other variables in predicting provincial reactions to the decision. An analysis of each hypothesis will be made with a score provided to each. The scores are then compared, and a determination of the most accurate hypothesis made.

Table 11: Hypothesis #1 Score (Dichotomous Scale)

Predicted Reaction	Alb. 2	BC 0	Man. 0	Nfld. 2	NB 2	NS 2	Ont. 0	PEI 0	Que. 0	Sask. 0
Negative	X	X	X	X	X	X	X	X	X	X
Positive										
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.

¹⁰⁰ Each table lists the score the provincial government receives directly under their name tab, and lists the overall score immediately following each table.

Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Hypothesis #1 scores an 8.

Table 12: Hypothesis #1 Score (Relative Scale)

Predicted Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative	2	0	0	1	1	1	0	0	0	0
Neutral	X	X	X	X	X	X	X	X	X	X
Positive										
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative		X	X				X	X	X	X
No Reaction				X	X	X				
Positive	X									

Hypothesis #1 scores 5.

The government of Alberta contravened the hypothesis because the decision could aid in justifying any potential expansion of the private sector in health care. Alberta, like all other provincial governments, was predicted to react negatively to the decision because an outside entity was interfering in its jurisdiction. However, the decision came at an opportune time for the government of Alberta as it was introducing reforms to public health care in Alberta. Such a decision gave the government judicial affirmation from the highest court in the country and thus led to a positive reaction to the decision. This demonstrates that ideology was more of a concern to the province of Alberta than the interference of an outside entity, even though Alberta had demonstrated its opposition to such interference during the gay marriage debate. In a similar vein, three of the Atlantic provinces, Newfoundland and Labrador, New Brunswick, and Nova Scotia all reacted neutrally to the decision. The decision did not have any potential effect on the manner in which any of these provinces implemented their health care plans, thus leading them to react neither negatively nor positively.

Although not the weakest performer in terms of overall score, hypothesis #1 is the weakest hypothesis by design. Simply determining that governments will all react negatively to an outside entity interfering in an area of provincial jurisdiction is a far too simplistic approach. Although such an expectation was generated through recent literature, the weakness of the hypothesis, the fact that it cannot explain variation, makes the hypothesis not suitable for determining governmental behaviour. In addition, even if scoring perfect, this hypothesis would only be applicable to situations in which governments have to make policy decisions when an outside entity interferes in their jurisdiction. Thus, the inability of the hypothesis to explain variation removes it from consideration for the most accurate predictor of governmental behaviour.

Hypothesis #2:

The second hypothesis predicted that the further a provincial government moved along the restriction scale the more vigorously a province would oppose the decision, while provinces not moving across the scale, regardless of whether they implement a ban or not, would react in a neutral or positive manner. The results of the hypothesis received are listed in Table 13 below.

Table 13: Hypothesis #2 Score (Dichotomous Scale)

Predicted Reaction	Alb. 2	BC 0	Man. 0	Nfld. 0	NB 0	NS 0	Ont. 2	PEI 2	Que. 0	Sask. 2
High	X	X	X						X	
Medium										
Low				X	X	X	X	X		X
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Hypothesis #2 scores 8.

It was expected that all provincial governments moving any distance across the restriction scale would react negatively to the decision but Alberta once again contravened the hypothesis and reacted

in a positive manner. Alberta's positive response may have been anticipated by some due to the Alberta government's proposal to institute its "Third-Way" health care reform package. Although the government of Alberta has been one of the most critical provinces towards outside interference in the province's affairs, the Court's decision comes at an opportune moment and provides judicial affirmation from the top court in the country.

Of the provinces predicted to react in a neutral or positive manner, Ontario, PEI and Saskatchewan all contravened the hypothesis and responded negatively. According to the restriction scale, although Ontario and PEI both implement laws banning private insurance for publicly-insured services, they both also implement laws that would prevent an increase in the role private insurance plays within the province if those bans were to be struck down. These laws would prevent either province from moving along the restriction scale, leading the second hypothesis to predict that neither would react negatively to the decision. However, both provinces did react negatively to the decision, thus contravening the hypothesis. Of the three provinces, Saskatchewan is the only one that does not implement a ban similar to the one under challenge in the *Chaoulli* case. Still, the government of Saskatchewan was one of the most vociferous opponents of the decision, going as far as to intervene on behalf of the government of Québec.

Of the three remaining provinces predicted to react either neutrally or positively, Newfoundland and Labrador, New Brunswick, and Nova Scotia all reacted in the predicted manner. Still, although not raising the score for the hypothesis, the inability of the hypothesis to predict whether these provinces would react neutrally or positively leaves the accuracy of the second hypothesis to predict provincial reactions on its own in question.

Hypothesis #3:

The third hypothesis to be tested is that provincial governments that are more ideologically predisposed to the privatization of health care will welcome the decision made by the Supreme Court. Following the prediction of the third hypothesis, it was expected that all three provincial governments considered to be ideologically predisposed to privatization, Alberta, BC, and Québec would welcome the decision. The verdict handed down in the Chaoulli case, if embraced, provides each provincial government with the opportunity to legitimize their practice of allowing private clinics to operate within their provincial boundaries. The score for hypothesis #3 can be seen below in tables 14 and 15.

Table 14: Hypothesis #3 Score (Dichotomous Scale)

Reaction	Alb. 0	BC 2	Man. 0	Nfld. 2	NB 2	NS 2	Ont. 0	PEI 0	Que. 2	Sask. 0
Negative			X	X	X	X	X	X		X
Neutral										
Positive	X	X							X	
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Hypothesis #3 scores a 10

Table 15: Hypothesis #3 Score (Relative Scale)

Reaction	Alb. 0	BC 2	Man. 0	Nfld. 1	NB 1	NS 1	Ont. 0	PEI 0	Que. 2	Sask. 0
Negative			X	X	X	X	X	X		X
Neutral										
Positive	X	X							X	
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative		X	X				X	X	X	X
Neutral				X	X	X				
Positive	X									

Hypothesis #3 scores a 7

British Columbia and Québec, both predicted by the third hypothesis to respond positively to the decision contravened the hypothesis by reacting negatively. The governments of British Columbia and Québec both passed on a chance to legitimize the operation of private clinics in their province, connoting that each government based its decision on a factor other than their ideological disposition. Also, the third hypothesis also predicted Newfoundland and Labrador, New Brunswick, and Nova Scotia to react negatively to the decision, however, all three reacted neutrally to the decision, thus, hypothesis three is not a very accurate predictor of provincial reactions to the decision.

Finally, all non-ideologically predisposed provincial governments, Manitoba, Newfoundland and Labrador, New Brunswick, Nova Scotia, Ontario, PEI, and Saskatchewan reacted in the predicted, negative or neutral manner.

Hypothesis #4:

The fourth hypothesis to be tested is based on the idea that *provincial reaction will be driven by public opinion*, and has a subset of three hypotheses. The first of the subset, hypothesis #4a, predicts that the provinces that are most likely to oppose the decision are those where public opinion is least supportive of the decision. Following this prediction, it is expected that, relative to the other provinces, there is a high chance that the Atlantic provinces, Manitoba and Saskatchewan will oppose the decision; a medium chance that both Alberta and Ontario will oppose the decision; and there is a low chance that British Columbia or Québec will oppose the decision. The results for hypothesis #4a are shown below in tables 16 and 17.

Table 16: Hypothesis #4a Score (Dichotomous Scale)

Hypothesis #4a	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
	2	2	0	2	2	2	0	0	2	0
High			X	X	X	X		X		X
Medium	X						X			
Low		X							X	
Actual Reaction										
Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Hypothesis #4a scores a 12

Table 17: Hypothesis #4a Score (Relative Scale)

Hypothesis #4a	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
	1	2	0	1	1	1	1	0	2	0
High			X	X	X	X		X		X
Medium	X						X			
Low		X							X	
Actual Reaction										
Negative		X	X				X	X	X	X
Neutral				X	X	X				
Positive	X									

Hypothesis #4a scores a 9

Of the provinces with a high chance of opposing the decision, only three, Manitoba, Saskatchewan and PEI, reacted in the predicted manner. The remaining Atlantic provinces, Newfoundland and Labrador, New Brunswick, and Nova Scotia all contravened the prediction and reacted neutrally. The provinces given a medium chance to oppose the decision were split, as Ontario reacted negatively to the decision, while Alberta contravened yet another hypothesis by reacting positively to the decision. Finally, of the provinces predicted to have a low probability of opposing the decision, both British Columbia and Québec contravened the hypothesis and reacted in a negative manner. Thus, hypothesis #4a was not a very accurate predictor of provincial reactions to the decision.

The second hypothesis in the subset, hypothesis #4b, predicted that Ontario would have the highest probability of opposing the decision and that Alberta would have the lowest probability of opposing

the decision. When public opinion is viewed relative to both Ontario and Alberta, it appears that the remaining eight provinces would have a medium probability of opposing the decision. The results for the hypothesis are displayed in tables 18 and 19.

Table 18: Hypothesis #4b Score (Dichotomous Scale)

Hypothesis #4b	Alb. 0	BC. 0	Man. 0	Nfld. 2	NB. 2	NS. 2	Ont. 0	PEI 0	Que. 0	Sask. 0
High							X			
Medium		X	X	X	X	X		X	X	X
Low	X									
Actual Reaction										
Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Hypothesis #4b scores 6

Table 19: Hypothesis #4b Score (Relative Scale)

Hypothesis #4b	Alb. 0	BC 1	Man. 1	Nfld. 0	NB 0	NS 0	Ont. 0	PEI 1	Que. 1	Sask. 1
High							X			
Medium		X	X	X	X	X		X	X	X
Low	X									
Actual Reaction										
Negative		X	X				X	X	X	X
Neutral				X	X	X				
Positive	X									

Hypothesis #4b scores 5

Hypothesis #4b was correct in predicting the government of Ontario’s negative reaction as well as that of the government of Alberta, which was predicted to react the most positively of any of the provinces. The scoring between the two scales varies greatly for this hypothesis, as the two scales correctly predict different reactions. Since focus is placed on the relative scale score, the hypothesis scores very well. However, the score for hypothesis #4b is misleading, as the hypothesis is based on strong public opinion, rather than just public opinion. In this case, the only two provinces displaying

any real preference were Ontario and Alberta, while the hypothesis' predictions for the other provinces is a safe one.

By predicting all of the other provinces to react neutrally, the hypothesis protects itself against making any real claims in which it could potentially receive the highest wrong score. Therefore, in the current case, the hypothesis has the opportunity to get two wrong for the price of one, while also having the opportunity to score correctly with neutral predictions, which it does in three cases. Thus, although receiving a low score and appearing to be a strong predictor of governmental reactions to the decision, the hypothesis is relatively weak, as it does not take the chance to make correct predictions, and would not, in general, be a good predictor of governmental behaviour.

Finally, the third hypothesis in the subset, hypothesis #4c, predicts that provinces are reacting to provincial public opinion in regards to allowing third-party insurance where services are not offered in a timely manner. The focus of hypothesis #4c is slightly different from the other two in the subset, as it focuses on the actual design of healthcare rather than agreement or disagreement with the decision. Hypothesis #4c predicted that Québec, Manitoba, and Saskatchewan would have had the lowest probability of opposing the decision; Ontario was predicted to have a medium chance of opposing the decision; while the Atlantic provinces, Alberta, and British Columbia were seen to have the highest probability of opposing the decision. The results for the hypothesis are found in tables 20 and 21.

Table 20: Hypothesis #4c Score (Dichotomous Scale)

Hypothesis #4c	Alb.	BC	Man.	Nfld.	NB.	NS.	Ont.	PEI.	Que.	Sask.
	2	0	2	2	2	2	0	0	2	2
High	X	X		X	X	X		X		

Medium							X			
Low			X						X	X
Actual Reactions										
Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Hypothesis #4c scores 14

Table 21: Hypothesis #4c Score (Relative Scale)

Hypothesis #4c	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
	2	0	2	1	1	1	1	0	2	2
High	X	X		X	X	X		X		
Medium							X			
Low			X						X	X
Actual Reaction										
Negative		X	X				X	X	X	X
Neutral				X	X	X				
Positive	X									

Hypothesis #4c scores 12

Of the six provinces predicted to react negatively, only British Columbia and PEI reacted in the predicted manner, while none of the provinces predicted to react in a positive manner did so.

Considering that hypothesis #4c only correctly predicted two reactions to the decision, missing four provinces by one column and another four by two columns (based on the relative scale), it cannot be considered a very accurate predictor of provincial reaction to the decision.

6.1 Multi-Stage Hypotheses

The weakness in the design of the second hypothesis is that the hypothesis cannot differentiate between positive and neutral reactions and combining one of the remaining hypotheses in order to aid in predicting whether a province will react positively or neutrally could increase the overall predictive capacity of a hypothesis. Thus, the second hypothesis has been combined with hypothesis #3 and #4, first with the second hypothesis acting as the first stage before application of the third and fourth hypotheses in the first four multi-stage hypotheses, followed by the second hypothesis performing as the second stage in the remaining four. All multi-stage hypotheses are graded solely on the relative scale.

Multi-Stage1 (hypothesis #2 + #3)

Multi-stage1 begins its test by first applying the second hypothesis to determine how accurate this stage is at predicting negative reactions. In the second stage, the third hypothesis is applied to those provinces that the second hypothesis has predicted will react either neutrally or positively, in order to determine if the third hypothesis can correctly predict whether these provinces will react either neutrally or positively. The results for Multi-Stage1 are displayed below in a Table 22 (two-parts).

Table 22: Multi-Stage1 (Hypothesis #2+#3)

Predicted Reaction	Alb. 2	BC 0	Man. 0	Nfld. 0	NB 0	NS 0	Ont. 2	PEI 2	Que. 0	Sask. 2
High	X	X							X	
Medium			X							
Low				X	X	X	X	X		X
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.

Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Reaction	Nfld. 1	NB 1	NS 1
Negative	X	X	X
Neutral			
Positive			
Actual Reaction			
Negative			
Neutral	X	X	X
Positive			

Multi-Stage1 scores 11

When the second hypothesis is applied during the first stage, Alberta, Ontario, PEI and Saskatchewan are predicted incorrectly. The second hypothesis correctly predicts three provinces, Newfoundland and Labrador, New Brunswick, and Nova Scotia to react either neutrally or positively, leaving these three provinces to be tested by the third hypothesis during the second stage.

The second stage of the hypothesis does not correctly predict the reactions of the Newfoundland and Labrador, New Brunswick, and Nova Scotia as the third hypothesis predicted that these provinces would react in a negative manner, however, all three provided a neutral reaction to the decision.

Thus, the final score for Multi-stage1 is 11.

Multi-Stage2 (hypothesis #2 + #4a)

Multi-Stage2 begins by applying the second hypothesis during the first stage, followed by the application of hypothesis #4a to those provinces predicted to react either neutrally or positively by the second hypothesis. Hypothesis #4a predicts that provinces that are most likely to oppose the decision are those in which public opinion is least supportive relative to the other provinces. The results for Multi-Stage2 are listed below in Table 23.

Table 23: Multi-Stage2 Score (Hypothesis #2+4a)

Predicted Reaction	Alb. 2	BC 0	Man. 0	Nfld. 0	NB 0	NS 0	Ont. 2	PEI 2	Que. 0	Sask. 2
High	X	X							X	
Medium			X							
Low				X	X	X	X	X		X
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Reaction	Nfld. 1	NB 1	NS 1
High	X	X	X
Medium			
Low			
Actual Reaction			
Negative			
Neutral	X	X	X
Positive			

Multi-Stage2 scores an 11

The results for Multi-Stage2 are identical to those of Multi-Stage1. During the first stage, Alberta, Ontario, PEI, and Saskatchewan are predicted incorrectly, while in the second stage, hypothesis #4a incorrectly predicts the responses of the three provinces that the second hypothesis could not differentiate between, predicting negative responses where neutral ones were provided. Thus, Multi-Stage2 also scores an 11.

Multi-Stage3 (hypothesis #2 + #4b)

Similar to the previous multi-stage hypotheses, the second hypothesis is applied during the first stage of testing and is then followed by the application of hypothesis #4b during the second stage, which bases its predictions on strong public opinion. The results for Multi-Stage3 are presented below in Table 24.

Table 24: Multi-Stage3 Score (Hypothesis #2+#4b)

Predicted Reaction	Alb. 2	BC 0	Man. 0	Nfld. 0	NB 0	NS 0	Ont. 2	PEI 2	Que. 0	Sask. 2
High	X	X							X	
Medium			X							
Low				X	X	X	X	X		X
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Reaction	Nfld. 0	NB 0	NS 0
High			
Medium	X	X	X
Low			
Actual Reaction			
Negative			
Neutral	X	X	X
Positive			

Multi-Stage3 scores a 8

Following the application of the second hypothesis, and the four incorrect predictions made, hypothesis #4b improves upon the success found in the two previous multi-stage hypotheses. The three provinces the second hypothesis has difficulty differentiating predictions for, Newfoundland and Labrador, New Brunswick, and Nova Scotia, are all correctly predicted to react neutrally by hypothesis #4b. This correct application during the second stage of the hypothesis leads to a score of 8 for Multi-Stage3.

Multi-Stage4 (hypothesis #2 + #4c)

Multi-Stage4 is the last of the multi-stage hypotheses to apply the second hypothesis during the first stage of testing. The second stage of testing will see the application of hypothesis #4c, which predicts that provinces are reacting to provincial public opinion in regards to allowing third party

insurance where services are not offered in a timely manner. The results for Multi-Stage4 are displayed below in Table 25.

Table 25: Multi-Stage4 Score (Hypothesis #2+#4c)

Predicted Reaction	Alb. 2	BC 0	Man. 0	Nfld. 0	NB 0	NS 0	Ont. 2	PEI 2	Que. 0	Sask. 2
High	X	X							X	
Medium			X							
Low				X	X	X	X	X		X
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative		X	X				X	X	X	X
Positive/Neutral	X			X	X	X				

Reaction	Nfld. 1	NB 1	NS 1
High			
Medium			
Low	X	X	X
Actual Reaction			
Negative			
Neutral	X	X	X
Positive			

Multi-Stage4 scores a 11.

Although the results for Multi-Stage4 are the same as those of both Multi-Stage1 & Multi-stage2, they are the same for different reasons. As in three preceding multi-stage hypotheses, the first stage of the process yielded a score of 8, as Alberta, Ontario, PEI and Saskatchewan were predicted incorrectly by the second hypothesis. During the second stage, Multi-Stage4 gained another 3 points for its overall score. However, rather than predicting Newfoundland and Labrador, New Brunswick, and Nova Scotia to react negatively, the second stage predicted these provinces to react positively to the decision. Yet, a neutral response from the three provincial governments left Multi-Stage4 with the same score as Multi-Stage1 and Multi-Stage2, 11.

Multi-Stage5 (hypothesis #3 + #2)

Multi-Stage5 is the first of the multi-stage hypothesis to apply the second hypothesis in the second stage rather than the first. In this instance, hypothesis #3 will first be applied, receiving a score based on how accurately it predicts the positive and neutral responses of the ten provincial governments. Following this, the provinces the first stage predicts to have negative responses will be tested by the second hypothesis. The results of Multi-Stage5 are presented below in Table 26.

Table 26: Multi-Stage5 Score (Hypothesis #3+#2)

Reaction	Alb. 0	BC 2	Man. 0	Nfld. 1	NB 1	NS 1	Ont. 0	PEI 0	Que. 2	Sask. 0
Negative			X	X	X	X	X	X		X
Neutral										
Positive	X	X							X	
Actual Reaction	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
Negative		X	X				X	X	X	X
Neutral				X	X	X				
Positive	X									

Reaction	Man 0	Ont 2	PEI 2	Sask. 2
High				
Medium	X			
Low		X	X	X
Actual Reaction				
Negative	X	X	X	X
Positive/ Neutral				

Multi-Stage5 scores a 13

The first stage of Multi-Stage5 produces five errant predictions, as BC and Québec are completely wrong, while Newfoundland and Labrador, New Brunswick, and Nova Scotia are wrong by one column. The second stage finds three more predictions that are incorrect. Ontario, PEI, and Saskatchewan are predicted to have a positive or neutral reaction, yet the government reacted

negatively to the decision. The combined incorrect predictions have lead to a score of 13 for Multi-Stage5.

Multi-Stage6 (hypothesis #4a + #2)

Multi-Stage6 applies hypothesis #4a during the first stage and the second hypothesis during the second stage. Those provinces that are predicted to react negatively during the first stage are tested by the second hypothesis during the second stage, with the total score from the first and second stages producing an overall score for Multi-Stage6. The results are displayed in Table 27.

Table 27: Multi-Stage6 Score (Hypothesis #4a+#2)

Hypothesis #4a	Alb. 1	BC 2	Man. 0	Nfld. 1	NB 1	NS 1	Ont. 1	PEI 0	Que. 2	Sask. 0
High			X	X	X	X		X		X
Medium	X						X			
Low		X							X	
Actual Reaction										
Negative		X	X				X	X	X	X
Neutral				X	X	X				
Positive	X									

Reaction	Man 0	PEI 2	Sask. 2
High			X
Medium	X		
Low		X	
Actual Reaction			
Negative	X	X	
Positive/Neutral			X

Multi-stage6 scores 15

The first stage of the hypothesis proves to be very inaccurate in its predictions, scoring only three correct predictions, Manitoba, PEI, and Saskatchewan, while the remaining seven provinces are

incorrect by at least one category. The second stage continues the poor accuracy level, incorrectly predicting both PEI and Saskatchewan. Therefore, the final score for Multi-Stage6 is 15.

Multi-Stage7 (hypothesis #4b + #2)

The first stage of Multi-Stage7 applies hypothesis #4b, which focuses on strong public opinion regarding the decision, and then applies the second hypothesis during the second stage, which focuses on testing the negative reactions predicted during the first stage. The results are listed in Table 28.

Table 28: Multi-Stage7 Score (Hypothesis #4b+#2)

Hypothesis #4b	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
	0	1	1	0	0	0	0	1	1	1
High							X			
Medium		X	X	X	X	X		X	X	X
Low	X									
Actual Reaction										
Negative		X	X				X	X	X	X
Neutral				X	X	X				
Positive	X									

Reaction	Ont. 2
High	
Medium	
Low	X
Actual Reaction	
Negative	X
Positive/ Neutral	

Multi-stage7 scores 7.

The first stage of the hypothesis correctly predicts only five provincial reactions, however, still manages to gain a low score. The first stage predicted that Ontario would be the only provincial

government to respond negatively to the decision, but incorrectly predicts the Ontario reaction during the second stage. Thus, the score for the hypothesis is low, considering its lack of accuracy in *correctly* predicting government reactions. The reason for such a low score can be attributed to the fact that aside from Ontario and Alberta, the first stage of the hypothesis predicts all provincial government reactions to be neutral. Such a tactic results in a low score, as the most points the hypothesis can gain due to an incorrect score in most instances is one, while the odds would suggest that a few provincial governments should respond in the manner predicted. Thus, although not correctly predicting many provincial reactions, the hypothesis still receives a low score of 7.

Multi-Stage8 (hypothesis #4c + #2)

Finally, Multi-Stage8 is the last of the hypothesis to be tested. The hypothesis first tests how correctly hypothesis #4c can predict positive and neutral reactions, and then applies the second hypothesis to those provinces that the first stage predicts to react negatively. The results for Multi-Stage8 are shown in table 29.

Table 29: Multi-Stage8 Score (Hypothesis #4c+#2)

Hypothesis #4c	Alb.	BC	Man.	Nfld.	NB	NS	Ont.	PEI	Que.	Sask.
High	0	2	0	1	1	1	1	2	0	0
Medium			X						X	X
Low	X	X		X	X	X	X	X		
Actual Reaction										
Negative		X	X				X	X	X	X
Neutral				X	X	X				
Positive	X									

Reaction	Man.	Que.	Sask.
High	0	0	2
Medium	X	X	

Low			X
Actual Reaction			
Negative	X	X	X
Positive/ Neutral			

Multi-stage8 scores 10

Multi-Stage8 begins poorly, by only making four correct predictions during the first stage, although only two predictions were incorrect by two columns. The situation does improve slightly during the second stage. The second stage does correctly predict the reactions of both Manitoba and Québec, but does add another incorrect prediction to the hypothesis, as Saskatchewan, predicted to have a positive or neutral reaction to the decision, reacted negatively to the decision. The incorrect prediction for the province of Saskatchewan raised the score of the hypothesis to 10.

6.2 Which Hypothesis Performed Best?

Following the testing of each hypothesis, the scores can be calculated and compared; making it possible to determine which hypothesis is the most accurate predictor of provincial reactions to the *Chaoulli* decision. In order to clearly compare the results, Table 30 lists how many correct predictions each hypothesis made when positive and neutral were folded together into one option; the score each hypothesis received on the dichotomous scale; how many correct predictions were made by each hypothesis when positive and neutral were not folded together; the dichotomous score for each hypothesis; the score each hypothesis would receive based on the amount of correct/incorrect predictions made; and finally, the relative score for each hypothesis.

Table 30: Overview of Hypothesis Scores

Hypothesis #	Dependant Variable (DV) folded Right/wrong	DV Folded Right/Wrong Score	DV not folded Right/Wrong	DV Not Folded Right/Wrong Score	Relative Score
1	6/4	8	6/4	8	5
2	6/4	8			8
3	5/5	10	5/5	10	7
4a	4/6	12	3/7	14	9
4b	6/4	8	5/5	10	6
4c	3/7	14	2/8	16	12
Multi-stage1 (2+3)			3/7	14	11
Multi-stage2 (2+4a)			3/7	14	11
Multi-stage3 (2+4b)			6/4	8	8
Multi-stage4 (2+4c)			3/7	14	11
Multi-stage5 (3+2)			2/8	16	13
Multi-stage6 (4a+2)			1/9	18	15
Multi-stage7 (4b+2)			4/6	8	7
Multi-stage8 (4c+2)			3/7	14	10

Of the hypotheses scored on the dichotomous scale, hypothesis #2 and #4b correctly predicted the most provincial reactions with six¹⁰¹. This led both to receive a score of 8, slightly better than hypothesis #3, which received a 10 for five correct predictions. As previously mentioned, the dichotomous scale was used in order to allow for comparable results, as hypothesis #2 could not differentiate between positive and neutral reactions, thus forcing a folding of the dependent variable from three categories into two. However, scoring the remaining hypotheses on a relative scale allows for more accurate scores, as some hypotheses may gain credit for predictions due to the folded

¹⁰¹ Hypothesis #1 also tied for the best score but due to its inability to explain variation is not considered as one of the most accurate predictors.

dependant variable, while other hypotheses may gain added points for wrong predictions by scoring a 2, while they may have only scored a 1 on the relative scale. Although a dichotomous score is more appropriate for hypothesis #2, all other hypotheses are scored on the relative scale, which is the score that will receive more attention.

All of the hypotheses were scored on the relative scale, with hypothesis #4b receiving a score of 6, the lowest of all the hypotheses. The closest hypotheses to hypothesis #4b were both hypothesis #3 and Multi-Stage7 (which applies hypothesis #4b as the first step before applying hypothesis #2), which scored 7. However, a facet of hypothesis #4b removes its opportunity to be considered the most accurate hypothesis. Similar to hypothesis #1, hypothesis #4b appears to expect all provincial governments to react in one particular way, except for Ontario and Québec. Hypothesis #4b predicts that all other provincial governments will react in a neutral manner. This prediction allows this hypothesis to score well on a relative scale, as with eight of the predictions being neutral, the hypothesis only requires a small number actually react that way in order to have a very low score. After correctly predicting Alberta and Ontario's reactions, this hypothesis only required a correct prediction for three more provinces. This allowed it to be wrong in five different instances, yet still receive a higher score than other hypotheses that predicted an equal amount of correct reactions. Thus, the scoring system benefits hypothesis #4b but does not make this hypothesis a very accurate predictor of governmental behaviour.

This leaves Multi-Stage7 and hypothesis #3 as the most accurate predictors of provincial reactions. However, the first component of Multi-Stage7 is hypothesis #4b, which, as listed above is not a very good predictor of governmental behaviour because of its near blanket prediction of neutral reactions, which allows it to take advantage of the scoring system. Including hypothesis #2 in the process raises the validity of Multi-Stage7's score slightly, but Multi-Stage7's use of hypothesis #4b in the initial stage of the process, and its relative scale scoring advantage of predicting almost all of the provinces

to react neutrally, removes the hypothesis from consideration for the most accurate predictor of provincial reactions. This leaves hypothesis #3, based on ideology and correctly predicting five provincial reactions, as the most accurate predictor of provincial reactions based on its low relative scale score of 7.

Upon concluding the analysis of each hypothesis, it is clear that hypothesis #2 and hypothesis #3 are the most accurate predictors of governmental behaviour. Although limited by its design, hypothesis #2 appears to be the most accurate predictor on the dichotomous scale. The dichotomous scale scoring system demonstrated that hypothesis #2 predicted the most correct reactions of the original four hypotheses. Due to its inability to be scored on the relative scale, because of the required folding of the dependant variable, hypothesis #2 was combined with other hypotheses in order to test whether or not such combinations could potentially increase predictive capability. Analysis has determined that in the case of using the relative scale, the multi-stage hypotheses had a wide variety of scores, with those testing the second hypothesis first averaging a better score than when applied second. In addition, when using the dichotomous scale, it was clear that the second hypothesis outperformed hypotheses focused on ideology and public opinion in terms of both correct predictions and score. Therefore, in regards to the dichotomous scale, it is clear that a government's current legislative position appears to be the most accurate predictor of how a government will react or decide on important policy decisions.

Although hypothesis #3 was outperformed by hypothesis #2 on the dichotomous scale and in terms of overall correct predictions, hypothesis #3 received the lowest score on the relative scale among those accepted. Analysis of the scorecard demonstrates that hypothesis #3 performed better than all of the original and multi-stage hypotheses in terms of overall score, and did so by a large margin in some instances. Hypothesis #3 correctly predicted the reactions of five provincial governments, but almost as important, only had two completely wrong predictions. The hypothesis predicted that both

British Columbia and Québec would welcome the decision due to their ideological predisposition towards increasing the private sector role in health care, however, both of these provincial governments reacted negatively to the decision. Therefore, it is clear that in terms of the relative scale, hypothesis #3 was the most accurate predictor of provincial reactions to the decision.

Chapter 7

Conclusions

After testing the predictions made in each of the hypotheses against the actual reactions of the provincial governments, two hypotheses could be considered the most important predictor of a government's reaction to the *Chaoulli* decision, a government's law and ideology. The score each hypotheses received, as presented in the scorecard in the previous chapter, demonstrates that, although other variables played a role in how provincial governments reacted to the decision, a government's law was clearly the most accurate predictor of governmental behaviour in terms of making the most correct predictions and scoring the lowest on the dichotomous scale, while a government's ideology was the lowest scoring variable on the relative scale.

The study's main goal has been to investigate why provincial governments reacted to the *Chaoulli* decision as they did. In order to make this determination, four hypotheses were developed, based on the current literature, and some of these were combined to create multi-stage hypotheses with the goal of increasing the hypotheses' predictive capacity. These hypotheses were then tested against the actual reactions provided by each provincial government in response to the Court's verdict.

Most of the hypotheses received better than average scores when graded on both the dichotomous and relative scales. Generally, provincial governments were not happy with the Court ruling on provincial law. Although some governments welcomed the decision, in general, provincial governments remained wary of the Court's involvement in matters falling in provincial jurisdiction. Each provincial government's response generally fell in line with their laws on private insurance and the degree to which the striking down of provincial bans on private insurance would directly affect

their own system of regulation. Some provincial governments chose to welcome the decision even though it contravened their current legislative position; but the reverse was also true, as some provinces reacted negatively to the decision, although it did not go against a law in place in the province. A government's ideological predisposition may have persuaded Alberta to react positively or Ontario to react negatively, but did not persuade other provinces, notably Québec and British Columbia, to react in a particular way. Finally, some provincial governments reacted in line with public opinion within the province, while others did not. In almost every case, provincial government reactions could often be linked to a set of predictions made by one of the hypotheses, with exceptions in every case.

The general implications of the study can be drawn from the scorecard presented in the previous chapter. The most important factor determining governmental behaviour appears to be either a government's current law or ideology. Both of these variables produced the best score on one of the two scales, but a government's law also made the most correct predictions. The performance of the second hypothesis demonstrates that a government's current law is usually a strong indicator of how a government will behave. The suggestion that there should be a change to a law, especially when driven by a court, would be generally received with antagonism. However, there are situations in which a government may welcome such change, either because a government may have inherited a policy that for ideological reasons it wants to change, or because the change may be popular with the public. Although these other variables did not produce as many correct predictions as a government's current law when tested against each government's reaction, it is clear from the scores displayed in the scorecard that one or more of the governments will be influenced by one of the variables before they make policy decisions. Nevertheless, governments generally prefer to make changes to their laws on their own terms, and thus, as demonstrated through the testing of each hypothesis, one of the most accurate methods to predict a government's behaviour is a government's current law.

Although a government's ideology did not lead to as many correct predictions of provincial reactions as a government's law, hypothesis #3 scored the lowest on the relative scale, thus making it one of the most accurate predictors of provincial reactions to the decision. The results from the scorecard demonstrate that governments often consider their ideological preferences when making policy decisions. An example of ideology acting as the driving force behind a government's behaviour is revealed through the government of Alberta's reaction to the *Chaoulli* decision. The Alberta government has a history of calls for expanding the role of the private sector in health care, and the government acted in a manner consistent with their ideology, even though doing so contravened its laws. Furthermore, although the Alberta government has been one of the foremost opponents of judicial activism, speaking out several times on the issue during the same-sex marriage debates, the government's ideology has drove it to embrace the Court handing down a decision that many onlookers would consider an "activist" approach.

Political calculation was the third explanatory variable tested in the study and did not perform as well as a government's current law or ideology. Aside from hypothesis #4b and the previously stated problems with accepting the results of this hypothesis, political calculation consistently produced more incorrect than correct predictions and scored higher than the average score on both scales. This does not mean that political calculation did not play a role in provincial reactions to the decision, but rather that political calculation was not an accurate predictor of provincial reactions to the *Chaoulli* decision.

Although the study has general implications for understanding government behaviour, the research performed also points to specific implications regarding health care policy. One of the implications for health care is that provincial governments are open to Supreme Court decisions in the area of health care, while more reluctant to accept decisions in other areas falling under the purview of provincial legislatures. It was originally expected that all provincial governments would react

negatively to the Court intervening in an area of provincial jurisdiction. This was expected due to the provinces' struggles for increased autonomy since the early days of Confederation, as well as their natural distrust for an institution that is appointed solely by the federal government. However, although the governments of BC, Ontario, and Saskatchewan all acted as interveners in the case, not a single provincial government has challenged the legitimacy of the Court's decision. Conversely, provincial governments have made challenges to the legitimacy of Court decisions in other areas of provincial jurisdiction.

Provincial governments have not been reluctant to challenge the Supreme Court when it hands down verdicts in areas of provincial jurisdiction. Two examples of provincial governments making these challenges occurred when the government of Alberta spoke out against the Court's ruling in favour of same-sex marriage, and when the government of Québec reacted negatively to the Court striking down Québec's prohibition of the use of English on signs. These challenges to the Supreme Court demonstrate that provincial governments are willing to challenge decisions in areas falling under their purview, thus leading to the conclusion that, in the area of health care, provincial governments have come to accept the Supreme Court's decisions as acceptable.

Another implication derived from the study is that if provincial governments were to make the decision to increase the role of the private sector in health care, political leaders would not base it on ideological predisposition to greater private sector involvement alone. It was originally expected that governments with an ideological predisposition towards increasing private sector involvement in health care would welcome the decision, and use the judicial affirmation to fulfill their goal of increasing the role of the private sector. However, political calculation proved a strong factor driving political behaviour to the point that governments viewing the decision as having a negative impact on voters did not openly welcome the decision as expected. It appears that regardless of how strongly a government feels toward increasing the role of the private sector in health care, their political

calculation will be the determining factor, thus requiring strong public opinion in favour of such a change before opening the door to further private involvement.

Appendix A

Newspapers for Review (by Province)¹⁰²

Province	Newspaper(s)
Alberta	Calgary Herald Edmonton Journal
British Columbia	Vancouver Province Vancouver Sun
Manitoba	Winnipeg Free Press
Newfoundland and Labrador	The Telegram
New Brunswick	New Brunswick Telegraph Journal Times and Transcript
Nova Scotia	The Chronicle Herald
Ontario	The Toronto Star
Prince Edward Island	The Guardian The Journal-Pioneer
Québec	Montreal Gazette
Saskatchewan	The Leader-Post

¹⁰² *The Globe and Mail* and *The National Post* were both reviewed to provide a national scope as well

Appendix B

Private Clinics by Province

Alberta

Clinic Name	Clinic Name
Coronation Day Surgery Centre	Groot Dermasurgery Clinic
The Morgentaler Clinic	Plastic and Cosmetic Laser Surgical Centre Inc.
David B. Climhenga Professional Corporation	Alberta Eye Institute Inc.
Gimbel Eye Centre	Holy Cross Surgical Centre
Royce L.C. Johnson Professional Corporation	E. Wayne Tunis Professional Corporation
Walter Dorovolsky Professional Corporation	Terence K. Vankka Professional Corporation
Darrell Andrew Paul Gotaas Professional Corporation	Kensington Clinic
Randall W. Kreutz Professional Corporation	Douglas J. Vincelli Professional Corporation
Saranjeev S. Lalh Professional Corporation	Donald I. Wakeham Professional Corporation
Kevin E. Lung Professional Corporation	Marlborough Surgi-Centre
E. Christopher Robinson Professional Corporation	Royal View Surgi-Centre
Thomas R. Stevenson Professional Corporation	The Anaesthesia Centre for Dentistry
Rocky Mountain Surgery Centre	Mitchell Eye Centre
Elizabeth Joy Hall-Findlay Professional Corporation	Surgical Centres Inc.

British Columbia

Clinic Name	Clinic Name
South Fraser Surgical Centre Inc.	Victoria Surgery
New Westminster Surgical Centre	Dr. Gerry Zimmerman Inc.
Valley Surgery Centre	Delbrook Surgical Centre
McCallum Surgical Centre	False Creek Surgical Centre
Seafield Surgical Centre	Ambulatory Surgical Centre
Dr. Raymon Kahwaji	Okanagan Health Surgical Centre
South Island Surgical Centre	Kamloops Surgical Centre
Broadmead Surgical Centre	Prince George Surgical Centre
Cambie Surgery Centre	Comox Valley Surgical Associates

Québec

Clinic Name	Clinic Name
IRM Québec	Medica
Medisys Health Group	Radiologie Laennec
Ville Marie Medical and Women's Health Centre	Reso-Concorde/Reso-Carrefour
Ville Marie PET/CT Centre	Westmount Square Medical Imaging
Centre d'Imagerie Medicale ResoScan	IRM St. Joseph MRI
Centre de Radiologie West Island	Leger et Associes Radiologists
Clinique Medicale MD-Plus	Ottawa Valley MRI Centre
MedExtra	

Appendix C

Questionnaires Provided to Provincial Governments

ALBERTA

- Do you think the decision will have any immediate and/or direct implications to the manner in which your province delivers health care? Do you feel that it is likely/possible that your province would face a similar legal challenge?
- Is the Alberta government considering removing its own ban on third party insurance voluntarily rather than waiting for a legal challenge to the ban?

BRITISH COLUMBIA/MANITBOA/NEWFOUNDLAND AND LABRADOR/NEW BRUNSWICK/NOVA SCOTIA/ONTARIO/PEI

- Do you think the decision will have any immediate and/or direct implications to the manner in which your province delivers health care? Do you feel that it is likely/possible that your province would face a similar legal challenge?
- Has your province made any changes, or are you contemplating making any changes, to buttress against the possibility of having a similar challenge occur in your province?
- Do you think the Supreme Court overstepped its boundaries in striking down a law approved by a provincial legislature?
- Do you believe that a parallel system can alleviate problems in the public system, such as wait times, as suggested by the Supreme Court Justices, or do you feel that the introduction of such a system will lead to further problems in the public system?

SASKATCHEWAN

- Do you think the decision will have any immediate and/or direct implications to the manner in which your province delivers health care? Do you feel that it is likely/possible that your province would face a similar legal challenge?

- Has your province made any changes, or are you contemplating making any changes, to buttress against the possibility of having a similar challenge occur in your province?
- Do you think the Supreme Court overstepped its boundaries in striking down a law approved by a provincial legislature?
- Although there is no prohibition on private insurance for insured services, Saskatchewan intervened on behalf of Québec in the Chaoulli decision. What was the motivation for this decision