

Backgrounder

CHA LEGAL CHALLENGE

The Minister of Health has taken the position that he cannot be held to account for failing to administer and enforce the Canada Health Act. This is becoming a well-established but regrettable pattern concerning government operations in an age of increased expectations around both accountability and openness.

In a legal memorandum filed in the Federal Court [30 April 2004], the Minister of Health argues that a coalition of citizen groups and trade unions have no right to challenge the failure of Ministers of Health to live up to their obligations under the Act.

But the obligations of the federal Minister of Health to monitor and enforce the requirements of the Canada Health Act, and to report to Parliament concerning the administration and operation of the Act, are clearly spelled out in the legislation. Moreover, these requirements represent essential accountability mechanisms whereby Parliamentarians and all Canadians are informed about the performance of Canada's health care system.

Auditors General of Canada have repeatedly documented the failure of successive Ministers of Health to live up to those obligations of monitoring, reporting and enforcement under the Act. Many of these shortcomings have continued for years.

As a result of the Minister's failure to report on compliance by the provinces with the criteria and conditions of the Act, the Auditor General concluded in her 2002 report that "Members of Parliament cannot determine from the Canada Health Act Annual Report whether the spending of billions of dollars transferred to the provinces and territories results in health care delivery that meets the intent of the Act."

Moreover, Ministers of Health have chosen to systematically ignore violations of the Act. In fact, the enforcement provisions concerning the criteria of the Act *have not been invoked once*, notwithstanding ongoing problems of non-compliance by several provinces.

Widespread misconceptions about the performance of the health care system abound precisely because the federal government has failed to properly monitor and report on compliance, as well as enforce the Act. This has created a sense of crisis where none is justified and undermines public confidence in and support for Canada's Medicare system.

At the same time, problems that may undermine the effectiveness of Canadian public health care insurance plans remain hidden and are allowed to persist. Particularly troubling is the Minister's failure to stem the proliferation of privatization across the system which can undermine the objectives and purpose of the Act.

For these reasons, an informal coalition of citizens' groups and trade unions have applied to the Federal Court for a ruling acknowledging the failures of the Minister to meet his obligations under the Act and ordering him to remedy them.

In support of their application, the groups have filed affidavits from three leading experts in the health care field reinforcing the criticisms of the Auditors General. Their evidence also documents how privatization is eroding the very foundations of Medicare, denying Canadians equal access to health care services in accordance with their needs rather than their ability to pay.

In the final step in the pre-hearing process, the Minister has now filed legal argument in which he argues that the Courts have no business reviewing the Minister's performance of his statutory obligations.

Notwithstanding his explicit obligations under the Act to report to Parliament concerning the performance of the health care system (Section 23); to withhold funding from provinces that ignore the requirements of the Act (Section 20); and to investigate non-compliance with the Act's criteria (Section 14), the Minister argues that these are political, not legal, matters which the Court should refuse to consider.

If the Minister fails to stop judicial review of his and his predecessor's records, the Minister's final argument is that the groups who have joined together to bring the application "do not have a genuine interest in the issues raised."

Those applicants are the:

- Canadian Health Coalition
- Canadian Union of Public Employees
- Canadian Federation of Nurses Unions
- Communications Energy and Paperworkers Union of Canada
- Council of Canadians

Together they represent well over a million Canadians who are vitally interested in the preservation of the Medicare system. Each of these groups have made health care a key priority and have dedicated substantial resources to public education and advocacy to not only defend but also expand the Medicare framework to include home care and pharmacare programs.

When their requests to meet with the Minister to discuss their concerns were simply ignored, the groups took the extraordinary step of seeking judicial review of the Minister's poor record of monitoring, reporting and enforcing the Act.