

FEDERAL COURT -- TRIAL DIVISION

IN THE MATTER OF Ss. 14 and 23 OF THE *CANADA HEALTH ACT*,
(R.S. 1985, c. C-6)

B E T W E E N:

**THE CANADIAN UNION OF PUBLIC EMPLOYEES, THE
COUNCIL OF CANADIANS, THE CANADIAN HEALTH
COALITION, THE COMMUNICATIONS ENERGY AND
PAPERWORKERS UNION OF CANADA, AND THE
CANADIAN FEDERATION OF NURSES UNIONS**

Applicants

- and -

THE MINISTER OF HEALTH

Respondent

APPLICATION UNDER section 18 and section 18.1 of the Federal Court Act.

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicants. The relief claimed by the applicants appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicants. The applicants request that this application be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Court Rules, 1998 and serve it on the applicant's solicitor, or where the applicant is self-


represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Court Rules, 1998, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 5, 2003

Issued by:
(Registry Officer)


Ivana G. Gisoni
Registry Officer
Agent du greffe

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TO: The Honourable A. Anne McLellan
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APPLICATION

This is an application for judicial review in respect of the failure of the Minister of Health to exercise duties and responsibilities under the *Canada Health Act*, in particular to monitor, investigate and enforce the requirements of the Act, and to report to Parliament on the administration and operation of the Act, including the extent to which provincial health care insurance plans have satisfied the criteria, and the extent to which the provinces have satisfied the conditions, for payment under the Act.

The applicants make application for:

1. A declaration that the *Canada Health Act Annual Report 2001-2002* (the "Annual Report") does not properly report upon the administration and operation of the *Canada Health Act*, and does not include all relevant information on the extent to which provincial health plans have satisfied the criteria (namely public administration, comprehensiveness, universality, portability and accessibility), and the extent to which the Provinces have satisfied conditions (namely, the prohibition on extra-billing and user charges), for payment under the *Canada Health Act*;
2. A declaration that the Minister of Health (the "Minister") is obligated to include in the Annual Report a determination of the extent to which provincial health plans have satisfied the criteria, and the extent to which the Provinces have satisfied the conditions, for payment under the *Canada Health Act*;
3. A declaration that the Minister has failed to include in the Annual Report a determination of the extent to which provincial health plans have satisfied the criteria, and the extent to which the Provinces have satisfied the conditions, for payment under the *Canada Health Act*;

4. A declaration that the Minister has declined to exercise her discretion, and has failed to properly exercise her discretion under s. 14 of the *Canada Health Act*, by systematically failing to investigate alleged instances of non-compliance with the requirements of the *Canada Health Act*;
5. An order in the nature of mandamus requiring the Minister to include in the next Annual Report to Parliament:
 - i) an account of the administration and operation of the *Canada Health Act*, including a description of the policies, practices and resources utilized by Health Canada to monitor, assess and enforce the Act in order that members of Parliament may assess their effectiveness;
 - ii) all relevant information on the extent to which provincial health care insurance plans have satisfied the criteria, and the extent to which the provinces have satisfied the conditions, for payment under the *Canada Health Act*;
 - iii) a determination of the extent to which provincial health plans have satisfied the criteria, and the extent to which the Provinces have satisfied the conditions, for payment under the *Canada Health Act*.
6. An order in the nature of mandamus requiring the Minister to properly exercise her discretion with respect to the authority provided under s. 14 of the *Canada Health Act* to issue a "notice of concern", and to seek information from and consult with a province, when a problem is foreseen concerning whether the health care insurance plan of the province satisfies the criteria of the Act.
7. The costs of this Application;

8. Such further and other relief as counsel may advise and this Honourable Court may permit.

The grounds for the application are:

1. Section 23 of the *Canada Health Act* places a reporting obligation on the Minister to lay before Parliament each year, a report respecting the administration and operation of this Act, including all relevant information on the extent to which provincial health care insurance plans have satisfied the criteria, and the extent to which the provinces have satisfied the conditions, for payment under the *Canada Health Act*.
2. The Minister has failed to properly carry out these obligations by:
 - i) failing to include in the Annual Report a proper account of the administration and operation of the Act including the policies, practices and resources utilized by Health Canada to monitor, investigate, and enforce the requirements of the Act;
 - ii) failing to gather sufficient and adequate information needed to assess the extent to which provincial health care insurance plans are designed and operated so as to satisfy the criteria, and the extent to which the provinces have satisfied the conditions, for payment under this Act, and failing to include that information in the Annual Report;
 - iii) failing to assess the adequacy of the information voluntarily submitted by provincial and territorial governments, which is reproduced in, and forms the overwhelming majority of the information set out in the Annual Report, to determine whether it provides the information which the Minister is obliged to lay before Parliament;

- iv) failing to either require the provinces and territories to provide adequate and comparable information concerning whether provincial health care insurance plans have satisfied the criteria and the conditions of the Act, or to gather that information independently of provincial and territorial governments where it is not voluntarily submitted;
 - v) failing to document the erosion of the public health care system through the processes of privatization, or identify the impacts of this transformation on accessibility, universality, and other criteria of the *Canada Health Act*;
 - vi) failing to provide members of Parliament with information about the performance of provincial health care insurance plans necessary for them to assess whether these are in compliance with the criteria and conditions of Act; and
 - vii) failing to make a determination of the extent of provincial and territorial compliance with the criteria and conditions of the *Canada Health Act*.
3. By failing to report to Parliament in accordance with requirements of s. 23 of the *Canada Health Act* the Minister has failed to properly inform Parliamentarians concerning the administration and operation of *Canada Health Act* so that members of each House of Parliament may make informed decisions about whether federal funding support for health care achieves the objectives of the *Canada Health Act*.
4. The Minister has declined on a systematic basis to exercise the authority provided under Section 14 of the *Canada Health Act* to investigate issues of and complaints concerning compliance by provincial health care insurance plans, and provincial and territorial governments, with the criteria and conditions for funding under the Act.

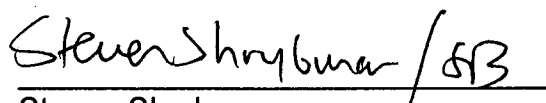
5. By failing to properly exercise her authority under Sections 14 and 23 of the *Canada Health Act*, the Minister has failed to give effect to the two key elements of the Act established to ensure accountability with respect to the performance of Canada's public health care system and which are crucial to maintaining public confidence in that system.
6. The Auditor General's reports of 1987, 1990, 1999, and 2002, in which Auditors General of Canada have documented the failure of Health Canada and Ministers of Health to meet their respective obligations under the Act, including the duty to properly monitor and enforce the Act and to provide adequate information to Parliament on the federal government's contribution to the provinces and territories for health care.
7. The *Canada Health Act* S.C. Chapter C-6.
8. Such further and other grounds as Counsel may advise.

This application will be supported by the following material:

1. The affidavit of Judy Darcy, to be sworn;
2. The Affidavit of Maude Barlow, to be sworn;
3. The Affidavit of Kathleen Connors, to be sworn;
4. The affidavit of Brian Payne, to be sworn;
5. The affidavit of Mike McBane, to be sworn;
6. The affidavit of Professor Joan Gilmour, to be sworn;

7. The affidavit of Professor Patricia Armstrong, to be sworn;
8. The affidavit of Dr. P.J. Devereaux, to be sworn; and
9. Such further and other material as counsel may advise and this Honourable Court permit.

May 5, 2003

Handwritten signature of Steven Shrybman, with the initials "SB" written at the end of the signature.

Steven Shrybman
Solicitor for the Applicants

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Court file no.

FEDERAL COURT - TRIAL DIVISION

Proceeding commenced at TORONTO

NOTICE OF APPLICATION

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