

## **Why the 2003 First Ministers' Accord on Health Care Renewal Will do Little to Redress the Health Care Accountability Deficit**

Steven Shrybman  
SACK GOLDBLATT MITCHELL  
shrybman@gattlaw.com

On Feb. 5, the First Ministers, but without the support of territorial and First Nations leaders, agreed to a new Accord for Health Care Renewal. The Accord includes a number of proposals which are significant and progressive - they are supported by new funding commitments. While the numbers are substantial, no-one, not even the federal government, argues that these new funding commitments will be adequate to meet the needs of the system.

This has already lead to predictions that the Ministers will be back at the table in a year or so to deal with ongoing pressures on public health care. This is a good thing because the Accord falls far short of any reasonable mark for addressing the need for reform.

On the question of accountability, the Accord sets out a number of new reporting obligations for the provinces to observe, and also proposes the establishment of a Health Council which is described this way:

First Ministers recognize that Canadians want to be part of the implementation of this Accord. Accordingly, they agree to establish a Health Council to monitor and make annual public reports on the implementation of the Accord, particularly its accountability and transparency provisions. **The Health Council will publicly report through federal/provincial/territorial Ministers of Health and will include representatives of both orders of government, experts and the public.** To fulfill its mandate, the Council will draw upon consultations and relevant reports, including governments' reports, the work of the Federal/Provincial/Territorial Advisory Committee on Governance and Accountability and the Canadian Institute for Health Information (CIHI). Health Ministers will establish the Council within three months. Quebec's Council on Health and Welfare, with a new mandate, will collaborate with the Health Council. [emphasis added]

The question is whether these particular proposals should be seen as credible. Will these initiatives address the significant accountability deficit that continues to erode the integrity of Canada's health care system?

The essential thrust of the Accord is to establish new, but informal and voluntary reporting mechanisms. Their effectiveness will depend upon the political commitment of the provinces. Because it will report *through* the Ministers of Health, the Health Council will also be at the mercy of federal- provincial relations.

Mr. Romanow regarded the issue of accountability as being so important that he recommended amending the Canada Health Act to add it as a sixth principle. He also suggested establishing a new Health Council, several recommendations of this report, spoke to its role and responsibility. The First Ministers have now taken up the latter, but ignored the former.

As for the notion that accountability be added as a sixth principle to the Canada Health Act, like so many of its recommendations, the Romanow report didn't spell out how this particular reform should be expressed. Moreover, one can question the need for a new accountability principle under the Canada Health Act given the reporting mechanism already built into its statutory framework. Section 23 of the Act provides:

The Minister shall, as soon as possible after the termination of each fiscal year and in any event not later than December 31 of the next fiscal year, make a report respecting the administration and operation of this Act for that fiscal year, **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 this Act** and shall cause the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is completed. [emphasis added]

It is in light of this binding statutory obligation that the issue of accountability needs to be understood.

The Accord's proposal for more voluntary reporting is very much like the one that emerged from the Health Accord of 2000. But as the Auditor General has repeatedly stated, reliance upon voluntary reporting by the provinces isn't working.

As successive audits have pointed out, not once in the 20 years since the Canada Health Act was enacted, has the Minister met her or his legal obligation to properly inform Parliament about the performance of the health care system.

Moreover, the Canada Health Act provides the federal government with the power to establish binding regulations that would compel provinces to report on the performance of their plans. This was in fact done years ago for extra billing and user charges, but never for the broader question of whether provincial plans comply with the five criteria of the Act - public administration, accessibility, comprehensiveness, universality and portability.

Surprisingly, Mr. Romanow's report doesn't comment on this key provision of the Act, nor on the Federal government's failure to honor its own accountability obligations.

The indifference of successive health ministers to their reporting obligation to Parliament, reflects a well established Liberal penchant for diminishing the role of this essential institution of our democratic society.

Thus under the Accord, the legal obligation to report to Parliament under s. 23 of the Act is to be supplanted by political arrangements among the First Ministers. These empower the Ministers to become the gatekeepers of information about the performance of the public health care system. The Ministers will now decide what and how much to tell Canadians about the performance of this critical social program.

It is true that the Accord calls upon the provinces to provide more information about how well their health systems are performing. If the provinces fully comply, Canadians will have new and important information about whether they have timely access to high quality health care services.

But even here, one fundamental feature the health system is ignored: the question of for-profit private delivery of health services. Yet the privatization of Canada's health care system is arguably the single most important threat to its ongoing viability.

Nevertheless, proposed new reporting obligations include no requirement to either report on 1) the extent of for-profit delivery of insured health care services or 2) the extent to which services are being paid for outside the public system entirely.

Each year questions about the extend of for-profit delivery are set out in the Minister's annual report to Parliament. Each year the provinces answer these questions this way:

*11. Number of private for-profit healthcare facilities providing insured hospital services, by the facility's primary type of care:*

- |   |                      |
|---|----------------------|
| <i>a. private surgical facilities</i>                     | <i>not available</i> |
| <i>b. private diagnostic imaging facilities</i>           | <i>not available</i> |
| <i>c. Total private for-profit health care facilities</i> | <i>not available</i> |

*12. Number of insured hospital services provided at private for-profit health care facilities, by the facility's primary type of care:*

- |   |                      |
|---|----------------------|
| <i>a. private surgical facilities</i>   | <i>not available</i> |
| <i>b. private diagnostic imaging facilities</i>   | <i>not available</i> |
| <i>c. Total insured hospital services provided at private for-profit health care facilities</i> | <i>not available</i> |

*13. Total payments to private for-profit health care facilities providing insured hospital services by the facility's primary type of care:*

- |   |                      |
|---|----------------------|
| <i>a. private surgical facilities</i>                                 | <i>not available</i> |
| <i>b. private diagnostic imaging facilities</i>                       | <i>not available</i> |
| <i>c. Total payments to private for-profit health care facilities</i> | <i>not available</i> |

Yet the Accord offers nothing to address this ongoing and flagrant disregard of the Minister's reporting obligations under the Act.

## **The Health Council**

This brings us back to the Health Council. The Council may provide Canadians with useful information about their health care system. That remains to be seen. But it is very clear that it will operate under serious constraints.

To begin with it is important to appreciate that the mandate of the Council is limited to reporting on the implementation of the Accord. Not the broader performance of the health care system.

In addition to having a narrowly defined mandate, the Health Council will have no statutory authority, nor independence from the political process (its members will be appointed by the ministers of health, and will report to Canadians through the health Ministers). The Council will have no power to compel anyone to provide it with information, nor will it have the capacity to carry out its own investigations. The questions of budgets and resources are left to the Ministers to sort out at a future date.

For these reasons the Council can not be considered a substitute for the legally binding obligation of the federal minister to report to Parliament, and through it, to all Canadians on the performance of Canada's health care system.

The federal government has clear constitutional authority to attach conditions to federal funding for health care. The Accord indicates that it has no intention of exercising that authority to require the provinces, as a matter of law, to report on the performance of their health care insurance plans. It seems quite content to sacrifice the principle of accountability to the political expedience of federal provincial relations.

This is not, of course, terribly surprising. When it comes to the question of accountability, the federal government and provinces have a lot in common.

But the issue of accountability is one that will continue to haunt both levels of government. The fact that these issues have been addressed by the Accord, however inadequately, is a testament to the effectiveness of the work of trade unions and civil society, working together, to force that issue onto the agenda of politicians who would much rather not deal with it. It is obvious that more work is needed to ensure that both levels of government are truly accountable to Canadians for the future of public health care.