

Federal Health Minister Challenged to Enforce Canada Health Act

On May 5, 2003 the: Canadian Union of Public Employees; Communications Energy and Paperworkers Union of Canada; Canadian Health Coalition; Canadian Federation of Nurses Unions; and the Council of Canadians filed an application in the Federal Court of Canada seeking declarations that the Health Minister was failing to live up to her obligations under the Canada Health Act and an order from the court requiring her to do so.

At issue are the Minister's obligations to monitor and enforce the Act, and to report annually to Parliament about the extent to which provincial health care insurance plans are in compliance with the criteria of the act. These guarantee that all insured persons will have universal access to the hospital and physician services they require, and which will be entirely paid for by provincial health care insurance plans that are publicly administered and operate on a not-for-profit basis.

At the center of the case are the two key accountability mechanisms of the Canada Health Act. The Romanow Commission stressed the need to strengthen accountability for the \$100 billion in public health care spending each year, if public confidence in the Medicare model was to be sustained. While this goal is commendable, the groups' application asserts that key accountability mechanisms already part of the legal framework have been routinely and systematically ignored by Federal Ministers of Health.

The grounds for the application provide a good synopsis of what the case is all about, these 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.

The case is likely to be heard by the Federal Court late in 2003.