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## **Federal government fights judicial review of its record defending medicare**

BY DENNIS BUECKERT

OTTAWA (CP) - The federal government is trying to fend off a judicial review of its record defending the Canada Health Act, whose five principles set the ground rules for medicare.

Several pro-medicare groups requested the review, saying Ottawa is failing to monitor provincial delivery of health services, particularly with respect to private, for-profit clinics. "The issues raised by the applicants in this application are not appropriate for judicial determination," says the memorandum filed with Federal Court on behalf of Health Minister Pierre Pettigrew.

"Under the guise of judicial review, the applicants are asking this court to venture into the realm of political decision making, an area which it has steadfastly and for sound reason of public policy, refused to tread."

The Canada Health Act, passed in 1984, sets out five principles for medical health insurance: public administration, comprehensiveness, universality and accessibility. It also requires provinces to report annually on their delivery of necessary services. The groups behind the lawsuit, including the Canadian Health Coalition and the Canadian Federation of Nurses Unions, say this isn't being done.

Even though each province submits an annual report to the federal government, technically fulfilling the requirements of the act, some provinces don't provide information on key areas, such as the operation of private clinics.

For example, Ontario's report to the federal government for 2002-2003 provides no data on private surgical facilities, private diagnostic imaging services and total payments to private for-profit health care facilities. The report says the information is not available.

Critics say the information is available, it just isn't being provided, and Ottawa is allowing the provinces to get away with practices that could violate the act.

Steven Shrybman, representing the pro-medicare groups, rejected the suggestion that an act of Parliament is a matter of purely political discretion.

"This is a statute so there's no question that these are legal obligations," Shrybman said in an interview Monday.

Critics say that private MRI clinics violate the principles of the Canada Health Act because they allow wealthier patients to buy quick access to diagnostic services that could be vital for medical treatment.

It is difficult to obtain information on the number of such clinics or their policies, since there is no national database.

Prime Minister Paul Martin came under fire recently for using a private clinic in Montreal where his family doctor practises. But he contends he always pays with his health card or through his health insurance.

The Canada Health Act specifies that Ottawa can withhold funds from provinces that violate the act, but such penalties have not been imposed for a long time.

Pettigrew recently said he favours an expanded role for public health care but has not hinted at any action to restrict the activities of private clinics.

"The provisions of the act designed to ensure that the provinces comply with the criteria have never even once been invoked," said Shrybman. "That represents not an exercise of discretion by the minister but simply a decision that he's not going to exercise his discretion."