

Monitoring, reporting & enforcement of Canada Health Act up to Parliament – Judge

Ottawa – According to the Federal Court, critics of the Minister of Health's failure to monitor, enforce and report under the Canada Health Act (CHA) have raised important public policy questions which should be taken up in Parliament.

Mr. Justice Mosley of the Federal Court released yesterday his 27-page decision on the legal challenge launched in November 2002 by a coalition of public health care defenders. The decision rejects their application but their arguments were not dismissed, and the ball has been put squarely in Parliament's court.

Mr. Justice Mosley did not dismiss the groups' arguments on privatization, noted Paul Moist, National President of the Canadian Union of Public Employees (CUPE). "The judge has sent a clear message by referring this matter back to Parliament," said Moist. "Now it's time for accurate reporting and active enforcement. The next annual report on the CHA must be comprehensive and accurate – no holes and no excuses."

"A minority government might make it more possible to shed real light on the Minister's shoddy reporting on and lack of enforcement of the CHA," added Moist. Moist also noted that the groups went to Court in the first place because the Minister of Health was submitting porous reports to the House of Commons. The groups are considering their options and discussing whether to appeal.

Defenders of public health care promised that they would work tirelessly with opposition parties to make sure that Parliament is not kept in the dark – again. "Canadians are kept in the dark by annual reports that are full of holes," said Mike McBane of the Canadian Health Coalition, "We will be working with opposition parties to take this up concretely in the next Parliament."

Successive auditors general have highlighted the stunning gaps in reports to Parliament by health ministers concerning the administration of the CHA. As in previous years, huge swaths of data – needed to track monies spent on private care – were missing from the most recent report (2002-03). For many of the provinces, the totals spent on private health care were listed as "not available". The exceptions were Saskatchewan and Manitoba – both provinces with strong commitments to public health care.

A coalition of public health care supporters – made up of the Canadian Union of Public Employees (CUPE), the Canadian Health Coalition (CHC), the Canadian Federation of Nurses Unions (CFNU), the Communications, Energy and Paperworkers Union of Canada (CEP) and the Council of Canadians – launched the legal challenge in November of 2002.

The decision can be viewed online at www.cupe.ca -and- www.medicare.ca.

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For more information, contact:

Paul Moist, CUPE national president, cell (613) 558 2873
Mike McBane, Canadian Health Coalition, cell (613) 277 6295
Stephen Shrybman, legal counsel, office (613) 233 4897
David Robbins, CUPE Communications, cell (613) 878 1431

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Court rules that enforcement of medicare law is not a matter for the courts

BY DENNIS BUECKERT

OTTAWA (CP) - A Federal Court judge has declined to rule on whether the health minister is failing to enforce the Canada Health Act, saying it's not a matter for the courts to decide.

In a ruling Thursday, Justice Richard Mosley dismissed a suit by several unions and advocacy groups who alleged the health minister has failed in his statutory duties to defend the rules of medicare.

"While this application raises important questions, they are of an inherently political nature and should be addressed in a political forum rather than in the courts," Mosley said in his analysis.

The Canada Health Act, which sets the rules for medicare, says medically necessary services must be comprehensive, universally accessible, and publicly administered, and allows Ottawa to withhold federal money from provinces that violate those principles.

There have been numerous complaints that private clinics in some provinces have violated the act. Several auditor general's reports in recent years have criticized Ottawa for failing to enforce the legislation.

The plaintiffs, including the Canadian Union of Public Employees (CUPE), the Council of Canadians, charged that Ottawa was systematically failing to investigate or report to Parliament on alleged violations.

The government argued that enforcement of the act is a political process involving consultation among governments and discretionary decisions by the minister.

CUPE President Paul Moist said the groups will bring the issue to the politicians in the coming session of Parliament. "The citizens of Canada put them in charge of an Act of Parliament which includes reporting requirements which are blatantly being ignored. We're going to keep pressing. "At the first ministers conference a few weeks ago a lot of money changed hands but not a lot on the accountability front ."

Maude Barlow, national chair of the Council of Canadians, noted that courts have in the past ruled on many issues that could be considered political in nature. "We want to push the envelope, whether it's through further court action or the court throwing it back at Parliament," she said. "We'll continue to seek ways in which we can move this forward."

Other parties in the action were the Canadian Health Coalition, the Canadian Federation of Nurses Unions and the Communications, Energy and Paperworkers Union of Canada.

Ottawa Citizen

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Judge throws out medicare lawsuit

By Janice Tibbetts

A federal judge has dismissed a lawsuit accusing the federal government of loose monitoring of the health system and failing to stem a dramatic growth in for-profit, private care.

"While this application raises important questions, they are of an inherently political nature and should be addressed in a political forum rather than in the courts," wrote Justice Richard Mosley, a former deputy justice minister who was recently appointed to the Federal Court.

A coalition of social groups wanted the court to order the government to take more responsibility in enforcing the five principles of Medicare by withholding money from provinces that don't live up to the terms.

The major thrust of the lawsuit was that the federal government does not live up to a Canada Health Act requirement that it report annually to Parliament about whether provinces are following the act.

The challenge was launched two years ago by the Canadian Union of Public Employees, the Council of Canadians, the Canadian Health Coalition, the Communications, Energy and Paperworkers Union and the Canadian Federation of Nurses.

Michael McBane, co-ordinator of the Canadian Health Coalition, said the groups will now intensify pressure on federal politicians, particularly Health Minister Ujjal Dosanjh.

"In a minority Parliament, we think we might get more accountability," Mr. McBane said.

In their lawsuit, the public-care advocates relied heavily on a 2002 report from auditor general Sheila Fraser, who blasted the government for "a non-intrusive approach" to administering the Canada Health Act and even failing to ensure it has the information needed to determine whether provinces are complying with the law.

The Justice Department argued in court that administration of the Canada Health Act should be left to political decision making rather than legal intervention.