

# The Canada Health Act

Medicare is more Canadian than multiculturalism.  
So why all the controversy now?

PAT RICH

It's hard to believe that a dry piece of government legislation — written in legalese, governing a relationship between Ottawa and the provinces, and now nearly a quarter of a century old — still has the power to fuel passionate debate. But the Canada Health Act is doing just that.

To some, the act is our “best brand” — a defining element of the Canadian identity embodying all that's good about this country, with its compassionate commitment to health-care services for all. To others, it's a creaky, outdated and restrictive law, a legislative straitjacket that prevents our health-care system from addressing interminable waiting lists and — as health-care spending continues to grow faster than the economy — a dwindling capacity to pay for the increasing demands on it.

As with everything else truly Canadian, the truth probably lies somewhere in between. After all, everyone knows the answer to that old joke: *Why did the Canadian cross the street? To get to the middle of the road!* But the truth is that every serious debate about the future of this country's health-care system comes back to the touchstone of this one fundamental piece of legislation.

## 10 Milestones in Medicare

*The defining element of our national identity for many Canadians, medicare has evolved over five decades. Some critics say it's time to reinvent it.*

- 1947** Under Premier Tommy Douglas (“the father of Canadian medicare”), Saskatchewan establishes an insurance plan guaranteeing publicly funded hospital care for most residents of the province.
- 1957** Parliament passes the Hospital Insurance and Diagnostic Services Act, which guarantees federal funding of 50% for provincial hospital-insurance programs.
- 1961** All provinces have implemented hospital-insurance programs.
- 1962** Ever the leader, Saskatchewan extends health coverage to include physician services.
- 1965** The Royal Commission on Health Services, headed by Justice Emmett Hall, calls for a national health-insurance plan.
- 1966** Parliament passes the Medical Care Act, which extends federal funding to help cover physician services under provincial plans.
- 1972** All provinces and territories have health plans covering both hospital care and physician services.
- 1980** A second commission headed by Justice Hall reports on emerging threats to medicare.
- 1984** Parliament unanimously passes the Canada Health Act.
- 2002** The Romanow Commission on the Future of Health Care calls for updating and clarifying the act, while reaffirming support for its basic principles.



opting out of medicare and charging directly for services that otherwise should have been covered by public funding. Such practices were seen as limiting access to health care for low-income patients.

Although the direct delivery and administration of health care are provincial responsibilities under the Canadian constitution, by the 1970s and '80s, the federal government had begun to assume a bigger role in funding. Since it had far greater power to levy taxes, it began to transfer increasing amounts of money to the provinces to help pay for rising health-care costs. Because of this greater role, Ottawa felt justified in acting on the key findings of the Hall Report.

"We thought we were saving medicare," recalled Monique Bégin, federal health and welfare minister at the time the Canada Health Act was passed and its staunchest defender, in *Conversations With Champions of Medicare* (Canadian Federation of Nurses Unions). But despite that heartfelt conviction — and the unanimous approval of the act — the three years of debate leading up to its passage were as acrimonious as any seen in the past half-century of Canadian politics.

The provinces condemned Ottawa for meddling in their domain. Some medical organizations direly predicted that the act would destroy the fundamental freedoms of all Canadians — and particularly of physicians. "Surely, the Canada Health Act is a rape of the spirit, if not the legal stipulations, of the Canadian constitution," said Dr. Everett Coffin, then president of the Canadian Medical Association.

Bégin endured unprecedented personal attacks. As she said in *Conversations*, "I was a woman, I was a French Canadian, and I am sorry to think that in some instances, with individual provincial ministers of health, that played against me... some individuals really despised me."

## Why the Canada Health Act?

The act was adopted in 1984 after unanimous approval by all members of the House of Commons and the Senate. It was designed to be a corrective measure to stop the erosion of publicly funded national health care, first introduced in the 1960s (see "10 Milestones in Medicare," opposite page).

The act was introduced by Pierre Trudeau's Liberal government after a review of the health-care system by Justice Emmett Hall undertaken in 1979. Hall's 1980 report noted that

certain practices were threatening to create a two-tier health-care system, one in which not all Canadians would have equal access to publicly funded services.

Hospitals in some provinces, for instance, had started to charge user fees for certain services to raise extra money, and some doctors were charging patients additional fees for services they felt were inadequately reimbursed under medicare. *Extra-billing* was the term used at the time. Some doctors of the day were

## The act is born

The Canada Health Act of 1984 set out the conditions under which provincial governments would qualify for federal funds to cover designated health-care services. It also established the dollar-for-dollar penalties they would face if they continued to allow doctors to extra-bill and hospitals to charge user fees. If a province allowed \$500,000 in extra-billing, for example, federal transfer payments would be reduced by that amount.

The act set out five criteria that provincial health plans were obliged to meet in order to qualify for a full cash contribution from the federal government — the so-called five pillars outlined in sections 8 to 12 of the legislation. Here they are in brief.

### Public administration

The health plan must be operated on a non-profit basis by a public authority responsible to the provincial or territorial government.

### Comprehensiveness

The health plan must provide coverage of all insured (i.e., medically necessary) hospital and physician services, as well as defined services from other health-care professionals.

### Universality

All insured residents of a province or territory must be entitled to the insured health services on uniform terms.

### Portability

Canadian residents moving to another province or territory must be covered for insured services by the home province during the minimum waiting period (no more than three months) for coverage eligibility in the new jurisdiction. Residents must also be covered during temporary absences from the country.

### Accessibility

All insured residents of a province or territory will have reasonable access to insured health services, unimpeded by user fees, extra-billing or other factors such as age, health status or financial circumstances.

## What it did

Within a couple of years of the act's passage, the provinces had largely stopped allowing hospitals to charge additional user fees and had stopped physicians from billing their patients anything more than what they were being paid by their provincial governments. Despite threatened lawsuits, the act remained legally unchallenged. With time, it became a venerable and enshrined piece of legislation and a repository of national values — a kind of Canadian Ark of the Covenant that no federal political party or provincial government dared question.

As Roy Romanow, a former premier of Saskatchewan and head of the 2002 Royal Commission on the Future of Health Care in Canada, wrote in the commission's report, "The principles of the Canada Health Act began as simple conditions attached to federal funding for medicare. Over time, they became much more than that. Today, they represent both the values underlying the health-care system and the conditions that governments attach to funding a national system of public health care. The principles have stood the test of time and continue to reflect the values of Canadians."

Opinion polls over the past 25 years have shown that Canadians may not know much about the Canada Health Act per se but they strongly support what they think it stands for.

A Queen's University research paper prepared for the Romanow Commission reviewed opinion polls over the previous decade and found that almost seven in 10 Canadians could not name a single principle of the Canada Health Act. But the report went on to note that four in five Canadians rated as *very important* four of the act's five pillars — universality, accessibility, comprehensiveness and portability. The principle of public administration was not rated quite as high.

"Many Canadians regard universality as part of the Canadian health-care system or the Canadian identity," says Stuart Soroka, an associate professor of political science at McGill University in Montreal who conducted a similar survey of opinion polls for the Health Council of Canada in 2007. It is rare to find "anything less than an overwhelming majority supporting universal health care. Universal health care is a big deal, no question. People talk a lot about it, and they think a lot of it."



A Queen's University research paper prepared for the Romanow Commission reviewed opinion polls over the previous decade and found that almost seven in 10 Canadians could not name a single principle of the Canada Health Act. But the report went on to note that four in five Canadians rated as *very important* four of the act's five pillars — universality, accessibility, comprehensiveness and portability



## The future

That support aside, the health-care system that the act defines is facing serious challenges as the population expands, ages and demands more sophisticated services. With health-care costs spiralling upward and the social conditions in which the legislation was conceived retreating into the rear-view mirror, the debate about its role and relevance is heating up and becoming increasingly polarized.

One Canadian physician perhaps put it best when he stated in a blog in 2004 that “the Canada Health Act has become a cultural icon that serves as a proud symbol of Canadian culture and identity. Due to this hallowed status within the national psyche, with regard to health care, Canadians are universally incapable of remaining objective or unemotional.” Adds Pauline Worsfold, secretary-treasurer of the Canadian Federation of Nurses Unions, “Its iconic status seems to stem from the fact that it really identifies the values of Canadian health care.”

But some say the act is not so much an enshrined icon as a byword that keeps popping up in the media. Those who fear health-

care costs are rising faster than the system's ability to pay want the act amended to allow for more funding from private sources without penalties for provinces or territories. Others feel the act unrealistically stops sick Canadians from getting timely access to diagnostic imaging and surgery — sometimes forcing them to pay for treatment abroad. Still others believe that changing the law will only permit people to meddle with its basic principles, making care no longer universally accessible.

As Dr. Brian Day, president of the Canadian Medical Association, told the *Calgary Herald* editorial board last August, “The Canada Health Act is based on principles that are nearly 45 years old — at a time when there were no MRIs, no CT scans and scarcely any hip replacements. Things have changed a lot, and it's time we looked at changing it.”

Day points to the pressing need to address gaps in the system, such as funding for in-home medical services and for catastrophic drug costs, neither of which is covered by the act. “If certain services can be delivered better, faster and at less

cost in the private sector, then the private sector must be

engaged,” he said in a speech last year at Toronto's Empire Club.

Other prominent Canadian physicians feel differently. “I think the evidence is overwhelming that the Canadian public wants to have access in a timely fashion to good care through the public system,” says Dr. Hugh Scully, a Toronto heart surgeon and former president of the Canadian Medical Association, speaking in defence of act.

So ingrained in the Canadian psyche have act's principles become that even supporters of coverage for more comprehensive health services not included in the act — such as in-home care and a national drug plan — don't want to see the act itself touched. So at the age of 24, it endures just as it was conceived a quarter of a century ago. And even though they probably can't tell you much about what the Canada Health Act actually says, most Canadians and their politicians seem to want to keep it that way. Whether that wish is a realistic one remains to be seen. 🇨🇦