

NOTES AND REFERENCES – TIME TO REFORM THE CANADA HEALTH ACT

Notes

- 1 This power was defined by former Prime Minister P.E. Trudeau as “the power of Parliament to make payments to people or institutions or governments for purposes on which it [Parliament] does not necessarily have the power to legislate” (Richer, 2007: 4). It can, however, also be defined as excess taxation by the federal government, acquiring funds beyond those required to fulfill the federal government’s responsibilities, to influence policy-making outside its Constitutional jurisdiction.
- 2 The CHA (in section 11) also requires portability of coverage including a requirement that minimum periods of residency required for entitlement not exceed three months, and a requirement that coverage is provided to those temporarily absent from the province.
- 3 For a more detailed discussion of the Canada Health Act’s sections and how each of them may restrict provincial policy options, see Clemens and Esmail (2012) and Esmail and Barua (2018).
- 4 For a more detailed explanation of the process that is followed by the federal Minister of Health to enforce the Canada Health Act, see Madore (2005) and Boychuk (2008). Despite the requirement that a process is to be followed, including consultation with the provincial government found to be in violation of the CHA, final authority for interpretation and enforcement lies solely with the federal Minister of Health. Further, as noted by Bridge (2007: 9): “[c]ourts have consistently held that they cannot rule on whether a province has complied with the CHA ...this is a political rather than a legal matter.” Boychuk adds the CHA “is not justiciable—it is neither agreed to by both parties, legally binding on either party, nor does it create a set of citizen entitlements which may be claimed through the courts” (2008: 5).
- 5 The lack of clarity in the CHA has also manifested itself in asymmetric applications of the CHA alongside non-action on provincial violations of the Act, both of which might be considered an arbitrary use of the discretionary power by the federal government (Clemens and Esmail, 2012).

Table 1 Sources

Clemens and Esmail, 2012; Esmail and Barua, 2018

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