

## Social Union

1999

The so-called Social Union is meant to demonstrate to Canadians that the provinces and the federal government are serious about improving the country's crumbling social programs. But the reality may be far from the promise, especially for our most cherished program - Medicare.



### Surgery by Social Union

**Social Union could end up killing off what the federal budget was supposed to save**

By Maude Barlow

In early February, just in time for Paul Martin's "good news" budget, the Prime Minister and the premiers emerged from a hastily convened first ministers' conference at 24 Sussex Drive to announce a new "Social Union" for Canada. The announcement marked the end of a series of low-profile meetings between the federal and provincial governments to renegotiate their roles and responsibilities in the delivery of Canada's social programs. Once again, the provinces and the federal government had met behind closed doors. Once again, Canadians had been left out, only learning about the talks through media reports that mixed strategic leaks with the best guesses of reporters. The premiers patted themselves on the back for their hard work. The story made the newscasts for the day, and then disappeared as if it had never happened.

### Anatomy of the Deal

In fact, the deal struck by the federal and provincial governments is central to the lives of all Canadians. The Council has studied the agreement and will monitor its implementation over the next three years. That's when the government has promised a review.

Essentially, the new Social Union deal says that all provinces have the right to receive their share of any new shared-cost or block-funded program, whether they support it or not, as long as they meet vague "Canada-wide objectives" and enter into a loose "accountability framework" with the federal government. The federal government cannot introduce new programs unless a majority of the provinces agree, and then it must work with the provinces to set "priorities and objectives" for these programs. Further, if a province already has a program in place in the area of a new federal initiative, it will still get its money from Ottawa and can spend it on a related area in the manner it chooses.

David Cameron, a constitutional expert at the University of Toronto, calls this "more, not less, than Meech," referring to the discredited 1987 Meech Lake Accord that preceded the Charlottetown Accord. Canadians rejected the Charlottetown Accord in a 1993 referendum, partly because it would have harmed the ability of the federal government to maintain common social standards throughout the country. John Conway of the University of Regina is equally stark in his assessment of the Social Union: "Taken together, these proposals seek heavy curbs on the autonomy and power of the central government and a devolution of considerable additional powers to the provinces....The premiers want nothing less than to become co-prime ministers in a Canada with a federal government reduced to being a tax collector and an ATM for the provinces."

In some ways, the Council breathed a sigh of relief at the current agreement, mostly because it fell far short of what the provinces had been demanding at the start of this round of talks. At that time, some of the provinces – Alberta and Ontario, in particular – were demanding a greatly reduced role for the federal government and a process that would essentially strip Ottawa's authority to force the provinces to comply with the Canada Health Act. With the promise of new

federal money in the budget for health care, the provinces backed off and their extreme demands were dropped.

But serious concerns remain. The governments have agreed, for example, to ensure "mobility rights" for all Canadians wherever they move within Canada. They will eliminate any residency-based policies or practices that constrain the access of all Canadians to provincial social programs, such as post-secondary education and social assistance. While we strongly agree with the principle, we are worried that, in the absence of strong national standards, provinces that put more funding into public programs will be penalized.

British Columbia is a good example. B.C. puts more public money into universities and welfare than its neighbouring province, Alberta. When the federal government cancelled the Canada Assistance Program in 1995, it ended national standards for social assistance, and it has never had national standards for post-secondary education. The result has been that very inequitable services exist in these areas from province to province. B.C. has tried in the past to establish residency requirements to stem the tide of "welfare refugees" from Alberta and Ontario, and has asked the federal government for help with out-of-province students fleeing higher tuitions at home.

Under the new Social Union, British Columbia's public systems will be even more pressed because the province won't be able to turn anyone away or set any conditions, even if other provinces cut or eliminate public funding for these programs altogether. National mobility rights without national standards may force some provinces to cut their public spending and create a "race to the bottom" between them.

### **How to Privatize Health Care**

But our biggest concern with the Social Union deal is in the area of health care. For one thing, the funding restored to health care in this budget comes nowhere near to making up for the money taken out of the system by both the Mulroney Tories and the Chrétien Liberals. Since 1986, cumulative cuts to federal health transfers to the provinces have reached almost \$36 billion. Federal spending on social programs and health care as a percentage of total government spending is lower now than at any time since 1949, and the government is not talking about replenishing other social spending in any significant way.

An even greater worry, however, is that the new rules will allow the provinces to decide whether the new health care money will be put into public or private services. This could spell the end of universal health care in Canada. As it is, the private sector has made great inroads into our system as governments have cut services in the last decade. Private spending now exceeds total federal spending on health care in Canada. Thus, provinces dedicated to the privatization of health care, such as Alberta and Ontario, can agree in principle to the five pillars of the Canada Health Act, as they did in the Social Union, while in practice direct all their spending to for-profit services.

Further, the Social Union will allow the provinces freedom to allocate money for major new federal health care initiatives, like home care, to the private sector as well. Home care is the fastest-growing area of health care in Canada, as patients are being discharged from hospitals "sicker and quicker." Crucially, the Canada Health Act only applies to insured doctor and hospital treatment, and therefore home care falls outside the jurisdiction of the Act. There is little in the way of standards, federal or provincial, for home care.

In 1996, Ontario announced a three-year phase-in of a totally open market system for home care. For-profit companies, many of which pay low wages, provide no benefits or overtime, and replace registered nurses with casual labour and nurse "practitioners," now provide most of the home

care in the province. As more and more health care services follow patients out of publicly funded institutions and into Canadian homes, health care is being privatized through the back door.

The North American Free Trade Agreement adds another disturbing twist. Operating in Ontario are now a number of American transnational corporations, including Olsten Health Services, the largest private home care company in the United States. If a different government dedicated to public health care were to replace the Tories in a future election and try to bring home care into the public sphere, Canada could be forced to pay billions of dollars to these U.S. companies exercising their NAFTA rights to compensation for the resulting "expropriation" of their future profits.

### **A Reality Check for First Ministers**

In short, while the Social Union purports to be about ensuring better health care and social security for Canadians, it may inadvertently be setting the stage for the destruction of Medicare and the ruin of national standards for other social programs. The deal may involve more than the transfer of responsibilities from one level of government to another; it could represent a fundamental realignment of power from governments to markets and from the public sector to the private.

It is crucial that Canadians monitor this new accord closely and be ready to demand changes when the three-year trial period is up. The Council of Canadians will be working with others across the country to see that this happens. - *Canadian Perspectives, Spring 1999*

## **Power Game: Five Problems With the Current Social Union Talks**

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### **Introduction**

The term "social union" has recently migrated from the obscure lexicon of a narrow circle of policy analysts and government officials to now dominate the front pages of Canada's dailies. But what is meant by the "social union"?

As it is currently used by the federal and provincial governments, the social union refers to a whole range of national cost-shared programs, such as Medicare and social services, and the manner in which these programs are administered, funded, and delivered. As such, the current social union process initiated by the provinces is ostensibly focused on restructuring the distribution of responsibilities, resources and powers between Ottawa and the provinces.

However, the social union talks represent much more than a shift of power within Canadian federalism. They involve not just the transfer of responsibilities from one level of government to another, but rather a fundamental realignment of power from governments to markets and from public to private.

While specific details of what this new social union will entail remain sketchy because of the unduly secretive nature of negotiations, at least five preliminary criticisms of the content and process of the talks can be identified at this point: 1) national standards for social programs are at risk; 2) the demand to further entrench the right of provinces to 'opt out' of new program initiatives will restrict the introduction of new programs; 3) the social union talks are inherently undemocratic and dominated by political and economic elites; 4) there is no solid reason to suspect that the new social union proposals would meet the demands of Quebec nationalists; and 5) the new social union proposals would further weaken democratically-elected governments and enhance the power of the private sector.

### **National standards at risk**

Provincial governments, under the Canadian Constitution, are granted jurisdiction over health care, education, and social services. However, provinces do not have the powers of taxation necessary to support such programs. On the other hand, the federal government is granted constitutional authority by virtue of its spending power to make payments to individuals, institutions and other governments. It is this latter constitutional power that has formed the basis for federal spending on health care, post-secondary education, social assistance, and social services.

The federal government's involvement in social spending has helped, when the political will has been there, to build common national standards for social programs. If the provinces alone were left to fund social programs themselves, access and quality would necessarily be unequal as the tax base needed to fund public programs differs significantly between richer and poorer provinces.

Moreover, without common standards across provincial boundaries the temptation will inevitably arise for provinces to engage in "social dumping" -- i.e. tightening eligibility or reducing benefits for programs in order to encourage recipients to move to another province. As well, there is the real danger that competition between provinces to attract and retain investors and businesses would lead to pressures to cut taxes by cutting social program costs, thus precipitating a race to the bottom.

Nevertheless, there is another less attractive side to the federal government's spending powers. Just as Ottawa has in the past been able to initiate national programs by flexing its spending

powers, more recently it has been undermining the viability of such programs by unilaterally scaling back its commitments through massive funding cuts. Since 1995, the federal government has reduced its social spending by more than \$6 billion, transferring its deficit woes onto the backs of the provinces.

The federal cuts to social spending in recent years, culminating with the introduction of the Canada Health and Social Transfer in 1996, have had two major impacts. First, the provinces justifiably find this unilateral reduction in transfers unfair. Beginning with the 1995 annual premiers' conference, provincial leaders have responded to funding cuts by calling for both a restoration of transfers and a reduced federal role in issues of social policy.

Secondly, the reduction of federal cash transfers to the provinces has already seriously weakened the ability of Ottawa to maintain national standards. The only way the principles of the Canada Health Act, for instance, can be enforced is by the threat of withdrawing federal funding from a province that strays from the Act. With less money to hold back as a penalty, however, the federal government now wields a significantly smaller stick to keep the provinces in line.

Added to this mix is the federal government's desire to appease so-called 'soft nationalists' in Quebec by devolving more authority to that province. Other provinces, most notably the conservative governments of Alberta and Ontario, have been quick to join the bandwagon and are calling for a radical decentralization of powers to all provinces. In fact, then, the social union talks are not really being driven by Quebec, but rather the fear of Quebec separation is being used as an excuse by English Canadian conservatives to grab control of the social policy agenda.

Indeed, since the beginning of the recent social union process, which has excluded Quebec from the start, one of the key goals of the conservative provinces has been to diminish the federal role in social programs, and particularly Medicare. Alberta, long attempting to introduce user fees and promote private health care services in violation of the Canada Health Act, has had several battles with Ottawa in recent years. In the current round of social union talks, Alberta is now reportedly pressing for the creation of a federal-provincial tribunal to enforce the Act, a move that would essentially weaken, if not strip, the federal government of its authority to ensure the provinces adhere to the principles of the Act.

This conservative agenda involves a dramatic and fundamental shift in government powers, opening the door to a complete overhaul of social policy in Canada. It leaves any development and enforcement of national standards to interprovincial negotiation and goodwill. Such thinking sits quite comfortably with Alberta's and Ontario's current preferences for a general retreat from the provision of social services and the downsizing of government. Alberta's Premier Ralph Klein previously explained his view of the social union as the "replacement of what he calls federal standards with guidelines...to be worked out among the provinces," (Greenspon, 1996). Of course, guidelines are much more flexible than standards, and far more open to interpretation and, hence, violation.

A further elaboration of this view of a new, more flexible social union was provided by Thomas Courchene (1996) in an influential paper commissioned by the Ontario government. ACCESS: A Convention for the Canadian Economic and Social Systems makes the case that all responsibilities for social policy be handed over to the provinces. To finance this, Courchene recommends that all fiscal transfers to the provinces for health, education and social services be terminated in exchange for granting the provinces greater taxation powers. On the issue of common standards and compliance, Courchene suggests the provinces come up with their own guidelines. The alleged violation of these voluntary guidelines would be subject to a dispute-resolution panel appointed by the provinces. The panel could recommend that an offending province rescind some legislative provision. If the province failed to comply, it could ultimately be forced to withdraw from the social and economic union.

The basic flaw in this model is that while it is intended to negatively prohibit provincial discrimination against non-residents, it is not clear that it would offer an effective positive remedy for citizens who feel their provincial government is not living up to its basic social obligations. Courchene is explicit that the panel, analogous to those operated under the Agreement on Internal Trade and NAFTA, would be able to enforce any claims brought forward from other provincial governments or private actors (including corporations) that show a policy or law restricts the movement of goods, services, capital or persons and thus discriminates against non-residents. However, another set of claims that are more pertinent to supporting common social standards is when a person makes a claim against his or her own provincial government for violation of basic social rights. In this latter case, the claim is over what a provincial government should be doing, not what it can not do. In effect, Courchene's dispute-resolution panel, promoted by Ontario and Alberta in the social union talks, would have the power to set limits on what governments can do, but not necessarily enforce what they should do.

Overall then, this model of a new social union, driven primarily by the governments of Alberta and Ontario and involving a radical decentralization of powers, is intended to further and perhaps irrevocably weaken the ability of the federal government to set and enforce national standards and to ensure equality of access for Canadians to basic social rights. It is clearly a politically driven agenda to lower social standards, to restrict the powers of government, and to weaken enforcement mechanisms.

The impact of the federal government's proposed "mobility rights" provision - the entitlement of all Canadians to the same level of care and service wherever they live - could, ironically, serve to undermine uniformly high national standards. Without strong, nationally enforced standards, mobility rights could cause any province that chooses to invest more in public health or education than other provinces to be penalized, encourage social dumping, and have a chilling effect on undertaking new programs or even maintaining the standards of current ones.

#### **New national initiatives thwarted**

A second concern inherent in the social union talks arises from the proposal of some provincial governments to impose strict limits on federal spending powers. Under these terms, the federal government would be prevented from initiating any new social programs without the full consent of the provinces.

The practical implications of this restriction, as Boismenu and Jenson (1998) note, can be seen in the new National Child Benefit program. Proponents of a more decentralized approach to social policy proudly point to the NCB as exemplifying a new era of federal and provincial cooperation that should form the model for a new social union. In truth, the weaknesses inherent in the NCB are a direct reflection of the basic flaws inherent in a more decentralized approach to social policy.

Beginning in July, 1998, the NCB combined and increased the value of two existing programs, the Child Tax Benefit and the Working Income Supplement. This was not, however, simply a matter of Ottawa loosening its purse strings. Tied to the increased federal credits is another more important and troubling change: as the federal benefit increases, provinces and territories will be able to decrease benefits for social assistance recipients. The funds that the provinces and territories save on welfare are supposed to be "reinvested" in other programs and services for low-income families and children. However, there is no agreed upon set of standards on where or how or even whether this so-called re-investment will take place. In essence, provinces are free to decide what to do with the savings. Some may opt to provide more services such as publicly-provided child care. Others may decide to shift the provision of services from the public to the private sector by offering further tax credits and encouraging parents to use the money to purchase for-profit child care. Or, provinces may simply pocket the savings. No matter where or if the money is spent, the end result is clear. Long-standing hopes for the creation of a common set

of services for all Canadian children, such as a national day care program, have been dashed by the NCB.

Future national programs are also in jeopardy because of the provinces demand in the current round of social union talks for the right to 'opt out' of all cost-shared programs. In fact, the provinces have already won this concession with regard to new programs. In 1996, after narrowly surviving the Quebec referendum, the federal government announced in its Throne Speech that it would only initiate new programs with provincial consent and compensate any province for opting out of new programs as long as they provided "comparable" services to their residents. The practical effect of this was quickly seen as the federal government's childcare initiative stalled when it could not get the majority of provinces on side. Similar initiatives such as Pharmacare or Homecare will likely befall the same fate if the right to opt out is adopted in any new social union agreement. The Ontario government, for example, has already declared that it intends to privatize homecare, raising the possibility that, as more and more health services follow patients out of publicly funded institutions and into private homes, healthcare generally could be privatized through the back door.

### **An undemocratic process**

In its 1996 Speech from the Throne, the federal Liberal government promised Canadians that the government would "work with the provinces and Canadians to develop by mutual consent the values, principles and objectives that should underlie, first, the Canada Health and Social Transfer and, building on this, the social union more generally," (cited in Cameron, 1997: 1). Similarly, reports issued by provincial premiers also promised that Canadians would be consulted on the social union talks. Yet no serious consultations have taken place.

Canadians should be concerned that the interprovincial and federal-provincial mechanisms for negotiating a new social union are inherently undemocratic. All meetings take place behind closed doors. Position papers and research remains secret. There is no accepted decision-making process and no written decisions. In short, there is no way for Canadians to have their views heard or to hold their governments accountable.

All of this of course sounds eerily familiar. When the Charlottetown Accord was rejected by Canadians, there was an understanding that major changes to confederation would never again be made in secret. Yet, that is precisely what the current round of social union discussions is all about. The social union talks are nothing short of constitutional reform by stealth.

While most Canadians are shut out of the process, it is important to note that some powerful economic interests enjoy privileged access to the ongoing discussions. The Business Council on National Issues, for instance, issued a memo on the social union that, with only minor modifications, was released by the premiers and territorial leaders as the Calgary Declaration.

Why have Ottawa and the provinces been reluctant to open up the social union process and consult with Canadians? One explanation may in fact be that the position of the provincial premiers on the division of powers and responsibilities simply runs counter to widely-held notions of social citizenship. The tenor of the current social union talks and federal-provincial wrangling over jurisdiction no doubt creates the impression that national standards are merely administrative issues. However, for most Canadians national standards are much more than this - they guarantee basic social rights and principles that are integral to our sense of national identity. As Barlow and Campbell (1996: 30-32) explain, national standards are based upon the principle that all Canadians, regardless of where they live, are entitled to adequate and equal standards of care, security, opportunity, and well-being.

### **Quebec's demands remain unsatisfied**

While the current round of social union talks is in large measure being justified on the grounds of

responding to Quebec's demands for greater independence, there is no evidence that a radical decentralization of power to all the provinces will meet the wishes of Quebec nationalists. The national project in Quebec is not simply a demand for more provincial powers. Nor has Quebec looked kindly on the proposal that the provinces themselves set pan-Canadian standards for a new social union. From Quebec's standpoint, neither the federal government nor the other provinces have a legitimate role in setting Quebec's standards in social policy.

While the goal of conservative provinces in the social union talks is to drastically roll back government programs and shift responsibility for the provision of services to the private sector, Quebec appears to be charting a social policy course that is markedly different. Quebec refused to sign on to the National Child Benefit and instead announced its own child tax credit program, as well as an ambitious overhaul of child-care services in which the non-profit sector plays the primary role. The Quebec government now guarantees all children a space in regulated child care for five dollars a day. Similarly, Quebec is asking Ottawa for greater control over Employment Insurance funds so the province can extend its parental leave provisions. Quebec's motivations for demanding more control over social policy, therefore, may be fundamentally different than those guiding Alberta and Ontario.

Ironically, the premise underlying current discussions is that Quebec should be accommodated by treating all provinces as if they were Quebec. This strategy is deeply flawed. As Cameron (1997) notes, it provides an insufficient recognition of Quebec's distinctiveness and undermines the social citizenship rights of other Canadians. It is, in fact, a tired and failed formula, one that was rejected in the Charlottetown Agreement referendum.

### **Power to the private sector**

The current round of social union talks are about more than federal-provincial wrangling over constitutional powers. They are also about a shift in power from democratic governments to the private sector.

To understand this link, the social union negotiations need to be placed in their historic context. In the past two decades, the federal government has rapidly withdrawn from many areas in which it had traditionally been active. The ongoing privatization of public services and devolution of powers and responsibilities to the provinces have characterized this process. But international trade and investment agreements have also limited Ottawa's legislative and regulatory powers.

Moreover, this process of privatization and devolution is also linked to the desire to create a free trade agreement within Canada itself, through the Agreement on Internal Trade. In fact, just as the AIT sought to remove boundaries between provinces and set limits on how much democratically elected governments could manage their economies, the social union proposals would have a similar effect of setting limits on how governments could manage social policy. In his position paper prepared for the government of Ontario, Thomas Courchene makes explicit the links between the devolution of social policy responsibilities to the provinces and the AIT. The goal in forming a new social and economic union in Canada, Courchene suggests, should be to create a homogenous economic space for private business, while steadily weakening the social security of working Canadians. In fact, Courchene proudly explains that his ACCESS proposal for a new social union, and now championed by Ralph Klein and Mike Harris, is specifically intended to sideline the federal government and increase the power of the private sector:

[I]t is clear that this institution [ACCESS] will constrain Parliamentary flexibility, even sovereignty. Indeed, this is the *raison d'être* of such a Convention -- in effect it is a set of social and economic rights of citizens and private-sector agents generally. (Courchene, 1996: 35)

The current social union proposals, like the existing free trade agreements, are about fundamentally shifting power from governments to the private sector. This is witnessed clearly by the position adopted by the conservative provinces where the motivating factor is to seize control of the social policy agenda in order to strike down federal restrictions and move the provision of social programs from the public to the private sector.

### **Conclusion: Beyond the 'New' Social Union**

The dangers raised by the current social union talks, as well as real concerns about the process under which such negotiations are taking place, suggest that these talks be immediately suspended. It is simply appalling that such a fundamental shift in the economic and social structure of Canada is being negotiated without any serious consultation with Canadians or with other key stakeholders in the process, including Aboriginal peoples.

At the same time, as Browne (1998) observes in a recent publication from the Canadian Centre for Policy Alternatives, the status quo will likely breed continued bitterness amongst those who remain dissatisfied with the current federal framework: Quebecers, First Nations, and Western Canadians, most notably. On the other hand, the proposed devolution of social policy to all provincial governments, and ultimately as we have seen to the private sector, is not an alternative. Such a power shift would effectively undermine the federal government's role in protecting and promoting social rights in Canada through national programs and standards. So, while change is needed, a new approach is required that will protect and enhance the social rights of Canadians, recognize the expressed desires for Quebecers and First Nations for self-determination, and enhance democratic accountability in the political system.

Such an approach would need to start with a clear understanding of the distinctive traditions of the social citizenship of English Canadians, Quebecers, and Aboriginal peoples. To do so is to recognize that there are three unique societies in Canada and that there is an overriding need to design democratically-accountable institutions and mechanisms for the protection of social rights in each society.

In English Canada, the Council of Canadians believes that any renewed social union must advance the three fundamental principles that have guided the unfinished post-war project of constructing a more just and equitable society. Briefly, these principles are as follows:

1. **Social Equality:** Social programs must be inclusive and universally accessible. Targetting health care or child care, for instance, to the poor serves to transform such programs from a social right to an act of charity. All Canadians have equal social rights.
2. **National Standards:** Effective social programs must have enforceable pan-Canadian standards so that all citizens, regardless of where they live, have equal access to programs and services.
3. **Public Provision:** National social programs, if they are to meet basic national standards and be universally accessible, are best provided by the public sector. Turning the provision of services over to the private sector in each province, as is currently the case, threatens to create a patchwork of unplanned, inadequate and unequal programs across the country.

Adopting these principles would require us to recognize that social programs are rights belonging to all Canadians by virtue of their membership in our society. Currently, however, the federal government and the provincial governments other than Quebec are moving in a different direction. They are negotiating a fundamental redesign of Canada's social programs that will further erode social rights and shift more power to unaccountable private actors. It is now time that Canadians hold Ottawa and the provincial premiers accountable.

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