BILL C-39: AN ACT TO AMEND THE FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT AND TO ENACT AN ACT RESPECTING THE PROVISION OF FUNDING FOR DIAGNOSTIC AND MEDICAL EQUIPMENT

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LEGISLATIVE HISTORY OF BILL C-39

HOUSE OF COMMONS

Bill Stage	Date
First Reading:	7 February 2005
Second Reading:	10 February 2005
Committee Report:	16 February 2005
Report Stage:	18 February 2005
Third Reading:	18 February 2005

SENATE

Bill Stage	Date
First Reading:	22 February 2005
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Committee Report:	10 March 2005
Report Stage:	
Third Reading:	22 March 2005

Royal Assent: 23 March 2005

Statutes of Canada 2005, c.11

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL C-39: AN ACT TO AMEND THE FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT AND TO ENACT AN ACT RESPECTING THE PROVISION OF FUNDING FOR DIAGNOSTIC AND MEDICAL EQUIPMENT*

BACKGROUND

Bill C-39, An Act to amend the Federal-Provincial Fiscal Arrangements Act and to enact An Act respecting the provision of funding for diagnostic and medical equipment, was tabled in the House of Commons on 7 February 2005. The bill gives effect to the 10-Year Plan to Strengthen Health Care, announced on 16 September 2004 after the First Ministers' Meeting on the Future of Health Care.

The 10-Year Plan built on previous federal commitments in the 2000 and 2003 First Ministers' health accords:

- The 2000 Agreement on Health Renewal and Early Childhood Development increased the federal Canada Health and Social Transfer by $23.4 billion over a five-year period beginning in 2001.

- The 2003 Accord on Health Care Renewal and Multilateral Framework on Early Learning and Child Care committed the federal government to a total of $36.8 billion in increased health care support over five years. As part of that commitment, the 2003 Accord introduced a Health Reform Transfer (HRT) that provided $16 billion in cash transfers over the five-year period.

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

The 10-Year Plan to Strengthen Health Care included:

- increased funding for health through the Canada Health Transfer (CHT);[1]
- measures to meet the outstanding financial recommendations in the report of the Commission on the Future of Health Care in Canada (the Romanow Report);
- measures to address wait times to ensure timely access to essential health care services through a new Wait Times Reduction Transfer;[2] and
- provision of funds for medical and diagnostic equipment.

Bill C-39 gives effect to the 10-Year Plan by increasing multi-year funding for the CHT, creating a new transfer to reduce waiting times, and establishing an additional fund for medical and diagnostic equipment.

DESCRIPTION AND ANALYSIS

A. Overview

Bill C-39 amends the *Federal-Provincial Fiscal Arrangements Act* (FPFAA) to give effect to the 2004 10-Year Plan to Strengthen Health Care. The bill increases the Canada Health Transfer for the fiscal years beginning on 1 April 2004 through 31 March 2014.

The bill also establishes a Wait Times Reduction Transfer, which will initially be paid out of a trust for the benefit of the provinces, and will then be transferred directly to provinces beginning with the 2009 fiscal year. Finally, Bill C-39 provides funding to provinces for diagnostic and medical equipment.

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(1) The CHT is an unconditional federal transfer allocated to provinces and territories on a per capita basis in support of health care. It came into effect on 1 April 2004, as part of the 2003 health accord agreed on by First Ministers. The 2003 health accord restructured the Canada Health and Social Transfer (CHST) by creating separate transfers for health (CHT) and for social programs, the Canada Social Transfer (CST).

(2) In the 16 September 2004 press release, First Ministers agreed to collect and provide information to Canadians on progress made in reducing wait times. Quebec indicated that it will continue to work with other governments to develop new comparable indicators and best practices; however, Quebec will apply its own wait time reduction plan, in accordance with the objectives, standards and criteria established by relevant Quebec authorities.

B. Amendments to the *Federal-Provincial Fiscal Arrangements Act*

Clause 1 of the bill changes the heading of Part V.1 of the FPFAA to include the Wait Times Reduction Transfer.

Clause 2 of the bill amends the FPFAA to include the 10-Year Plan to Strengthen Health Care as one of the purposes of the Canada Health Transfer.

Section 24.1(1) (a) of the FPFAA sets out the amounts of the CHT for upcoming fiscal years. Clause 3(1) of the bill alters these amounts. Under the amended formula, the CHT will now consist of a cash contribution equal to:

- $13.65 billion for the fiscal year beginning on 1 April 2004;
- $19 billion for the fiscal year beginning on 1 April 2005; and
- thereafter an annual increase of 6% from the cash contribution of the previous year, for the fiscal years from 1 April 2006 to 31 March 2014.

The cash contribution is not subject to the interim estimates that are required to be made under section 4(1) of the *Canada Health Transfer and Canada Social Transfer Regulations*.

Clause 4 repeals the amounts that would have been granted under the Health Reform Transfer for the 2005-2007 fiscal years.

Following the 2004 Meeting on the Future of Health Care, the First Ministers agreed to set aside more money to reduce wait times at Canadian medical facilities. Clause 5 of the bill adds new sections 24.61 and 24.62 to the FPFAA. The new section 24.61 creates a Wait Times Reduction Transfer, designed to assist provinces to reduce wait times according to their respective priorities, which may include:

- training and hiring more health professionals;
- clearing backlogs;
- building capacity for regional centres of excellence;
- expanding appropriate ambulatory and community care programs;
- expanding tools to manage wait times; and
- other priorities outlined in the 2004 10-Year Plan to Strengthen Health Care.

The Wait Times Reduction Transfer will consist of:

- $4.25 billion payable into a trust. The amount provided to each province will be determined by the terms of the trust indenture establishing the trust. The $4.25 billion will come out of the Consolidated Revenue Fund.
- A $250-million cash contribution for each fiscal year for the period beginning on 1 April 2009 and ending on 31 March 2014. The amount paid to each individual province will be determined on a per capita basis.

Clause 6 of the bill adds a requirement for a parliamentary review by a committee of the Senate or the House of Commons, or both. The review must be undertaken on or before 31 March 2008, and will study whether the provisions of Bill C-39 have been effective in implementing the 10-Year Plan to Strengthen Health Care.

Clause 6 further clarifies that the 10-Year Plan to Strengthen Health Care includes the communiqués released in respect of the First Ministers' Meeting on the Future of Health Care that was held during 13-15 September 2004.

C. An Act Respecting the Provision of Funding for Diagnostic and Medical Equipment

Clause 7 of Bill C-39 enacts An Act respecting the provision of funding for diagnostic and medical equipment.

Under clause 7.1(1) of the bill, the Minister of Finance is to provide an aggregate amount of $500 million, starting in the 2004-2005 fiscal year, to help provinces acquire diagnostic and medical equipment, and train staff in its use. The amount paid to each individual province will be determined on a per capita basis. The population of a province for the fiscal year is to be determined by the Chief Statistician of Canada. All payments come out of the Consolidated Revenue Fund.

COMMENTARY

There has been a wealth of commentary on the 10-Year Plan negotiated by the First Ministers in September 2004. The Plan has generated attention for explicitly recognizing the principle of asymmetrical federalism, and the effect this will have on Canada's division of

powers.(3) Some have questioned whether such an agreement would set a precedent for future federal-provincial negotiations in areas where provinces hold jurisdictional authority.(4)

The concept of asymmetrical federalism is of particular importance to Quebec, and its aspiration to exercise its own authority with respect to planning, organizing and managing health services. Some commentary expressed concern that Quebec was distancing itself from the national reporting requirements outlined in the 10-Year Plan, which may signify that the province will not use new federal health transfers to meet the Plan's stated health care priorities.(5)

The 10-Year Plan has been criticized equally for putting the federal government in a fiscal straitjacket,(6) and for not providing enough money to fix the health care system.(7)

The unanimity among First Ministers in signing the 10-Year Plan was considered a laudable achievement in federal-provincial cooperation. The 10-Year Plan includes an agreement to develop evidence-based benchmarks, comparable indicators, targets and transparent reporting. Bill C-39 does not, however, give the federal government authority to withhold money from the newly created transfers if provinces fail to uphold the benchmarks.(8) Provinces and territories maintain sole accountability to their residents.

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(3) "We stand on guard for asymmetry: Adapting national programs to regional realities," *The Globe & Mail* [Toronto], 8 November 2004; Chantal Hébert, "Martin's uncertain road map," *Toronto Star*, 29 September 2004. For a defence of the strategy of asymmetrical federalism, see Hugh Segal, "You ain't seen nothin' yet," *The Globe & Mail* [Toronto], 17 September 2004.

(4) "Santé : Québec obtient un accord particulier," *Le Devoir* [Montréal], 16 September 2004.

(5) "Le réseau de la santé se sent trahi par Charest," *Le Devoir* [Montréal], 18 September 2004.

(6) "The PM pays dearly for medicare promises," *The Globe & Mail* [Toronto], 18 September 2004.

(7) "Health deal is poor medicine, says former cabinet minister," *Vancouver Sun*, 24 September 2004.

(8) Prior health transfers included a stipulation that the provinces conform to the *Canada Health Act*. Under section 25 of the FPFAA, the money given to the provinces under the CST (section 24.2 of the FPFAA) and the Health Reform Transfer (section 24.6(3)) can be reduced or withheld if an Order in Council has been made under section 15 or 16 of the *Canada Health Act*. Orders under these sections are made when provinces violate sections 8 to 12 of the *Canada Health Act* (which generally require provinces to have non-profit, comprehensive, universal, portable and accessible health care systems), or if the provinces allow extra billing (section 20). No such provisions exist for the newly created Wait Times Reduction Transfer, although the additional money transferred through the CHT would still be subject to *Canada Health Act* provisions.