Child Care

PART ONE: LEGISLATION

Provincial/territorial officials reviewed the Canada Child Care Act in detail at their meeting in Toronto on August 24, 1988. The following major points were made with respect to the legislation.

Overall, while the Canada Child Care Act does provide for a broader range of eligible services, clients and suppliers (commercial agencies) than the Canada Assistance Plan, it introduces many more financial and other controls at the federal level. The tone is set by the Preamble to the legislation which fixes the federal contribution at a maximum of $4 billion over 7 years and indicates that the federal government wishes to increase the number of child care spaces (this term is undefined) throughout Canada during that period by 200,000.

By specifying the $4 billion, the government has left no room for negotiating the amount of funds available. Any increase would most likely require legislative change. It is also questionable as to whether the 200,000 space target can be reached given the reduction in provincial/territorial plans and the possible inadequate inflation amount which has been factored in.

Three major aspects of the legislation have been highlighted:

(1) OVERALL RIGIDITY

The Act establishes a set of rigid parameters with respect to provincial/territorial participation in the National Child Care Strategy. These parameters do not allow for unforeseen events such as higher inflation or interest rates. Three areas deserve particular attentions:

Annual expenditure ceilings

The Act stipulates that any agreement with a province/territory will fix the maximum federal contribution payable for each year of the agreement. There is no provision to roll over unspent funds from year to year or province to province. The federal government has indicated that provinces/territories, through a proposed amendment to the legislation, may be entitled to carry over up to 10% of unspent funds from the previous year to the following year, subject to conditions not yet clearly articulated. This amendment only provides for very limited flexibility for provinces/territories.

(6.2) added

Space projections

Any agreement will indicate the projected net increase during each year of the agreement in the number of new child care spaces available in the province/territory and an undertaking by the province/territory to endeavour to achieve that increase. While the Act leaves open the

question of penalties if provinces/territories fail to reach their space target, there is unease to the extent that targets are highlighted in the legislation. This is a particular concern given the controls on expenditures that may be necessary to stay within the ceiling amounts allocated to each province/territory and the fact that the Act doe not contain a definition of subsidized space.

Standards

The Act stipulates that any agreement must specify child care standards that are required to be implemented in a province/territory and the time within which they are to be implemented. In addition, an appendix to the agreement must contain an outline of the methods of enforcement and publication of standards. These requirements represent an intrusion by the federal government into an area of provincial/territorial jurisdiction. However, the federal government has indicated these sections will be amended to clarify its role to be one of "commenting" on, not "consenting" to such standards. Until the precise wording of the amendment is known, the exact role of the federal government in this area of provincial/territorial jurisdiction requires clarification.

(2) FUNDING BEYOND YEAR 7

Again, three areas deserve particular attention:

Lack of inflation protection

The act states that in Year 8 the federal contribution will not be less than the contribution equal to operating costs minus capital costs payable to a province/territory in Year 7, with an adjustment for the national rate of general inflation as determined by the Minister of Finance. This clause fails to guarantee even a Consumer Price Index escalator for provinces/territories. There is also some limited provision for continued top ups for provinces/territories with a view to reducing differences in the amounts per child available to each province/territory. Of particular note is that the level of adjustment in later years is to be determined by the federal Minister of Finance and is not based on a clearly articulated formula.

Program Growth

There is no automatic provision for increased costs for improvements in the quality of care or expansion of the number of child care spaces after the first seven years of the initiative. Regardless of the escalating cost of child care in later years the legislation fixes the federal contribution to a maximum of the 1995 rate with an inflation rate to be determined by the federal Minister of Finance.

Reduced expenditure base

Finally, as the federal government has unilaterally reduced planned provincial/territorial expenditures for 1995 by 28% or 42%, the cumulative effect of the legislation and the offer is that there is no assurance for provinces/territories that costs for subsequent years will be fully shared.

(3) THE EXPLICIT ROLE OF THE FEDERAL MINISTER OF FINANCE

The Act grants wide and unprecedented powers to the Minister of Finance in an area of social policy which has traditionally been the reserve of the Minister of National Health and Welfare. Approval of the Minister of Finance is required for child care agreements with provinces/territories to be entered into, amended, terminated and renewed. Further, with respect to Year 8 and subsequent years, the federal Minister of Finance determines both the inflation rate to be used in the escalator and any continued top up that a province/territory may be eligible for.

CONCLUSION RE LEGISLATIVE FRAMEWORK

These are the major points covered by provincial/territorial officials at their Toronto meeting. There were more minor technical wording and definitional issues that were discussed. They can be documented if deputies wish. In closing, it should be noted however, that no analysis of the legislation would be complete without a review of the regulations which the federal government have yet to share with provinces/territories. The Act lays out wide scope for the regulations and appears to indicate that the federal government can unilaterally amend regulations when their agreements with province/territory end. Regulations will determine what are child care services, what constitutes not for profit child care, what represents a cost to the province/territory, what capital assets are, and prescribe the manner of estimating costs and the maximum contribution payable to a province/territory in a given year. This analysis is therefore, of necessity, incomplete. One can however conclude that the Act has been framed so as to control federal expenditures by imposing a financial strait-jacket on provinces/territories. Whether this strait-jacket is acceptable to provinces/territories largely depends on whether a province/territory can live with the ceiling proposed on the federal contribution to child care.

PART TWO: NEGOTIATION PROCESS

Change in the approach to Negotiations

The process of negotiating the cost-sharing arrangement for child care represents a radical departure from the usual federal-provincial/territorial process on social policy issues. In the past, there has been a high degree of consultation and collaboration due to provincial/territorial responsibilities in the field of social welfare. Certainly, it appeared at the outset that it was the federal government's intention to continue this practice when negotiating child care. The minister of Health and Welfare Canada, Jake Epp, indicated that the new cost sharing arrangement would be developed "in the spirit of Meech". Apparently, this statement was meant to signal that a cooperative approach would be taken, and that the federal government would not use its spending power to intrude on provincial/territorial jurisdiction. However, fiscal concerns and the desire to follow through on the final element of the National Child Care Strategy prior to a possible federal election this fall ultimately overrode commitments regarding cooperation.

Deviation from the schedule for Child Care Consultations

Perhaps the first indication that the original approach to the negotiation of child care cost sharing had been derailed was the deviation from the schedule for negotiations which the federal government had established initially. Consultations never proceeded beyond the first meeting of deputy ministers, though further meetings at this level and at the ministers level were expected. The cost sharing package, which was to be presented to provincial and territorial ministers in July 1988, was not released until it was too late for significant input.

Atmosphere of Mistrust

Along with the deviation from the original commitment to cooperative development of the new cost sharing arrangement came an increasingly negative atmosphere. Among the causes was the reluctance of federal officials to commit even the most important and basic details of the child care offer to writing. Provincial and territorial officials were forced to "read between the lines" of information provided orally in order to get a sense of what the federal offer really means. Not surprisingly, provincial and territorial officials began to feel mistrustful due to their inability to obtain a clarification from federal officials on key points, and also due to the impression that federal concerns regarding timing and fiscal restraint were given more weight than ~~legitimate provincial/territorial~~ concerns.

Role of the Federal Minister of Finance

The sense of unease referred to above was exacerbated by the unprecedentedly large and explicit role of the federal Minister of Finance in the negotiation of a social services funding

arrangement. The requirement that the federal Finance Minister's signature be on any agreement made pursuant to the Canada Child Care Act and on most amendments to agreements is firm evidence of this role.

His influence also became apparent with the dramatic change in the workings of the cost sharing formula and in the approach to access to the cost sharing fund which followed the authorization of a $1 billion increase in that fund. The final version of the cost sharing mechanism is essentially a fiscal strait-jacket which the provinces/territories must wear to get their slice of the pie. Provinces/territories which are unable or unwilling to spend at the rate expected by the federal government, or live up to federal expectations regarding space creation, will lose cost sharing. it is arguable that the cost sharing formula, which was developed after the funding was enlarged, was designed to ensure that the provinces/territories would not be able to access all of the federal funding to which they are entitled.

Failure to provide opportunity for input to Bill C-144

The federal government did not allow adequate time for the provinces/territories to review and have input on Bill C-144. Health and Welfare Canada did not provide the provinces and territories with a copy of the draft legislation before tabling it in Parliament. Furthermore, it appears that the legislation will be rushed through Parliament in order to ensure a policy victory before a possible federal election and to preclude provincial/territorial input.

The federal government's approach to the negotiation of child care cost sharing should put the provinces and territories on their guard when other aspects of the cost sharing arrangement, such as the regulations and the agreements, are developed.

Possible Action

The window of opportunity for input into Bill C-144 is closing rapidly. However, in spite of the short timelines, provinces/territories can still jointly present their concerns on those matters where there is a common position, and make a strong stand individually on concerns which are not shared.

Equally important is the need to ensure that the regulations reflect provincial and territorial concerns, and that all jurisdictions have the opportunity for informed input before the proposed regulations are finalized. This is a matter for immediate attention. A formal request should be made for consultation on any regulations the federal government plans to introduce. Any such consultation would be more effective if provinces/territories had copies of the draft regulations sufficiently in advance to enable a thorough analysis.

PART THREE: COMMENTS ON OFFER

The offer is not what the provinces and territories were led to expect

The cost sharing package contained in Bill C-144 is quite different from what the provinces/territories expected on the basis of the bilateral and multilateral consultations which were orchestrated by the federal government in the initial months of 1988. The most significant differences related to the allocation of funds. They are as follows:

1. Predetermined Annual Allotment

During the consultation process, the federal government indicated that a lump sum would be allocated to each province/territory for the seven year period, and that this amount would be accessible as outlined in the cost sharing formula. The provinces/territories would be able to access this amount at their own rate. However, if a province/territory had used its total allotment before the end of the seven year period, additional funding would not be forthcoming.

Instead of this arrangement, Bill C-144 contains a provision requiring that the maximum federal contribution payable for each year be fixed in the agreement between Canada and a province/territory. This means that a province which was unable to expand its child care system as rapidly as it expected, or experienced fluctuations in child care expenditures for reasons beyond its control, would be penalized. A province/territory would not be able to underspend in one year and then access unused cost sharing dollars for that year at some later point in the seven year period. Thee what-you-don't-use-you-lose approach to allocating child care dollars could very easily lead to less than 50% cost sharing of operating expenditures for many provinces/territories. This contradicts the assurances which were made verbally at the beginning of the consultation process to the effect that the provinces/territories would receive cost sharing under the new child care cost sharing mechanism at a ratio which is no less favourable than that which is currently available under CAP.

It should be noted that one of the amendments tabled by the Minister of Health and Welfare Canada as part of his representation to the Parliamentary Committee reviewing Bill C-144 would enable a jurisdiction to roll over to the next year up to 10% of its federal allotment which it was unable to access. This is conditional upon inability to achieve the net increase in spaces which was expected for that jurisdiction by that point in the seven year period.

2. Cumulative Cuts in Provincial/Territorial Expenditures

A feature of the arrangements for allocation which was unexpectedly introduced by the federal government is the cumulative cuts requirement. This requirement, which is not referenced in any public document, such as Bill C-144, or HWC News Releases, involved the reduction of provincial/territorial expenditure plans in a cumulative fashion for each year of the period of time covered by federal-provincial agreements. The size of the cumulative reductions varies from 4% to 6%, depending on the province/territory. Because the cuts are cumulative, a province/territory which is asked to shave, its expenditures faces total cuts as follows:

year 1	-	4% or 6%
year 2	-	8% or 12%
year 3	-	12% or 18%
year 4	-	16% or 24%
year 5	-	20% or 30%
year 6	-	24% or 36%
year 7	-	28% or 42%

Presumably, the provinces/territories can spend whatever they wish on their child care programs. However, the cumulative reductions mean that cost sharing, as a percentage of total provincial/territorial child care expenditures, will decline insofar as those expenditures exceed what is allowable under the child care cost sharing arrangement.

3. Use of Inflated Dollars

Another problematic feature of the federal offer is the use of inflated dollars by the federal government when indicating the amount allotted to each jurisdiction. As requested by federal officials, each jurisdiction provided its expenditure projections in 1987 dollars. However, when the Minister of Health and Welfare Canada called his provincial and territorial counterparts to advise them of the notional amounts for their jurisdiction, the figures he provided reflected an estimated rate of inflation for each year. Since the federal Minister did not indicate that the notional amounts were in inflated dollars, the allocation initially appeared to be more generous than it really was.

Inadequate inflation adjustment

As mentioned above, the amounts allocated to each province and territory for each of the seven years covered by the cost sharing arrangement are adjusted for a rate of inflation based on federal estimates. It should be noted that the rate of inflation used by federal officials is low. For most years inflation was forecast at about 3.4%. This kind of optimism has the potential to hurt provinces and territories, which will be left in the position of making up the difference between the federal adjustment for inflation and the actual rate of inflation for each year.

The impact of the top up

Many jurisdictions are concerned about the top-up provisions contained in the federal offer. A major problem is that it is virtually impossible to assess the impact of the top up provisions, since eligibility for a top up and its value to a province or territory depend largely upon how a jurisdiction measures up to the national average per child entitlement - a figure which cannot be determined at this point.

Perhaps a greater source of concern is the fact that the top up provisions will work to discourage additional spending on child care by provinces/territories with child care expenditures of less than 70% of the national average per child entitlement. The size of the top up available diminishes rapidly when child care expenditures increase. This could force some jurisdictions to keep child care expenditures low in order to continue to receive enhanced cost sharing from the federal government, rather than provide more generous support for their child care systems.

Rigid legislative framework

Many of the features of the federal offer which are problematic will be entrenched in legislation. Such features include the use of a predetermined annual allotment rather than the provision of a lump sum for the seven year period and the top up mechanism which works to discourage eligible jurisdictions from increasing child care expenditures. This leaves the provinces and territories with very little room to manoeuvre in their attempts to negotiate a cost sharing agreement with the federal government which can accommodate the needs of their individual child care systems. Jurisdictions are faced with the prospect of persuading the federal government to alter Bill C-144 during its rapid progress through Parliament, or operating within its limited confines for the foreseeable future.

PART FOUR: CAP/CHILD CARE INTERFACE

The support committee noted the importance of having a well understood delineation of the CAP/Child care agreement interface.

Delineation of the CAP/Child care interface is important for understanding the broad outlines of the federal offer ie. what are possible implications for obtaining sharing in the range of informal child care arrangements, adult day care programs, programs for children with special needs, administration costs, etc.

The situation at hand is not dissimilar to that which exists between CAP and EPF. Certainly, just as in the case with EPF, once provinces/territories are at their maximum allocations under the child care agreements, they will need to know exactly what options remain under CAP.

Final CAP/EPF guidelines were not finalized until 1985 and have not yet been adjusted in light of the Canada Health Act. There is an opportunity to avoid such administrative problems and delays by joint interprovincial/territorial action at this time?