

Box 2: No-fault compensatory regimes

Claims falling within a predefined class of avoidable adverse events are automatically paid by a public fund or through private resources without a formal finding of negligence through the court process.

Advantages

- prompt redress to victims for comparatively cheaper administrative and legal costs (5%–30%, as compared with 40%–60% in the tort liability system)
- avoidable standards” create the conditions for more open exchange about the circumstances that led to errors and hence foster the development of more efficient independent error reporting and risk mitigation systems
- award amounts are more consistent

Drawbacks

- could result in more claims per capita, which could result in higher costs if introduced anew into a jurisdiction
- level of compensation may be insufficient
- coverage usually limited to avoidable adverse events as decided by a group of expert advisors
- possible lack of personal accountability of physicians

Main challenge

Establishing a set of triggers and criteria for compensation, scope of coverage and level of damages — hence these systems typically undergo several reforms to fine tune coverage decisions.

Source: *Medical Malpractice: Prevention, Insurance and Coverage Options*, published by the Organisation for Economic Cooperation and Development in 2006.

Incoming CMA president impatient for reform

It could be argued that the incoming president of the Canadian Medical Association (CMA) is a trifle impatient. After all, Dr. Robert Ouellet says that he is “allergic” to pilot projects and “a bit against consensus because I am a man of action.”

The problem with consensus, the 62-year-old radiologist explains, is that it smacks of more discussion, more study, which essentially impedes the goal of improving access in Canada’s health care system. “It’s not the time to do studies. We have so many studies. In Quebec, we are champions at this,” says the former Quebec Medical Association president. Rather, the CMA should take the plunge and make concrete proposals for change.

The second consecutive private clinic owner/operator to assume the CMA helm, Ouellet will succeed Dr. Brian Day on Aug. 20, 2008, at the association’s annual general meeting in Montréal, Quebec.

Ouellet opened Canada’s first private computed tomography (CT) scan clinic and now owns a stake in 4 other clinics in Quebec, including a pair of magnetic resonance imaging (MRI) clinics that his radiation technologist wife, Diane Marceau, oversees.

Ouellet wants to inject more competition into the system and foster more public–private partnerships. “Nobody



Daniel Fortin

Radiologist Dr. Robert Ouellet, pictured here with his family, will become the second consecutive private clinic owner/operator to head the Canadian Medical Association. From left to right: daughters, Sandra and Julie, spouse, Diane, and son, Maxime.

and its acceptability to the Canadian public, but there has been no follow up.

Meanwhile, opinions about the merits of the current system are divided. In the latest Canadian Medical Protective Association annual report, President Dr. Peter Fraser wrote that members “sleep better at night” because the association exists. And in a 2006 Organisation for Economic Co-operation and Development report on medical malpractice, Canada’s system compared favorably to those in other countries.

Winnipeg-based Dr. Rob Robson, who spent 10 years as a claims manager for the protective association, believes strongly that doctors have a right to a legal defence and has no problems with the association’s activities. But he left his association job to train as a mediator at Harvard University because he learned that “when you use a confrontational system like tort law, you keep people apart. At the end of the process the doctors are mad, patients are mad and the system doesn’t change.”

Toronto lawyer Douglas Elliott, who has done “a reasonable amount” of medical malpractice litigation on behalf of plaintiffs, says he’s not a big fan of tort “but it’s better than nothing.” And he acknowledges it can be a deterrent. For example, for years doctors overprescribed blood transfusions to “get patients up and around quicker” — notwithstanding

inherent risks — because the blood was “free”. It was only fear of litigation that led to them to take a more conservative approach, Elliott says.

Elliott, however, favours the introduction of no-fault compensation, arguing that the current system is fair to doctors, but not to patients. And he decries the fact that individuals must bear the cost of litigation against doctors, whose insurance premiums are mostly paid by taxpayers via provincial health ministries (as part of fee negotiations).

The retired doctor, quoted at the beginning of this article, would have appreciated a no-fault system that could have spared him the lengthy and traumatic experience of going to court. Still, he wonders about those “difficult situations where doctors are totally wrong” and their negligence causes permanent harm to patients. But lawsuits aren’t the only answer. Countries with no-fault compensation systems typically have separate processes for discipline and corrective action to prevent harm to future patients. — Ann Silversides, *CMAJ*

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In the next issue of *CMAJ*: Experts weigh in on whether the tort-based liability system and fear of litigation spell trouble for the growing patient safety movement.

wants to privatize the system like it is in the US," he says, adding that every other health care system in the world has a mix of public and private delivery and that nobody has copied Canada's single payer system.

Raised with 2 siblings in the Montréal suburb of Longueuil, the son of a plant supervisor studied medicine at the Université de Montréal and after interning, entered a pediatrics residency. It soon lost its appeal and Ouellet shifted into radiology. "I like technology. I am an Aquarius, and believe in that. Aquarius as a sign is always thinking, always looking at the future, what is coming up."

Ouellet first worked for a hospital radiology department in Trois Rivières, while enjoying regular rotations further north in LaToque, where, for a week every fall, doctors and residents disappeared into the woods to hunt.

In 1981, he was invited to join the staff of the newly minted Cité de la Santé hospital in Laval, near Montréal. Six years later, he was head of the radiology department when the hospital's chief executive officer informed him that it would be 2 years before the hospital could purchase a CT scanner, despite heavy demand.

The administrator was more than willing to send patients to a private clinic if Ouellet and colleagues were interested in opening one, so they began raising money and opened a CT clinic in 1987, staffing it, on a rotating basis, with 5 hospital radiologists, who are allowed to toil outside the public system because CT scans, MRIs and ultrasounds, if provided outside a hospital, are not covered by the province's health plan. Each spent about 15% of their time at the clinic.

In 1997, Ouellet opened the province's first private MRI clinic, again serving patients referred by his hospital, which didn't buy its own machine until 2002. But patients also came from as far as Gatineau, some 200 km to the west.

Ouellet stresses that patients need a prescription to receive services at the clinics, while test results are sent directly to doctors. "It's not like the US where people can just walk in off the street and ask for a full body scan."

Those not referred by hospitals, or workers compensation or auto insurance programs, pay out of pocket unless they have private insurance, which can cover as much as 80% of costs.

Quebec's pharmacare program, with its mix of public and private insurance coverage and deductible and copayment features, is a model for potential reform, Ouellet says. He notes that prescription drugs are not covered by the Canada Health Act. But while people don't want deductibles and copayments in the rest of the health care system, they seem quite satisfied with the way the pharmacare program operates.

The CMA is ideally positioned to promote systemic change by appealing

to the hearts and minds of Canadians, Ouellet adds. A solution from doctors will "be good for the patients and good for the doctors."

Ouellet also hopes to boost CMA membership among Quebec doctors, only about one-third of whom are now Quebec Medical Association (and hence CMA) members. That's long been sought and while membership has increased, particularly among medical students, the association's goal of signing up 75% of the province's doctors before this year's annual general meeting has proved elusive. — Ann Silversides, *CMAJ*

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Suicide fad threatens neighbours, rescuers

Japanese authorities have moved to crack down on websites listing the ingredients and the process for concocting a deadly hydrogen sulfide gas that has been used in a spate of recent "detergent suicides."

The gas, which can form a cloud that affects neighbours and rescuers, has often triggered mass evacuations.

The Peninsula Hotel in Tokyo, for example, was forced to clear patrons from 4 floors, while in Konan City, a 14-year-old girl used the gas, causing her mother to be hospitalized and 90 of her neighbours to flee their homes.

Japanese media reported that the girl stuck a sign to the bathroom door that stated "DO NOT open! Poison gas be-



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Medical workers are being forced to wear gas masks in responding to "detergent suicides" in Japan.