For the record

Court turfs product liability suits against government

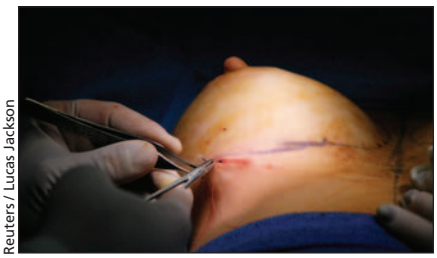
The federal government owes no "duty of care" to individual Canadians in its regulation of medical devices and thus can't be held liable for harm resulting from their use, the Ontario Court of Appeal has ruled in rejecting a class-action lawsuit brought on behalf of an approximated 29 500 Canadian women who received Dow Corning silicone breast implants between 1962 and 1992.

Holding the federal government liable for harm caused by products such as implants would ultimately result in medical treatments becoming inaccessible and limitations on Canadians freedom of choice, argued Justice Susan E. Lang in a 3-0 court ruling (*Attis* v. *Canada (Health)* 2008 ONCA 660) that rejected lead plaintiffs Joyce Attis and Alexandra Tesiuk's negligence claim that asserted Health Canada was responsible for ensuring the safety of all medical devices.

If that were allowed, it would invite a situation in which "liability could extend from medical devices to other products regulated under the FDA [Food and Drugs Act], such as food, drugs and cosmetics, as well as to many other regulatory regimes. It follows that the imposition of liability on the public purse would place an indeterminate strain on available resources," Lang wrote.

Imposing liability on Health Canada and other regulatory regimes might also have a "potential chilling effect on public health" because it would likely result in constraining access to new devices and medical treatments, the court argued. The government would be inclined to limit their availability in a bid to protect itself. "In addition, the imposition of liability could also discourage medical advances and innovative technologies, which often come with risks and without guarantees regarding their long-term consequences."

Government liability would also inevitably prompt industry to reduce its own vigilance as it would likely serve as a "disincentive" to compliance. "Diminished deterrence for a regulated industry is to be avoided particularly when it is the industry, and not the regulator, that holds critical knowledge regarding product safety."



Reuters / Lucas Jackson

A surgeon stitches an incision during breast augmentation surgery.

Ontario medical watchdog censures family physician

In the first test of its regulatory crackdown on untrained family physicians who perform cosmetic surgery, the College of Physicians and Surgeons of Ontario has slapped the wrists of a Toronto-area doctor for professional misconduct while performing liposuction in his offices.

In the wake of an extended dust-up over the lack of regulation and licensing of cosmetic surgery (*CMAJ* 2008;178[3]:174-5), the College adopted new regulations last April prohibiting physicians from claiming that they are "cosmetic surgeons," or advertising such capabilities (*CMAJ* 2008;178[11]:1412).

But the College's efforts to investigate complaints were stalled by a legal challenge until Sept. 25, when the Ontario Superior Court of Justice ruled that the regulatory body had the authority to appoint investigators to observe cosmetic surgical procedures and review files of physicians against whom a complaint had been filed.

Days later, the College's disciplinary committee and Dr. Jimmy Chi Ming Poon reached an "agreed statement of facts and plea of no contest," under which the latter conceded that he "failed to maintain the standard of practice of the profession," used inappropriate doses of anesthetic and didn't chart procedures properly.

The College promptly imposed conditions on Poon's certificate of registration, requiring that he agree to have his family practice reviewed and that he participate in the province's Physician Review and Enhancement Program within 6-weeks. Should he pass that program with a category 3 result, he would be entitled to perform "minor diagnostic procedures on superficial lesions less than 2 cm, under local anesthetic, for medical, not cosmetic reasons; incisions and drainage of superficial abscesses; and suturing of uncomplicated superficial lacerations." But such minor surgical procedures would remain prohibited if performed on the face or neck of a patient. — Wayne Kondro, *CMAJ*

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Briefly

Electronic cigarettes: The World Health Organization says there is no evidentiary basis for concluding that so-called electronic cigarettes — stainless steel devices that dispense a heated liquid nicotine mist which is absorbed by the lungs — are a "safe and effective" smoking cessation aid. Clinical studies and toxicological tests must be conducted, Douglas Bettcher, acting director of the WHO's Tobacco Free Initiative, told reporters. "There are a number of chemical additives in the product which could be very toxic,"

Pointless: A survey of British patients about the efficacy of the United Kingdom's National Health Services complaints process (*CMAJ* 2008;178[11]:1409-11) found that 29% found the process "totally pointless," while 20.5% found it pointless and 19% "slightly" pointless (www.patients-association.org.uk). "There is a lack of transparency in procedures and overlaying it all there is the perception that they exist to protect the NHS rather than help patients," states a report by The Patients Association. — Wayne Kondro, *CMAJ*

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