

Letter to the Editor

**Canada's System of Liability Coverage
in the Event of Medical Harm:
Is It Time for No-Fault Reform?**

Shoo K. Lee, Brian H. Rowe,
Colleen M. Flood and Sukhy K. Mahl
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AS AN ACTIVE PARTICIPANT IN DISCUSSING IMPROVEMENTS TO THE CANADIAN medical liability system, the Canadian Medical Protective Association (CMPA) read with interest the article noted.

We were surprised that the authors did not undertake a more systematic literature review of the current medical liability system or consider reforms other than the no-fault model. We also noted the significant omission of any discussion regarding the role of hospitals and other healthcare professionals in the medical liability system.

Conversations regarding the implementation of a Canadian no-fault medical liability system have been ongoing for years. The CMPA has continuously reviewed international data related to no-fault models, including some comprehensive reports (Armstrong and Tess 2008; Farrell et al. 2010). Our analysis reveals that a no-fault model has several key challenges to achieving an equitable and sustainable medical liability system and that it would not necessarily enhance patient safety (Davis et al. 2003).

There is a significant amount of context missing from information cited from CMPA's annual reports (2016, 2017, 2018, 2019 and 2020). Most importantly, neither is the CMPA subsidized nor does it receive any government or taxpayer funding. The CMPA collects membership fees directly from physicians. Governments reimburse them for a portion of their fees. Provincial or territorial medical associations negotiate reimbursement agreements on behalf of the physicians. The CMPA is not a party to these negotiations. The CMPA is the leading provider of patient safety-related medical education to Canadian physicians.

When a patient initiates a claim against a CMPA member, the CMPA assists the member's defence as long as the care is medically defensible. If experts conclude that the standard of care was not met and this failure harmed the patient, appropriate financial compensation to the patient or family is provided. In the last five years, approximately over *one third* of cases proceeding through the medico-legal process were resolved with compensation to patients and their families. While the total annual amount varies, the CMPA has paid *\$1.1 billion* in patient compensation over this period on behalf of its members.

A medical liability system is generally considered effective when it takes into consideration the social, cultural, legal and economic environment (The World Bank 2013). While we believe that the existing Canadian system has been more resilient and sustainable than the authors suggest, there is room for improvement. The CMPA supports civil justice reforms including alternative dispute resolution, improved case management and proportionality in dispute adjudication – all aimed at bringing cases to early and fair resolution and reducing costs for all parties.

However, it is unlikely that a no-fault model would address the current deficiencies in our medical liability system. In those jurisdictions where complete no-fault systems have been effective, there is an extensive social welfare system, and compensation related to medical injury is largely a “top up” of a comprehensive benefit package (e.g., Sweden and New Zealand) (*Act [1993: 387] on Support and Service for Certain Disabled People*; Kachalia et al. 2008). This type of system does not exist in Canada. The implementation of a no-fault model in Canada would require significant investment in community care resources and would not enhance patient safety (Davis et al. 2003; The World Bank 2013).

The CMPA will continue to advocate for medical liability model improvements and focus efforts on enhancing patient safety, which helps to decrease system costs and improve patient outcomes (Simon and Jansen 2009; Slawomirski et al. 2017; Yang et al. 2018).

LISA CALDER, MD, MSc, FRCPC
CEO, Canadian Medical Protective Association

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