



POSITION PAPER

TORT REFORM & HEALTHCARE

SUMMARY OF THE ISSUE

Concern continues to grow in Canada and other countries regarding the effects of medical errors on patient safety. Statistics indicate that patient injury, as a result of medical errors, is far more widespread than was previously suspected. At the same time, a growing body of evidence points to the root cause being a systemic, institutional problem, rather than the cause traditionally cited—individual errors made by healthcare practitioners.

Tort legislation generally is geared toward identifying culpability and ensuring the person responsible is held accountable before the law. As justifiable as this is, in this respect, tort legislation runs counter to initiatives in healthcare designed to reduce the incidences of medical errors that result in patient injury. With its emphasis on culpability, accountability and judicial solutions, tort legislation does not support broad-based, systemic healthcare solutions designed to ensure patient safety through the creation of workplace environments where medical errors are less likely to occur.

At the heart of the matter is patient safety. Tort reform in the area of medical errors would be beneficial because it could re-focus the issue on improving patient safety, rather than on assigning blame and ruling on compensation. It would provide leeway for healthcare leaders to address the root cause for errors and work diligently to create institutional environments designed to reduce the number of medical errors significantly. The pointing finger would be turned away from healthcare practitioners, who often are not to blame personally for medical errors.

It is time for these parallel paths to converge. Tort reform is long overdue as it is related to healthcare. Patient safety is the best and most logical point for convergence to take place. While some efforts are being made in Canada to address tort reform, these are limited. Radical reform is not necessary. A directed and concerted effort in incremental steps can result in significant strides towards improved patient safety.

HIROC'S ROLE & INITIATIVES

Promoting patient safety is at the core of HIROC's mandate. As an advocate for patient safety, HIROC is committed to building awareness of the need for tort reform with respect to healthcare matters and working to strengthen political will for tort reform, in general. We recognize the difficulties that tort reform presents in the Canadian political context, given that tort law jurisdiction and healthcare both are provincial responsibilities. Yet ensuring the Canadian healthcare system is as safe as it can possibly be is enough of a reason to keep the issue of tort reform alive.

HIROC is also the largest healthcare liability insurer in Canada. While insurance is our business, our vision is the safest healthcare system. We work to realize this vision by sponsoring educational programs and events and by partnering with other organizations, institutions and governments.

One of our key objectives is to contribute to safer healthcare environments where there will be fewer medical errors and fewer claims requiring settlement. Tort reform, aimed at improving patient safety rather than at reducing the size and risk of judgments, would support this objective and yield significant benefits for stakeholders in the Canadian healthcare system.

POSITION STATEMENT & CALL TO ACTION

HIROC believes that provincial governments in Canada should make tort reform, as it relates to healthcare, an ongoing part of the political agenda. As an important first step, governments should consider enacting limited qualified privilege legislation that shields information gathered in connection with defined patient safety initiatives from use in civil litigation.

At the same time, provision should be made for systematic identification and dissemination of patient safety lessons to be learned from lawsuits. Also, more accessible, inexpensive, conciliatory complaints resolution mechanisms should be made available to consider complaints involving healthcare institutions and other providers.

Along with the many partners we work with to improve patient safety, HIROC is committed to this important topic. At the same time, we are developing new tools and expanding current tools to deal with risk management and hazards in healthcare environments. This includes RMSAM—our comprehensive Risk Management Self-Appraisal Modules tool. Our efforts are designed to underline the importance of ensuring that patient safety remains at the core of decisionmaking and oversight in Canadian hospitals.