

# In the Know

A spotlight on **management of the healthcare workplace**

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## Regulatory and medico-legal barriers to inter-professional practice

*William Lahey and Robert Currie*

Lahey and Currie explore, from a legal standpoint, the prospects and potential ramifications of implementing inter-professional practice (that is, collaborative, patient-centred practice) in Canada. They examine the regulatory and medico-legal barriers that might prevent or inhibit healthcare professionals from working together and use these findings to forecast the kinds of changes needed to accommodate the shift to collaborative practice. They focus on two areas of law where the major legal issues are likely to play out: regulatory laws for healthcare professionals, and professional malpractice law.

### Regulatory law for health professionals in Canada

Structures for professional regulation are a barrier to a more integrated healthcare system in general and inter-professional practice in particular. Reforms that seek to create space for inter-professional practice must build on the strengths of existing self-regulation. Overly broad or radical reform – such as the abandonment of the principle of self-regulation – could cause collateral damage (such as damage to healthcare provider morale, recruitment, and retention). Lahey and Currie propose law reforms that take into account both the current state of inter-professional practice and the functions and values that professional regulation is designed to protect.

### Professional malpractice law

Malpractice law is highly individualized; courts evaluate allegations of medical negligence on a case-by-case basis. The courts focus on the decision, who made it, and how it was carried out to determine causation and responsibility. In this area, the authors respond to the two main concerns of practitioners:

**1) Will there be more liability?** Today courts are rigid about who does what, when, and how in inter-professional practice. With inter-professional practice, roles and responsibilities will change from case to case. In the short term courts could find more liability because they are not equipped to deal with the tensions that could arise between traditional and emerging views of practitioner

### Key messages

- Canadian regulatory and malpractice laws are likely to inhibit or prevent healthcare professionals from working together in the short term.
- Although inter-professional practice will lead to better patient care and less liability in the long term, courts may find more liability in the short term due to a lack of understanding of this new clinical treatment model.
- Tailoring inter-professional practice to the requirements of tort law, pushing the collaborative agenda before the courts, and taking a proactive approach to legislative reform could address the liability issues, opening the gates to a more collaborative approach to healthcare.

roles and clinical decision-making processes. This increase should dissipate as courts come to grips, through education and experience, with inter-professional practice. Proponents argue that in the long term, because inter-professional practice results in better patient care, there will be less injury and therefore less liability.

### 2) Will there be misallocation of accountability?

Inter-professional practice will re-allocate clinical responsibilities and therefore accountability. Courts could redirect too much accountability to institutions and non-physicians, or they could continue to impose a level of accountability on individual physicians that is disproportionate to their roles as team members. Lahey and Currie propose three strategies to minimize this risk:

- a) Tailor inter-professional practice to the requirements of tort law.** Inter-professional practices should be tailored with the parameters of negligence law uppermost in mind. The administrative systems should safeguard detailed evidence about individual roles and team functions, and about how decisions were made to reduce the chance of rulings that implicate individuals in overly broad or inaccurate ways.
- b) Push the collaborative agenda before the courts:** Professionals must collectively promote a vision of inter-professional practice that addresses accountability. A consistent view of the value and operating modes of collaborative

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practice will help courts understand the model is clinically sound and consistent with a reasonable standard of care.

- c) **Determine needed law reforms:** Law reforms, such as mandating accountability in certain places, could help courts transition into a new medical services delivery model. Laws change with new research and with shifting standards and practices.

Inter-professional practice is appearing in a wider variety of geographic, clinical, and professional settings. For these initiatives to grow, they must be supported. Researchers should search out the lessons learned from specific initiatives and disseminate them so they can be adopted more broadly. Regulators and other legal actors should engage in making inter-professional practice happen, partly because they are instrumental to making the changes happen and partly because they are in need of a similar shift in their own professions.

Lahey and Currie recommend lawyers and regulators pursue more research and discussions with other professional groups about how to:

- adjust scopes of practice for health professionals;
- mandate accountability for facilitating inter-professional practice;
- eliminate regulatory restrictions;
- help create flexible, responsive legislative machinery; and
- develop institutions for inter-professional regulation.

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