

## Response to the Letter to the Editor

**W**E THANK DR. CALDER FOR HER RESPONSE ON BEHALF OF THE CANADIAN Medical Protective Association (CMPA) to our article (Lee et al. 2021), and we appreciate the opportunity to address her comments.

Dr. Calder claims that we did not undertake a full systematic review. Systematic reviews are distinct research undertakings beyond the objective of this manuscript. Importantly, bias and conflict of interest need to be avoided, and we propose that an organization with a vested interest in the topic is not the appropriate author of such a systematic review. If indeed CMPA has literature that supports their case, we ask them to release such information for critical review. Dr. Calder also critiques our article on the grounds that no-fault compensation would not improve patient safety. We disagree. Countries such as New Zealand and Sweden have had no-fault systems, which do not compromise patient safety, in place for over 40 years, and provide a model for how Canada can do this.

With so few cases of medical negligence brought relative to the estimated numbers of patients injured due to medical error, tort law does not deter or prevent medical error (Flood and Thomas 2011). Dr. Calder further claims that a no-fault system cannot be implemented in Canada because it lacks a comprehensive social welfare system as, for example, in Sweden and New Zealand. In fact, New Zealand ranks much closer to Canada than Sweden in its level of social spending as a percentage of the gross domestic product, suggesting this is not a determinative factor (OECD 2022). More importantly, Canadians would be better served if the majority of funding were used to compensate patients directly instead of litigating claims.

Dr. Calder claims that the CMPA is not directly paid by governments, nor does it participate in negotiations for fee reimbursements related to medical liability. The reality is that almost all medical liability costs come out of the public purse, irrespective of how the money is routed. The CMPA states that one third of cases proceeding through the medico-legal process are resolved with compensation to patients and their families; however, this neglects the vast majority of injured patients who did not undertake medical liability claims, many because they lack the resources to litigate. In fact, it has been estimated that only 2% of injured patients ever receive compensation for injuries caused by negligent physicians (Silversides 2008). Judicial notice has also been taken of CMPA's "scorched earth" policy (*Frazer v. Haukioja*, 2008) of strangling patient claims at their inception (Gibson 2016) and the fact that "plaintiffs don't have the war chest and endurance of professional defendants" (*Ornstein v. Starr*, 2011). A no-fault system could compensate far more injured patients instead of only those with the resources needed to win their medico-legal battle with the CMPA.

We appreciate that any no-fault proposal would see a reduced role for the CMPA. However, we believe that this is outweighed by the extant evidence in favour of no-fault as well as another important dimension that our tort system fails to address: both patients and medical professionals involved in litigation proceedings experience tremendous emotional stress. Since the publication of our article, we have received communications from patients who have been involved in malpractice claims who state how much they suffered in the process, and wished that a no-fault system had been in place instead. Despite the CMPA's claims, the time for reform is now.

Sincerely,

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## *References*

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