Health Care Reform & the Law in Canada: Meeting the Challenge

Edited by Timothy A. Caulfield and Barbara von Tigerstrom
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ALMOST TEN YEARS AGO, the Canadian Bar Association (CBA) published *What's Law Got To Do With It? Health Care Reform in Canada.*[1] The very tentativeness of the title of that slim volume suggested that part of the challenge for lawyers who were interested in health system policy was to convince others, and perhaps themselves, that lawyers had something to contribute to debates about the reform of the core Canadian institution known as Medicare. Almost certainly, this tentativeness had something to do with the fact that Canadian health law scholarship had been traditionally concerned primarily with the patient-physician relationship and more particularly, with the law of medical malpractice. As of 1994, there had been very limited engagement by Canadian health law scholars with the broader questions of public policy, such as those of system governance, financing and organizational structure, that shape the system within which the patient-physician relationship unfolds.

It is a measure of how much things have changed, both within Canadian health law scholarship and within Canadian health system policy-making, that in 2002 Timothy Caulfield and Barbara von Tigerstrom could give their collection of essays, on the law and health system reform, the bold and confident title of *Health Care Reform & the Law in Canada: Meeting the Challenge.*[2] Today, there is little doubt that Canadian health law scholarship has greatly expanded beyond its traditional core concern with medical malpractice law. The evidence for this is found throughout the diverse health law literature that is being produced by scholars from across the country, as demonstrated in the very extensive "Health Care Reform Project Bibliography"[3] that is part of what will make *Health Care Reform & the Law in Canada* of enduring value to both lawyers and policy-makers. The further evidence of the growing breadth of Canadian health law scholarship consists of the breadth of topics and the quality of presentations that are on display at annual health law conferences, including those now being funded by the

1. The Canadian Bar Association Task Force on Health Care, *What's Law Got To Do With It? Health Care Reform in Canada* (Ottawa: Canadian Bar Association, 1994) (Chair: Richard C. Fraser, Q.C.).
2. Timothy A. Caulfield & Barbara von Tigerstrom, eds., *Health Care Reform and the Law in Canada: Meeting the Challenge* (Edmonton: The University of Alberta Press, 2002).
3. Vanessa Cosco & Barbara von Tigerstrom, "Bibliography" in *ibid.* 251.

Canadian Institutes of Health Research.[4] There is also little doubt that there is a broader understanding among policy-makers and influencers of the relevance and value (and sometimes of the necessity) of legal ideas and of legal analysis to the ongoing work of reforming Medicare and the broader health care system. The evidence for this includes the emphasis placed on legal issues, and the reliance placed on legal advisors, by both of the national reviews of the Canadian health care system that have been recently completed. Most dramatically perhaps, the Standing Senate Committee on Social Affairs, Science and Technology (the "Kirby Committee") went so far as to conclude that Canadian governments must provide a "care guarantee" to Canadians to avoid having a similar, but less well thought through, obligation imposed on them by the courts under the Canadian *Charter of Rights and Freedoms*.[5] The concern of the Commission on the Future of Health Care in Canada (the "Romanow Commission") with the legal dimensions of health system reform (now often called health system renewal) was apparent from the significant attention given to legal or law-related topics in the various discussion papers that were written as background for the Commission's work.[6]

At one level, *Health Care Reform & the Law in Canada* is valuable simply as an overview of this broadening engagement of law with the systemic aspects of Canadian health care policy, and as an introduction to the work of some of the mostly younger generation of scholars who are leading the way in this developing field. It is part of the legacy of the funding given in 1999 to the Health Law Institute of the University of Alberta by the Alberta Law Foundation for an education and research project on the legal aspects of health care reform. It contains seven chapters, together with a short "Preface" from the editors and an "Afterword" by Brent Windwick. Two of the chapters are attempts to bridge the gap between the traditional concern

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4. See *e.g.* "Who Gets It? Who Decides? Issues of Access and Allocation in Health Care" (University of Toronto Faculty of Law: National Health Law Conference, January 22–24, 2004) [unpublished], online: University of Toronto Faculty of Law < http://law.utoronto.ca/faculty> (presentation topics included challenges to governmental restraints on publicly funded services under administrative and constitutional law, access to emergency contraception and abortion services, conflicts of interest in medical research and practice, international trade agreements and access to health care and the effect of marketing on health care access).
5. Canada, Standing Senate Committee on Social Affairs, Science and Technology, *The Health of Canadians–The Federal Role–Final Report on the State of the Health Care System in Canada*, vol. 6 (Ottawa: The Senate, 2002) at 109-121, online: Parliament of Canada <http://www.parl.gc.ca/37/2/parlbus/commbus/senate/com-e/soci-e/rep-e/repoct02vol6-e.pdf>; Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].
6. See Commission on the Future of Health Care in Canada, "The Commission's Discussion Papers", online: Health Canada <http://www.hc-sc.gc.ca/english/care/romanow/hcc0381.html> (of a total of 40 discussion papers, five were on the impact of Canadian federalism or inter-governmental relations, two were on the role and/or the reform of the *Canada Health Act*, two more were on the implications of the *Charter of Rights and Freedoms*, two were on the implications of international trade agreements, one was on the impact of current common law principles and one other was on regulatory structures for the evaluation of health innovations. Several others were on governance and citizen participation, subjects closely associated with questions of legal structures and of values that are fundamental within various branches of Canadian law).

of health law scholarship with the patient-physician relationship and the more recent concern of health law scholars with broader policy issues. One of these is Caulfield's own chapter on "Malpractice in the Age of Health Care Reform," which opens the book, while the other is Moe Litman's quite ambitious comparative chapter on "Fiduciary Law and For-Profit and Not-For-Profit Health Care."

The enforcement of the *Canada Health Act*[7] is the concern of Sujit Choudhry's chapter, previously published in the Osgoode Hall Law Journal, entitled "Bill 11, *The Canada Health Act* and the Social Union: The Need for Institutions."[8] As suggested by the title, the chapter culminates with a case study of how the *Canada Health Act* might be applied through new adjudicative institutions to the dispute over Alberta's legislative plans (under what is now properly called the *Health Care Protection Act*[9]) to allow the private purchase of some surgical services. Colleen Flood's chapter on the shift of medical care from hospitals to home care and Peter Carver's chapter on the effectiveness and human rights implications of community treatment orders under Ontario's amended *Mental Health Act*[10] are both in-depth considerations of specific health care reform initiatives, each falling under the general heading of "deinstitutionalization." Both chapters are distinguished from the others by this (all of the others deal with health system reform as a more generic phenomenon that consists of "cost containment" and "privatization"), as well as by the fact that both chapters cut across areas of law, although both are significantly concerned directly (Carver) or indirectly (Flood) with human rights issues. Finally, Barbara von Tigerstrom's chapter, titled "Human Rights and Health Care Reform: A Canadian Perspective," and E. Richard Gold's chapter, titled "Health Care Reform and International Trade," are both attempts to understand the significance for health care reform of bodies of law that are much broader than health care and that therefore, in very different ways, demand consistency of health care reform with norms that have developed outside of what would normally be called "health law." As different as the two chapters are in subject matter, they have this in common. It is therefore not surprising that both authors stress the difficulty of reaching firm conclusions about the implications of their respective areas of law for health care reform due to the need to gauge the possible impact of very broad concepts that have yet to be much applied in health care settings by adjudicative bodies. In addition, because of the attention paid by von Tigerstrom to international human rights law as well as to the *Charter*, both chapters can be said to be about the relevance of

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7. R.S.C. 1984, c. C-6.
8. See Sujit Choudhry, "Bill 11, The *Canada Health Act* and the Social Union: The Need for Institutions" (2000) 38 Osgoode Hall L.J. 39.
9. R.S.A. 2000, c. H-1.
10. R.S.O. 1990, c. M-7, as am. by S.O. 2000, c. 9.

aspects of global law to domestic health system reform.

A quick review of this line-up reveals significant subject-matter overlap with the ground covered a decade ago in *What's Law Got To Do With It?* The chapters by Caulfield, Litman, Choudhry and von Tigerstrom are all significantly within the parameters mapped out by the CBA Task Force that produced the earlier book. So, in this respect, *Health Care Reform & the Law in Canada* potentially reflects stability and continuity—not evolution and change—in Canadian health system law scholarship over the last decade. This is reinforced by the consideration that both Caulfield's chapter on malpractice law and Litman's chapter on fiduciary law, are, for the most part (owing to the continuing paucity of Canadian case law) as tentative and as speculative in their conclusions as were the authors who wrote more briefly on each area of law in *What's Law Got To Do With It?*

Nevertheless, *Health Care Reform & the Law in Canada* clearly does demonstrate that change and growth have taken place in the scholarship over the intervening eight years, undoubtedly inspired in part by the earlier effort of the CBA to better connect law and health system reform. This change and growth is apparent, for example, in the new and complicating relevance of international law, as illustrated in the chapters by von Tigerstrom and by Gold. Moreover, Choudhry's superb discussion of the institutional requirements for effective enforcement of the *Canada Health Act* demonstrates the growing sophistication of legal scholarship's engagement with health system reform. This sophistication is particularly evident in his very compelling argument that the interpretation and enforcement of the *Canada Health Act* must be grounded in evidence-based evaluations of how provincial health plans operate on the ground, informed by health systems expertise that is brought to bear through institutions that are designed and created with heavy reliance on legal expertise as to the attributes of institutional effectiveness and fairness.

It is true that Choudhry's underlying theme is the critical need for greater transparency and accountability in the administration of Medicare's legislative infrastructure and that this is essentially the same theme that pervades the CBA Report of 1994. But this similarity is less important than the differentiating quality by which Choudhry more fully develops these concerns into a set of specific institutional recommendations that are designed to facilitate necessary collaboration between lawyers and health care disciplines, including those involved with clinical services and program evaluation. This difference undoubtedly says much about the quality of Choudhry's work, but it almost certainly also says something about the developments in health law scholarship that have taken place since 1994 and that are part of the environment within which Choudhry writes. As in the discussion paper he wrote with Flood on the modernization of the *Canada Health Act* for the Romanow Commission, Choudhry argues here for insti-

tutional reforms that go well beyond the national health council recommended by Romanow and by the Kirby Committee, and therefore, well beyond the Council that has now been established through federal-provincial agreement.[11] In particular, Choudhry's argument for adjudicative institutions has not been adopted. Nevertheless, the establishment of any such institution as the new Canada Health Council is a significant achievement in the context of the bitterness that has characterized federal-provincial relations on health care. It reflects the fact that accountability has become a leading objective of health care reform. What Choudhry's chapter represents is the role that lawyers have played in contributing to this by emphasizing, as Choudhry does, that the *Canada Health Act* is a statutory instrument that both can and must be reinforced by the kind of institutional machinery that is taken for granted in other statutory contexts.

Change and growth in the scope and dimensions of health system legal scholarship is even more apparent in Flood's chapter on the shift to home care. Flood is clearly one of the leading lights of health law's growing contribution to system level policy-making in Canada. In many ways, her chapter is the strongest in *Health Care Reform & the Law in Canada*. In explaining the factors that have influenced the shift to home care she makes a much broader contribution to the volume as a whole. As the same factors explain much of Canadian health care reform more generally, her explanation of them in the large but specific context of home care is actually an explanation of their role in the broader context as well. Her chapter can therefore be read as background and almost as an introduction to the other chapters, even though it is the one in the middle of the book and ostensibly concerned only with an aspect rather than with the whole of health care reform. It can also be read as a very accessible primer on the forces that have been driving broader system health care reform, dealt with in much greater detail and more from an economics perspective in Flood's other writings.[12] Here, Flood gives an especially strong response to the utilitarianism that sometimes leads both health economists and advocates of the determinants of health model to advocate for greater investment into population health at the expense of funding for medical services.[13]

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11. Colleen M. Flood & Sujit Choudhry, *Discussion Paper No. 13: Strengthening the Foundations: Modernizing the Canada Health Act* (Commission on the Future of Health Care in Canada, 2002), online: Health Canada <http://www.hc-sc.gc.ca/english/care/romanow/hcc0377.html> (the recommendation of Commissioner Romanow for a Canada Health Council, very similar to the national health Council recommended by the Kirby Committee, has resulted in the establishment of the Health Council for Canada through federal-provincial agreement); See Canada's First Ministers, *Health Care Renewal Accord 2003*, online: Health Canada <http://www.hc-sc.gc.ca/english/hca203/index.html>.
12. See *e.g.* Colleen M. Flood "The Anatomy of Medicare" in Jocelyn Downie, Timothy Caulfield & Colleen M. Flood, eds., *Canadian Health Law and Policy*, 2nd ed. (Toronto: Butterworths, 2002) 1; See Colleen M. Flood, *International Health Care Reform: A Legal, Economic and Political Analysis* (London: Routledge, 2000).
13. Colleen M. Flood, "Unpacking the Shift to Home Care," in *supra* note 2 at 137–139.

Of more immediate interest here is the fact that Flood's chapter models how legal analysis can engage with health care policy discourse at a level that is beyond the parameters defined by any particular field of law, and even beyond what might generally be thought of as lawyers' issues and questions, while at the same time remaining strongly grounded in the expertise, perspective and analytical tools that lawyers bring to the table. Her leading conclusions are these: first, that the development of the medical component of home care is a form of passive privatization that is encroaching upon the single payer model on which the *Canada Health Act* is based and designed to protect, and; second, that the distributional implications are adverse to lower income Canadians, to Canadians in certain provinces, to rural Canadians and to women. These are hardly novel conclusions.[14] They are hardly ones that depend on legal analysis. They are however, presented compellingly by Flood because her analysis so seamlessly combines a rich understanding of the economic arguments for and against the single payer system with a lawyer's understanding of Medicare's legal framework and a lawyer's concern for the human rights values that underpin that framework and the broader responsibilities of government in relation to health care. On this foundation, Flood makes the argument for the extension of the principles of the *Canada Health Act* to the medical, but not the social services component of home care, as cogently and as compellingly as it is made anywhere, including in the various reviews of the health care system that have been completed at the national level, all of which have endorsed some version of what Flood recommends in this chapter.[15]

There is also much that is positive about the other chapters in this book. Caulfield's chapter on the implications of malpractice law for health care reform is a valuable addition to his other writing on the topic, partly because it updates that broader body of work and partly because it brings the essential conclusions of that work into sharper focus.[16] Litman's chapter

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14. See National Forum on Health, *Canada Health Action: Building on the Legacy–Final Report* (Ottawa: National Forum on Health, 1997) at 20–23 (these conclusions supported the recommendation of the National Forum on Health for a national home care program); See also (2000) 1:4 Healthcare*Papers* (the various papers in this special issue on home care).
15. See *e.g.* Roy J. Romanow, *Building on Values: The Future of Health Care in Canada*, (Ottawa: Commission on the Future of Health Care in Canada, 2002) at 171–188, online: Health Canada <http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC_Final_Report.pdf>; See *supra* note 11 (the expansion of the principles of the *Canada Health Act* to cover home care was one of the recommendations that Flood and Choudhry made in their discussion paper on modernization of the *Canada Health Act*).
16. See generally Timothy A. Caulfield, "Suing Hospitals, Health Authorities and the Government for Health-care Allocation Decisions" (1994) 3 Health L. Rev. 7; Timothy A. Caulfield & Diana E. Ginn, "The High Price of Full Disclosure: Informed Consent and Cost Containment in Health Care" (1994) 22 Manitoba L.J. 328; Robert G. Elgie, Timothy A. Caulfield & Michael I. Christie, "Medical Injuries and Malpractice: Is it Time for 'No Fault'?" (1993) 1 Health L.J. 97; Timothy Caulfield, *Discussion Paper No. 24: How Do Current Common Law Principles Impede or Facilitate Change?* (Commission on the Future of Health Care in Canada, 2002) online: Health Canada <http://www.hc-sc.gc.ca/english/care/romanow/hcc0437.html> (more recently, Caulfield did this broader discussion paper for the Romanow Commission that covered some of the same ground).

on fiduciary law is an important reminder of the potential importance of fiduciary law as a distinct ground of accountability within medical malpractice law in a possible world of expanded for-profit medicine, although the clarity of the message gets diluted somewhat by the very interesting but lengthy and not obviously necessary detour into American law. The chapter on human rights by von Tigerstrom makes a compelling case for linking the growing importance of *Charter* law in health system reform to international human rights instruments, though interestingly, it ignores domestic human rights statutes. In addition, the chapter's overview of *Charter* law, particularly in regards to section 15, will provide a good foundation for those who lack this background and who want perspective on the growing involvement of Canadian courts with what have historically been regarded as policy matters. Peter Carver's chapter on community treatment orders (CTOs) is a complex analysis of a controversial reform in a highly specialized area of law that reaches a highly nuanced conclusion—that, on the one hand, CTOs may be ineffective because of the difficulty or even the impossibility of legal enforcement but that, on the other hand, they represent an unwarranted extension of coercion into the community that probably does not violate the *Charter*. It is less for the reader with a general interest in health care reform and the law than any of the other chapters. Nevertheless, it does give rise to more general reflections about the inadequacy of legal obligations and statutory powers as substitutes for adequate care and support for patients and their families, whether within or beyond the mental health system. Finally, in his chapter on international trade law, Richard Gold does a superb job of making a highly complex and remote area of law understandable to non-specialists, of demonstrating its possible relevance to the health care system with well-chosen and very concrete examples, and of translating his necessarily general overview of trade law into quite practical and specific advice for policy-makers. Moreover, his chapter demonstrates two points of critical and general importance about law and health system reform. The first is that the law is a "determinant of health" that should only undergo major change in a country that attaches pre-eminent importance to its health care system after the implications of the change for the health care system and the health of its people have been canvassed fully and debated publicly. The second is that significant and unintended difficulties can be created when changes to health care policy are made and implemented without close attention to the legal consequences of those changes, not only within "health law" but within law more broadly.

Nevertheless, the importance of what *Health Care Reform & the Law in Canada* says about the expanding horizons of Canadian health law does not lie only in the strengths of the individual chapters. What is equally of value and interest is the juxtaposition that the book creates between different areas of law in relation to their collective significance for health care reform.

In this connection, the book provides a series of windows into the complex interactions (current as well as potential) between distinct fields of law that tend to be thought of as operating independently of one another, at least when viewed from the perspective of lawyers. In this, *Health Care Reform & the Law in Canada* provides readers with a cross-sectional perspective on the relationship between law and health system policy-making that, by itself, demonstrates an important point. This is simply that the relationship is not a uniform and undifferentiated one, with all of the law standing neatly on one side of the equation, waiting to be called-in to be applied, and with health system policy on the other side of the equation waiting to do the calling. Instead, it is a relationship that is complicated as much by the multi-faceted interactions between branches of laws within health care policy-making as it is by the difficulty of understanding the connections between law and health system policy-making as two distinct activities. In this regard, the unexplained decision of the editors (as well as almost all of the authors) to equate "health care reform" with "cost containment" and "privatization," seemingly a limitation, actually contributes to the book's success. While it may have unduly limited the scope of the book as a whole and while it somewhat implies an essentially reactive role for law in the health care reform process, it also means that a more or less common understanding of reform is a constant across the chapters. One result is that the chapters have an underlying thematic consistency, despite their concern with quite disparate fields of law. This allows the reader who reads across the chapters to develop a cumulative appreciation for how the different areas of law reinforce, modify or counteract one another in their respective application to the wide range of initiatives that potentially fall within the cost containment and privatization parameters.

It is not possible here to give a full account of this intersectionality, a discussion that might usefully have been developed much more fully by the editors, either in their "Preface" or in an introductory chapter that concentrated on the identification and development of common themes from across the other chapters. An example that stands out is the different conclusions that the various writers reach on what their respective areas of law might have to say on privatization. Reflecting the continuing paucity of case law on malpractice and cost containment, Caulfield somewhat tentatively concludes that malpractice law will encourage rather than discourage privatization, partly because it generally requires doctors to focus exclusively on the best interests of the individual patient and more specifically, because the constantly expanding duty to inform will increasingly encompass the obligation to inform patients of options outside the publicly financed system. Indeed, he contemplates a world in which courts will base liability decisions on the financial capacity of patients to take advantage of these private options. Gold's conclusion that international trade agreements will make moves towards privatization irreversible if they are not done very carefully

runs in a parallel direction. It suggests that trade law also has the potential to reinforce the economic, social and political dynamics that might push the Canadian system toward greater privatization. In contrast, Choudhry's analysis of the *Canada Health Act* leads him to the conclusion that the Act may well require the reversal of privatization initiatives if monitoring of their implementation establishes a reduction of access to necessary medical services by those who continue to rely on the public system. Barbara von Tigerstrom concludes that international human rights law could similarly demand similar post-privatization remedial action, while also concluding that section 7 of the *Charter* will not create an entitlement to access private services. Meanwhile, Litman concludes that Canadian courts must be prepared, if eventually confronted with for-profit medicine, to ignore the lead of the United States Supreme Court and use fiduciary law to make physicians and insurers liable for breach of their fiduciary obligations when they allow their personal financial interests to conflict with the interests of patients.

Another (and related one) of these cross-cutting themes is what the various authors have to say either explicitly or implicitly on the role and capacity of courts as decision-makers on system-level issues.[17] Again, Caulfield places courts in malpractice cases at one end of the spectrum, focused resolutely on the individual patient and on the protection of individual autonomy as the overriding value and as therefore unlikely to shape malpractice doctrine to accommodate system objectives such as those that seek to reallocate resources from curing to caring or preventing. In contrast, Litman's analysis of the obligation of the courts to use fiduciary law as a means of protecting patients in the event of a shift to for-profit medicine, while exercising restraint in the face of allocation decisions that subordinate patient best interests in not-for-profit systems, implies greater confidence in the capacity of courts to tailor even private law adjudication in response to systemic imperatives. For her part, von Tigerstrom also seems optimistic about the ability of the courts to apply the *Charter* guarantees of the right to security of the person and the right to equality in ways that will preserve and reinforce the basic architecture of the Canadian single payer system, while making its operation and administration more consistent, fair and inclusive. Finally Choudhry, who gives the most attention to the need for institutions and to questions of institutional capacity, sees the role of the courts in the enforcement of Canadian Medicare (at least in this context) as largely restricted to the probably limited review of the decisions of specialized agen-

17. See *e.g.* Christopher P. Manfredi & Antonia Maioni, "Courts and Health Policy: Judicial Policy Making and Publicly Funded Health Care In Canada" (2002) 27:2 J. Health Pol. 213; Donna Greschner & Steven Lewis, "*Auton* and Evidence-Based Decision-Making: Medicare in the Courts" (2003) 82 Can. Bar Rev. 501 (this is a subject receiving increasing attention in the literature, though most of that attention concentrates on the role of the Courts under the *Charter*, rather than more broadly).

cies staffed with health care experts who would have the primary responsibility for monitoring and evaluating provincial compliance and adjudicating federal-provincial and citizen activated disputes.

The critical need for more monitoring and better evaluation of health system performance as a means of determining the system's compliance with applicable legal norms is a third cross-cutting theme. It is one of consensus rather than of divergence. Again, it is emphasized most and taken farthest by Choudhry. But von Tigerstrom also stressed this in her analysis of Canada's obligations under international human rights law. The lack of monitoring and evaluation in the implementation of home care, whether as to the quality of care, the cost-effectiveness of the program or the distributional consequences of deinstitutionalization, also figure prominently in Flood's critique of that implementation process. Likewise, Gold's recommendation for privatization to be done carefully under controlled circumstances that protect the ability of Canadian governments to reverse privatizations, implies a critical role for close monitoring of such initiatives. Each of these examples reflects the larger themes of the law's general concern for transparency and accountability that runs through all of the chapters, including Flood's concern for the quality of the assessment process that determines eligibility and financial responsibility for home care services, and Carver's concern about the nature and scope of the power that is given to physicians, as well as his concern to substitute decision-makers under the community treatment order process in Ontario.

By setting the stage for a better appreciation of the dynamic interaction of discreet bodies of law within health care reform, it might be said that *Health Care Reform & the Law in Canada* best reflects the expanding importance of health system law scholarship by demonstrating that we can no longer meaningfully assess or evaluate the contribution of law to health care reform by asking the general question of "what's law got to do with it?". By this I mean that *Health Care Reform & the Law in Canada* illustrates that the relevance of law to health care reform is likely to be multi-dimensional and multi-directional, something that is also amply demonstrated by a reading of the various law-related Romanow Commission discussion papers. In this respect, the value of *Health Care Reform & the Law in Canada* operates at various levels. At one of these levels, it is valuable simply as a warning to policy-makers (and others) against the simple assumption that "the law" must have a unitary and consistent significance for any particular program of reform or a clear preference for one direction or process of reform over others. At another level, it is valuable for demonstrating how deliberate and comprehensive the reform process must be if it is to encompass all potentially relevant areas of law and their complex interactions.

At still another level, *Health Care Reform and the Law in Canada* is valuable as a "moment in time" in the development of Canadian health system

law scholarship. Looking backwards, it confirms that health law scholarship has bridged the divide that separated it from the system-level policy-making that gave original urgency to the question, "what's law got to do with it?". Looking forward, it helps to establish the agenda for the ongoing development of an ambitious program of research, writing and teaching that aims to bridge the divides that exist within the broad, expansive and expanding realm that is health system law. In so doing, it helps to set the stage for the further work that will improve and enhance law's growing capacity to contribute positively to both better process and better outcomes in Canadian health care policy-making and implementation.

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