Viewpoint

Canada's health care legislation: Good intentions, bad laws

J. Edwin Coffey, MD, FRCSC

What must be the greatest irony in Canada's political history is the fact that the medicare legislation designed to implement her most noble experiment in "social justice" has robbed her citizens of their most precious moral value, individual freedom. Equally significant is this political paradox: the Canadian political parties that supposedly stand for individual freedom and free enterprise have been instrumental in designing the laws that have taken away this freedom.

For those who consider the above statement exaggerated, consider the landmark decision announced by the British Columbia Court of Appeal last August. This ruling exposed the oppressive elements in medicare legislation that had seriously restricted the liberty of BC doctors and their patients. That legislation (the Medical Services Amendment Act, 1985) was meant to reduce medicare costs and force young physicians to settle in areas where doctors were in short supply. It gave the minister of health the arbitrary power to deny doctors (and by implication, their patients) the right to participate in medicare in certain regions of the province by restricting the issuance of the billing numbers that allow physicians to bill the medicare system.

At stake in the appeal, undertaken by six young doctors, was the right of licensed physicians to pursue their profession anywhere in the province, and the right of patients to use their medicare insurance to see physicians of their choice anywhere in the province.

Citing Section Seven of the Canadian Charter of Rights and Freedoms, all five Appeal Court judges upheld the doctors' argument and ruled that the medicare legislation effectively deprived individual physicians of liberty and the right to pursue a livelihood in their place of choice. It found the law "so procedurally flawed and manifestly unfair in substance as to violate the principles of fundamental justice". The government promptly requested a stay of proceedings, hoping to keep the legislation in place while it sought the Supreme Court's permission to appeal. The stay was denied, and the Supreme Court has since denied leave to appeal.

Other provincial governments that may contemplate or already have comparable legislation in place are likely to see their legislative options limited because of this ruling. Quebec legislators, for example, have already outdone British Columbia by introducing a variety of imaginative and restrictive laws that threaten doctors' rights to practise medicine as they want. Legislation severely restricts the number of doctors entering hospital training programs for specialists and forces Montreal hospitals to deny young specialists the staff privileges needed to provide medical and surgical care.

Quebec's family physicians are forced to take a 75% cut in their medicare fees once a certain billing ceiling has been reached. This approach to "overtime" service is novel, to say the least.

It is equally incongruous that another law should arbitrarily force newly trained specialists with top qualifications to take a 30% cut in what are already the lowest medicare fees in Canada if they want to offer their medical skills in Montreal rather than in the areas decreed by bureaucrats. Because such disincentives are the result of coercive and discriminatory laws and not the free forces of demand and supply, Montreal citizens who hope to build and maintain centres of excellence in medical care have reason to be outraged at their lawmakers.

Other Quebec legislation establishes a government monopoly in health insurance and prohibits all competition in the field, a policy hardly in keeping with a free society. Such restrictive laws prevent individuals from using dynamic market forces to improve the deteriorating quality of health services generally. These forces would not only provide more choice and improved access for everyone, but they would reduce the burden on the public system as well.

J. Edwin Coffey, a member of the CMA Board of Directors, is president of the Montreal district of the Quebec Medical Association and associate professor at McGill University medical school.

It is inevitable that Canadians will soon demand the right to purchase the quality and variety of health insurance and medical services they want, not that decreed by bureaucrats. This would not alter the continued obligation of our governments to provide a reasonable level of health insurance for all who prefer or need it.

The foregoing examples of Quebec's oppressive legislation lead to one conclusion: If the principles of fundamental justice and individual liberty have been violated under BC's legislation, then they have been tramped upon in Quebec too.

This significant court decision has demonstrated the vulnerability of individual freedom in the face of oppressive legislation, wherever it occurs. While the court has rescued this fragile principle from the clutches of well-meaning but overzealous lawmakers and reaffirmed its fundamental value, serious questions remain concerning the moral quality of our laws and the competence of our lawmakers in the field of health legislation.

As more and more legislation is put under the constitutional microscope, we are discovering a careless disregard for those moral values that are essential conditions in a society of free men and women:

- The dignity and self-esteem of the individual.
- Individual freedom and responsibility.
- Property rights of the individual.
- The virtue of free markets and competition.
- The necessity of limited government.
- The rule of law whereby all are treated equally by the law.

When they attempt to carry out government policy, our lawmakers often forget the primary functions of law — to limit the coercive power of government, to protect the individual from its adverse effects, and to secure the protection of the individual against unpredictable interference. Above all, law must secure and maintain liberty. If one were to ask our elected members of the legislatures and Parliament if they concurred with the above values and principles, I expect the majority would answer affirmatively.

How, then, can we explain the coercive laws that find their way through the legislatures and Parliament? I believe the answer lies in the changing concepts and connotations of the terms "law" and "justice" and their misapplication in attempts to alleviate such unfortunate circumstances as poverty, sickness, unemployment and illiteracy. Although the good intentions of Canada's welfare-state legislation and its trendy but meaningless slogan "social justice" have gained popular support, many of the laws aimed at correcting these problems are irreconcilable with individual freedom and the rule of law.

We are discovering a careless disregard for those moral values that are essential conditions in a society of free men and women.

As a result of this legislative nightmare, physicians and other Canadians, by means of a slow and costly judicial process, are struggling to recover personal freedoms that have disappeared because of bad laws passed with good intentions. As democrats, we must share the responsibility for this unintentional, though ironic, misuse of legislative authority. As defenders of liberty and a free society, however, we must strive for constitutional safeguards to protect both legislator and citizen from the dangers of unlimited coercive power.

The presence of such authority now obliges the government to satisfy all demands of coalitions of special-interest groups in order to retain power. This has become one of the greatest threats to individual liberty in our country and political and constitutional reforms are urgently needed.

Political reforms leading to a reaffirmation by Canadians of the concept of limited government under the rule of law, one of our founding but forgotten principles, would go far in correcting the unlimited power of government. This would require a discipline and respect for law by citizen and legislator alike, whereby all would be treated equally under the law and where coercion of individuals and privileges of special-interest groups would be minimal.

Such reforms could only come after a change of attitudes and expectations as to the purpose and nature of government, the function of law and the distinction between universal general rules of just conduct (law) as seen in our Charter of Rights and Freedoms, and other rules of organization (legislation) passed daily by our legislators and aimed at particular ends. Reforms of this nature will require serious discussion and leadership by those well informed in political, economic and legal thought. All citizens, special-interest groups and politicians must first be convinced that democracy, as we know it, will not by itself preserve individual liberty. By nudging the reform process in this direction, we would at least undertake to preserve freedom and ensure true justice for the long term.

Meanwhile, Canada's high court judges, through their broad interpretation of liberty and wise judgements, are playing a vital role in preserving elements of the free society for Canadians. Surely we can expect no less from our lawmakers, through health legislation of similar quality which protects and expands individual freedom rather than oppressing it.■