

## EDITORS COMMENTS

As managing editor of JCANPA I am responsible for the content and appearance of the Journal. At times I need to reduce some articles and submissions. In example, the University of Manitoba's MPAS PA-students prepare a 5,000-10,000 word capstone paper as a degree requirement. In our publication we use a format requiring 3,000 (max 5,000) words. In this edition's two original research and one review article prepared by students have been edited for length. Laura Moore's article on British Columbia's charter of rights and legal requirements to address health access is an interesting read and well research paper. I regret my requirement to reduce by almost half the material we share with you in this edition. I share as a supplement a practicing lawyer's review. Please note many of the issues raised were in the original work.

Ian W Jones; JCANPA Managing Editor

### ***Reviewer's Comments:***

The paper provides a good overview of the legislative and regulatory landscape within which PA's practice and are seeking to practice. The paper argues that the inclusion of PA's into the BC healthcare system (and into its larger healthcare professional regulatory framework) would help to make BC live up to a conceptual right to health/healthcare. It provides a comprehensive description of the inadequate provision of health services to some populations and population areas in British Columbia and describes how the deployment of PAs would ameliorate these inadequacies in a cost effective manner. The paper provides an overview of Supreme Court of Canada's jurisprudence relating to s. 15 and s. 7 of the Canadian Charter of Right's and Freedom's and evaluates the lack of willingness of the court to find a freestanding right to health or to generally conceive of a "positive" right to health/healthcare. It strongly criticizes the decision in *Auton* and suggests the decision led to a limited view of the role of the courts (and the charter) in resolving inadequacies in the provision of health services to marginalized groups. The writer acknowledges that while the *Auton* decision looms large in the realm of s. 15 jurisprudence relating to healthcare that certain factors particular to the circumstances of the case (applicability of s. 15 to those seeking novel/emerging treatments), may limit the scope of the decision as precedent in the long-run. The conclusion reached is that decisions like *Auton's* have established the state's "right to do nothing" in respect of the delivery of health services in Canada. It concludes that this right to do nothing allows the BC government to do nothing in relation to the regulation of PAs in the province despite evidence that PAs could provide significant improvements in health services to populations and population areas that require them.

Although the paper is well researched and has a strong grasp of the issues it's considering it suffers from some challenges. The connection between its human rights approach and the consideration of the utilization of PAs seems very tenuous. If the ultimate conclusion is that a human rights approach to health/healthcare on the part of the courts would result in mandating the regulation of PAs in jurisdictions like BC to ameliorate shortcomings in healthcare delivery, these seems like an unlikely result on the part of the courts given the general deterrence the courts tend to give the legislature in making policy decisions. Given the role of socio-economic factors in health outcomes, it makes just as much sense that the courts would impose a guaranteed income to achieve the improvement in health to the populations and population areas that might be behind a charter claim

of discrimination under s. 7 or s. 15. It's unlikely, however, that the paper is suggesting this is the likely outcome of the courts implementing a broader view of health/healthcare as a human right. The paper is more likely suggesting that the application of a human rights approach to health/healthcare might result in courts enforcing adequate service delivery to under-serviced groups or areas and that the coercive power of the decisions would lead to jurisdictions like British Columbia allowing and regulating the work of PAs in the health system in order to comply with judicial decisions in a cost effective way. The discussion of use of PAs to fulfill health human resource shortage that are affecting healthcare delivery seems tangential to the conceptual framework of the paper: the need for a human rights approach to health/healthcare in BC (and Canada) to resolve service delivery shortfalls to under-serviced areas and groups.

In the paper there is significant criticism of the Auton decision as it relates to the view of the courts (specifically the SCC) in relation to enforcing a "positive" right to health/healthcare. The Auton decision regarded the use of ABA treatment for autism (a then novel/emerging treatment) and the entitlement of patients with autism to the treatment on the basis of a right to equality in the delivery of healthcare. A unanimous court determined that s. 15 did apply to the provision of ABA treatment because it was not a core service that was required to be covered by the Canada Health Act. While the paper describes Auton having a chilling effect on further application of a human rights approach to health/healthcare, it doesn't contend with the reasons why it may have been a sound decision: the need for provincial governments to maintain restraint in funding novel treatments given finite financial resources and the incomplete evidence of their effectiveness. One might recall the significant push by sufferers of multiple sclerosis to fund the so-called CCSVI's treatment after early claims of its effectiveness emerged. Most governments responded by taking a wait-and-see approach or by funding very limited trials. Although the chilling effect of the Auton decision on the application of a human rights approach to health/healthcare may be regrettable, in the case of novel treatments it appears sound. Some consideration of how decisions relating to insured benefit are made and how they are subject to review (in some places like MB there are boards that offer specialized quasi-judicial rulings in these matters (subject to further judicial review) and in other provinces review is essentially left to the courts as court/tribunal-of-first instance which raises access to justice issues) might be useful when considering how decisions like the one in Auton was made.

The failure to regulate PAs in BC raises more issues in relation to mobility rights (s. 6) of the Charter and the legal issues around the Agreement on Internal Trade (AIT) as they relate to the provincial regulation of many professionals with credentials/education gained in Canadian schools (or comparable foreign institutions), than it does in relation to health/healthcare as a human right. The AIT has gone a long way to allow for many professionals to transfer to other Canadian jurisdictions with minimal difficulty and the discussion of s. 6 of the Charter and discussions of how the AIT might relate to the movement of PAs across jurisdictions seems unexamined. The writer is justified in saying that the SCC jurisprudence has facilitated governments (including BC) in their desire to not solve many problems in relation to adequate service delivery of health services in some areas and to some groups. The way in which this jurisprudence relates to the lack of regulation of PAs in BC is not entirely clear.

**Reviewer's Name Withheld per JCANPA policy**