Into the Breach: The Emerging Role of Canada's Ombudspersons in Improving Accountability in Canadian Health Care

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What has been the relationship between these Canadian institutions?

- Minimal, incidental
- Little or no attention in health reform efforts, despite emphasis on accountability
- Not thought of as part of health care system

But recently …

- Growing role or growing notice of role
- Role being prioritized legislatively (PQ) or administratively (NS)
- Growing attention to systemic issues
- Focusing attention on administration and regulation in the sector
- Jurisdiction being restructured (PQ), expanded (NB) or debated (ON)

Some Examples

- AB report on out of country services (2009)
- BC reports on care for seniors (2009/12)
- ON report on “The LHIN Spin” (2010)
- ON investigation of LTC regulation (2010)
- SK report on waiting list management (2011)
- PQ “intervention” at Hôpital Régional de Saint-Jérome (2012)

Accountability and Health Care

- Common diagnosis: weak, diffuse, uncertain, ineffective accountability is problem
- Common prescription: strong, clear, certain and effective accountability is the solution

Questions about Accountability

- What is the problem? Why does it matter?
- What “tools of governance” are available?
- What is role of regulation and regulatory institutions?

Questions about Regulation

- At P/T level
  - Why do we regulate health care?
  - What is regulated in health care?
  - Who regulates health care?
  - How is healthcare regulated?
  - Is health care regulation effective?

Propositions

- We need more, not less public administration
- Specifically, good management of health care requires stronger regulatory accountability
- Regulation must be
  - Institutionally independent
  - Appropriate to the sector

Reasoning

- Accountability 101
- There is regulatory work to be done
- It is distinct work
- Value depends on how it is done

Beyond Canada

- Regulation a big part of health reform
- Fundamental changes in provider regulation
- New layers of independent “Meta Regulation” and of “Regulated Self-regulation”
- Substantive regulation implemented by multiple enforcement processes
- Codification of patient/consumer rights
- System-wide, independent, patient/consumer complaint processes

NHS Example

- Patient Charter
- Internal market
- Performance targets/“league tables”
- National Institute of Clinical Excellence
- National Service Frameworks
- Healthcare (Quality Care) Commission
- National Patient Safety Agency
- Provider reaccreditation & lay governance
- Council for Health Regulatory Excellence

Why?

- Government failure (i.e. under performance)
- Marketization/commodification/ideology
- Voter/consumer expectations
- Egregious regulatory failures
- Empirical evidence on safety and quality and the need for systemic responses
- Regulation's role in improving performance (efficiency/quality)

Critiques

- Administrative burden, resource diversion
- Superficial improvement
- Corrosive culture
- Ineffectiveness
  - Strafford Hospital

Meanwhile, in Canada

- Continuing reliance on
  - “Being more accountable”
  - Reorganizations
  - Experimentation with funding and alternative service delivery
  - “Soft law” (e.g., Health Accords, CHC, Quality Councils, strategies, plans etc.)
  - Changing macro legislative frameworks (like the one for HPR)

With some directional change …

- Patient Care Quality Offices and Review Boards in British Columbia
- Quebec's Health Services Ombudsman
- Changes in long term care
- "Persons in Care" legislation
- Ontario's *Excellence in Health Care Act*
- More regulatory approach to HPR by HPR's

Highly Provisional Conclusions

- Accommodation prevails
- Negatives avoided but positives missed
- Institutional gaps remain
- Enter the Ombudspersons (and the Auditors General, Public Inquiries, Coroners)

Issues to Consider

- Capacity
- Expertise
- Own motion investigations
- Remedial authority
- Importance of operational style
- Scope of mandate across health care and beyond administration