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August 25, 2016

Coalition of Ontario Doctors
c/o Dr. Kulvinder Gill & Dr. David Jacobs

Dear Drs. Gill and Jacobs:

Re: Report on OMA General Meeting and Vote on PSA

You have requested a report on events leading up to the defeat of a proposed physician services agreement (the "Proposed PSA") at a general meeting of the members of the Ontario Medical Association ("OMA") held on August 14, 2016 (the "General Meeting").

April - June 2016: OMA Undisclosed Negotiations with Ministry

In April 2016, the OMA reported to its members that it was not engaged in PSA negotiations with the Ministry of Health (the "MOH"). Contrary to these statements, on April 6, 2016, the OMA entered into an agreement with the MOH concerning the resumption of negotiations (the "April Agreement"). OMA leadership has refused membership requests to produce this agreement or describe its contents. It is not clear whether the April Agreement was the subject of Board consideration.

On April 7, 2016, the OMA Negotiations Advisory Committee ("NAC"), formed for the purpose of advising the OMA's negotiations team, met for the first time. At this meeting, the NAC members were told that the OMA had not resumed negotiations with the MOH and that they would be told if and when those negotiations resumed. This information was not accurate and the NAC was never informed of the resumption of negotiations.

This same inaccurate information was repeated to the NAC members during a teleconference held on April 28, 2016.

On May 4, 2016, Dr. Virginia Walley, the President of the OMA, stated in a video interview that the OMA would not resume negotiations with the MOH without binding arbitration.

In fact, at the time, the OMA was engaged in secret negotiations with the MOH and binding arbitration was dropped.

On June 8 2016 at an NAC teleconference Dr. Scott Wooder, one of the OMA's negotiators, informed the NAC members that negotiations with the MOH had not resumed and that the negotiating team would consult with the NAC. This information was not accurate.

On June 24, 2016, leaders of the Ontario Association of Radiologists and the Ontario Association of Cardiologists met with Dr. Walley and with Tom Magyarody, the OMA's CEO.

At the meeting, in response to a direct question on whether negotiations had resumed, Dr. Walley denied that negotiations had resumed with the MOH. This denial was not accurate.

July 2016: OMA Announces the Proposed PSA

On July 5, 2016, the OMA convened an emergency teleconference of the NAC. During this teleconference, Dr. Wooder and Dr. Pierre Bonin, the co-chairs of the negotiations committee, informed the NAC that the OMA had reached a tentative agreement on a PSA with the MOH and that the role of the NAC was effectively at an end.

The substance or text of the Proposed PSA was not shared with the NAC members prior to or during this call.

During the teleconference, Dr. Ved Tandan, a past President of the OMA and the chair of the NAC, urged NAC members to support the Proposed PSA. It is unclear how Dr. Tandan was able to form a view as to the merits of the Proposed PSA without seeing a copy of it.

According to Mr. Magyarody, the MOH delivered a "fully formed" PSA to the OMA on June 30, 2016, and prior to this date no negotiations over a PSA took place. If this is correct, then the OMA appears to have negotiated the terms of the Proposed PSA over the course of one business day between June 30 and July 5.

On July 10, 2016, the Board of the OMA passed a resolution approving the Proposed PSA and calling for a non-binding members' referendum vote to be followed by an OMA Council meeting to vote on ratification of the Proposed PSA. The referendum was scheduled for July 27 to August 3 and the Council meeting was scheduled for August 6.

We understand that the vote was not unanimous, but that Board members who voted against the Proposed PSA were told not to disclose how they voted and that they had to publicly support the Proposed PSA to members. We find it difficult to understand how Board members, who owe a fiduciary obligation to the OMA, could receive and acquiesce to advice to speak against their conscience on a matter of such importance.

On July 11, 2016, the OMA and the MOH issued a joint press release announcing that they had reached a four-year agreement. This is the first time the OMA disclosed to its members that it had resumed negotiations with the MOH.

The Proposed PSA was six pages long and lacked the detail contained in prior PSAs. All of the "hard" decisions concerning cuts and rationing of patient care were deferred to the implementation stage of the agreement, at which point physicians were to engage in "co-management" with the MOH to determine how patient care was to be rationed.

The Proposed PSA imposed hard caps on the Physician Services Budget, an identical term in a PSA offered by the MOH in January 2015 that the OMA's Board unanimously rejected and did not put to a membership vote.

By letter dated July 12, 2016, Dr. Prieditis communicated his concerns about the Proposed PSA to Dr. Walley. Among other things, Dr. Prieditis asked Dr. Walley to provide him with a copy of the April Agreement.

By letter dated July 18, 2016, Dr. Walley responded to Dr. Prieditis. She refused to provide the information requested. She also refused to produce the April Agreement on the grounds that its terms were confidential. We do not agree that such an agreement could be confidential in these circumstances.

Immediately following the public announcement of the Proposed PSA, the OMA engaged in a "Vote Yes" publicity campaign with the assistance of a communications firm. The OMA only presented arguments in favour of the Proposed PSA and invoked the threat of unilateral cuts in response to a NO vote. The OMA did not provide members with a detailed economic analysis of the anticipated affect the Proposed PSA on patient care in Ontario.

Concerns were expressed about the accuracy of the information the OMA was disseminating in its campaign. Notably, in a "Frequently Asked Questions" document published by the OMA on or about July 22, one of the questions asked is, "Has the OMA released all documents related to the tentative Agreement?" The OMA's answer was:

Yes, all materials were provided to members at the same time on July 11 via the President's Update and posted on the secure OMA members' website. **There are no supplementary documents or confidential documents.** [Emphasis added.]

This response is not accurate. Dr. Walley and the OMA had refused to disclose or describe the April Agreement that led to the PSA and which they described as confidential.

OMA Members Petition for a General Meeting

Because of the OMA's refusal to explain the circumstances giving rise to the PSA and the tenor of its campaign to promote a Yes referendum vote, a group of concerned OMA members spanning all specialities and geographic regions formed the "Coalition of Ontario Doctors" (the "Coalition"). The goal of the Coalition was to persuade OMA members through publication of balanced information and economic analysis why they should reject the proposed PSA.

On July 21, 2016, the Coalition launched a petition to require the OMA Board to call a members' meeting pursuant to the OMA's by-laws. The petition proposed that three resolutions be put to members at the general meeting, including a resolution to reject the Proposed PSA.

Within 24 hours, the petition had received over 2,300 signatures, which were delivered to the OMA on July 22.

In order to ensure that the OMA complied with its by-law, the Ontario Association of Radiologists ("OAR") brought an application to the Ontario Superior Court of Justice to require, amongst other things, that the OMA call a general meeting. We acted as counsel to the OAR in that proceeding.

On July 24, 2016, the OMA communicated that it had disqualified approximately 300 of the 2,300 signatures, and as a result, the petition had not been signed by a sufficient number of OMA members to require the OMA to call a general meeting.¹ In response, the Coalition delivered approximately 400 additional signatures to the petition.

The evening before the scheduled Court hearing, the OMA acknowledged that it had received the requisite number of signatures. At the hearing before Justice Paul Perell of the Ontario Superior Court of Justice, the OMA agreed to call a general meeting as required by its by-law.

Concurrently with the request for a general meeting, Dr. Prieditis, as member of the OMA, exercised his right, (held by every single member of the OMA by virtue of s. 306 of the Ontario *Corporations Act*) to ask for the OMA's membership list. This is a statutory entitlement of every OMA member. Because it is a statutory entitlement of every member, the OMA agreed in Court to provide the list to Dr. Prieditis, with members' email addresses.

Although it was aware that Dr. Prieditis had the absolute right to request and receive this information Dr. Walley characterised it as a litigious manoeuvre to gain access to members 'personal' information. On Tuesday, July 26, Dr. Walley sent an email to the OMA's members that incorrectly stated that the OAR had obtained the OMA's membership list through litigation:

OAR Legal Action to Obtain Your Personal Contact Information

I have to advise you that the Ontario Association of Radiologists (OAR) has taken legal steps to require the OMA to share its membership list, including your address and email address. Please note that the OMA did not have a choice in the matter; it is legally required to provide the OAR with your information.

It is not clear whether this spin – which sought to cast the OAR and any effort by members to communicate with fellow members in a negative light - was the product of the OMA's communications firm or OMA leadership. In any event, this characterisation of the effort to obtain the membership list was misleading.

The OMA Attempts to Distribute an Unfair and Unbalanced Proxy Form

¹ Despite repeated efforts, the OMA refused to disclose the names of the disqualified signatories to the petition.

Beginning on Monday, July 25, 2016, and continuing throughout that week, the Coalition tried to engage the OMA in a collaborative dialogue on the form and content of the proxy form to be distributed to members. The OMA Executive refused to discuss the proxy form.

It is our understanding that the OMA Board was not engaged in or aware of the efforts of the Coalition to engage in a collaborative approach to the meeting and proxy form.

On Saturday, July 30, the OMA distributed a notice of general meeting (the "Notice") and proxy form to its members. The Notice included a resolution for the general meeting that was added to the meeting agenda by the Executive Committee. Remarkably, the proxy form only permitted members to give their proxy holder explicit instructions as to how to vote on the OMA's resolution and did not permit members to give instructions as to how to vote on the three resolutions set out in the petition.

When the OMA refused to modify its proxy form, an emergency hearing was scheduled before Justice Perell. Because the proxy form was released on a long weekend, that hearing could not take place until Tuesday, August 2.

Prior to and at the Court hearing, the OMA refused to acknowledge any unfairness in its approach or deficiencies in its proxy.

Justice Perell disagreed with the OMA's approach to its proxy form. Among other things, Justice Perell wrote, **"In my opinion, the Executive Committee has abused the authority provided to it by s. 84(3) of the *Corporations Act*, which specifies the form and content of a proxy."** Justice Perell described the Executive Committee's proxy form as **"unfair", "sneaky", "unhelpful", "unclear", "unbalanced", and "likely to compromise the fair conduct of the meeting"**.

Justice Perell declared the proxy form invalid, ordered the OMA to distribute a revised proxy form, and specified the language to be used for the revised proxy form. Among other things, at the OMA's request, Justice Perell changed the mandatory nature of two of the petition's resolutions to suggestive language by substituting the word "should" for "shall" in the proposed resolutions.²

As required by the Court, the OMA delivered a revised proxy form. But the Executive Committee never explained in a forthright manner why it had been ordered to do so.

In fact, as Terence Corcoran wrote in the National Post in reporting on the outcome of the motion, it attempted to 'whitewash' the decision by ignoring entirely the important rebuke of its approach and claiming the decision as a win. It is not clear whether this approach was the product of the OMA's communications advisors or the executive.

² This substitution was the subject of much discussion at the General Meeting. At the General Meeting, the OMA's leadership attempted to deflect responsibility for this change by claiming the change was made by Justice Perell, without admitting that Justice Perell did so at the OMA's request.

OMA Communications Campaign

After it released its deficient proxy form, the OMA implemented an aggressive campaign to drive a Yes vote.

For example, on Monday, August 1 (Simcoe Day), the OMA used physician's phone numbers to implement a "robo-call" campaign. We understand that physicians were called at their private, unlisted numbers, and that the calls delivered a pre-recorded message from Dr. Walley asking them to vote "Yes" to the Proposed PSA.

We are also aware that the OMA used its access to membership data to deliver "Yes" email blasts to members slanted according to their specialty.

These emails were vetted by the Executive Committee, who only permitted "Yes" emails to be broadcast to members. We are aware of at least one OMA section that was not permitted to send a "No" themed email blast to its members.³

We understand that the OMA's "Yes" campaign was managed by, a public relations firm.

The OMA's "Yes" campaign tactics, included falsely characterising the Coalition as a group of high-billing medical specialities.

The OMA has not disclosed the cost of its communications campaign to members.

The Flawed Meeting Protocol

On Friday, August 5, the day after Justice Perell released his reasons for decision and 9 days before the General Meeting was scheduled to take place, efforts were made to engage the OMA on the protocol to be followed at the General Meeting (the "Meeting Protocol"). These efforts were rebuffed by the OMA Executive.

The Meeting Protocol as published by the OMA was, like the original proxy form, unfair and unbalanced. As a result, third urgent attendance before Justice Perell to address the deficiencies in the Meeting Protocol was arranged.

In the face of a scheduled appearance before the Court, the OMA agreed to many of the Coalition's requests to alter the Meeting Protocol so that the General Meeting could be conducted fairly and transparently. Those changes, which included clarification that no other business would be conducted at the General Meeting, important rights to inspect disputed proxies before the General Meeting and to inspect all proxies and ballots before the tabulated results were publicly announced, were incorporated into a consent order of the Court.

³ At the General Meeting, the Executive denied censoring emails to members. We are aware of circumstances where an OMA section's efforts to communicate their leadership's views on the Proposed PSA were frustrated.

The consent order also enforced provisions in the Meeting Protocol that were not being adhered to by the Executive Committee. For example, the OMA's Meeting Protocol stated at paragraph 21:

Confidential voting restrictions are being applied by Computershare with respect to all proxies deposited, with the intention that the Association will not have access to the voting instructions of any member who has deposited a proxy. **All proxies will be maintained in confidence by Computershare and the only persons with access to proxies will be Computershare and its counsel and the Chair and his proxy.** Interim proxy tallies will be kept confidential and not publicly released to ensure the integrity of the voting process. [Emphasis added.]

To the extent this paragraph, including the emphasized text, communicated to members that the OMA's Executive Committee did not have access to interim tallies of the proxy vote results, it was misleading and incorrect at the time it was published. In fact, as acknowledged by the OMA on August 9, the day after the Meeting Protocol was published, the OMA Executive Committee had been receiving information about the interim tally of aggregate proxy voting instructions from the outset.

This access to interim voting results stopped as a result of our enforcement of the Meeting Protocol to provide for a fair and balanced meeting.

The Carr Report

The OMA's economic analysis of the effect of the Proposed PSA on patient care was virtually non-existent. The OMA did not provide its members with the detailed economic analysis that accompanied prior negotiated PSAs. The OMA's explanation for the absence of such analysis was that many of the details of the Proposed PSA's implementation were deferred to the "co-management" phase of the agreement.

The Coalition retained Professor Jack Carr of the University of Toronto to perform an economic analysis of the Proposed PSA. Professor Carr concluded that the Proposed PSA would likely lead to large cuts to physician funding, the cost of which would be borne by physicians. Among other things, Professor Carr concluded:

From an economic point of view, if payments to doctors decrease this ultimately will affect physician supply and availability of medical services to the residents of Ontario. **Cuts in physician payments will clearly negatively impact patient accessibility.** [Emphasis in original.]

Professor Carr's report was publicized by the Coalition several days before the General Meeting. The OMA did not respond to or contradict the report.

The General Meeting

The General Meeting was conducted in a fair and relatively even-handed manner. One exception to this general observation was the conduct of the Executive Committee. Throughout the meeting, the Executive Committee advocated strongly in favour of a

"Yes" vote and made factually questionable statements about the availability of binding arbitration to determine disputes as to the Proposed PSA's implementation and the affect of the Proposed PSA on patient care in Ontario.

On Monday, August 15, the OMA announced that 63.7% had voted against ratification. In total, 23,612 members cast votes, which we understand is the highest turnout by members in over 25 years, and possibly in OMA history. The 63.7% "No" vote was the highest margin of rejection of a PSA by members in 20 years.

Next Steps

It is unclear whether the Executive Committee's approach to campaigning for ratification was shared by the wider Board. It is unclear whether the Board endorsed the OMA's communications strategy, including the robo-calls, the invalidated proxy form, the social media ads, the repeated email blasts to OMA members that only voiced support for the Proposed PSA, the one-sided presentation of information about the Proposed PSA and the unbalanced Meeting Protocol.


It is not yet known what steps the OMA will take to address the concerns of membership arising from the events of the past six weeks. We understand that the OMA very recently communicated an acknowledgment of member dissatisfaction over its management of the PSA vote and has communicated an intention to engage in some form of governance review.

The sufficiency of this response, and in particular such matters as the governance review's cost and the independence, reliability and the mandate of the reviewers, will have to be considered when full details are provided by the Board.

Any refusal or reluctance to provide members with complete transparency into the review and to ensure complete independence of the reviewer should raise serious concern.

Finally, careful thought should be given to the need for such a review as opposed to simply moving forward with a new approach and negotiation team given the facts as described above and the OMA's acknowledgment of the deficiencies in its approach and communications campaign.

Yours truly,



Jonathan Lisus



Eric Hoaken