

COALITION OF ONTARIO DOCTORS

September 21, 2016

Virginia Walley, MD, FRCPC
President
Ontario Medical Association
150 Bloor St. West, Suite 900
Toronto Ontario
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Dear Dr. Walley:

The Coalition of Ontario Doctors (Coalition) is writing to you and the OMA Board about the Charter Challenge; the communiqué you released on Monday, September 19th; the appointment of PriceWaterhouseCoopers; and the cost to OMA membership of the tPSA campaign. Please share this letter with the full OMA Board membership.

OMA Charter Challenge

Over the last two months (and again on Monday in its communiqué) the OMA has repeatedly invoked the Association's Charter Challenge as justification for its decisions including its decision to negotiate the rejected tentative Physician Services Agreement (tPSA) in secret, to drop the demand for binding arbitration as a prerequisite for bilateral negotiations, and to provisionally agree in the tPSA to drop the significant financial damages suffered by Ontario physicians as a result of unilateral fee cuts made by the Health Minister.

This has caused many Coalition members to inquire about the status of the OMA's Charter Challenge, the efforts the OMA has made to advance it towards a court hearing, the nature of the government's response, and the next steps. To our knowledge, the OMA has not provided much by way of public updates or related documentation since the Challenge was started almost a year ago on October 29, 2015.

In looking at the OMA members' website today, there is no meaningful information about the Charter Challenge. The only reference to a legal action is to the Coalition/OAR's PSA Injunction application. To respond to Coalition member inquiries we have reviewed the Superior Court file in an effort to understand the status of the Challenge and the next steps.

The Coalition was very surprised to find that, according to the Court records, nothing has been done by the OMA to advance the Challenge since it was started last October.

The Notice of Application that started the Challenge last October says that it will be supported by affidavit evidence of Drs. Kapur and Tandan, and Messrs. Kantarovic and Roszuk. But, almost a year later, not a single affidavit has apparently been filed in support of the Challenge.

There are also no affidavits from the Ontario government. In fact, according to the court file, the Ontario government has not even responded to or acknowledged the Challenge by filing a Notice of Appearance. And it does not appear that the OMA has taken any steps to

have the government respond to or acknowledge the Challenge.

It would also appear from the Court file that no steps have been taken by the OMA to ensure that the Challenge ever does advance, such as setting a schedule for the government to respond, filing of evidence, the appointment of a case management Judge and setting a timetable for the conduct of the challenge. This is in contrast to the legal proceedings this past July and August when the Coalition demonstrated how effective a case management Judge could be in managing court proceedings about the August 2016 PSA vote and general meeting.

It would appear that nothing has been done by the OMA on the Challenge since it was started eleven months ago, including getting the Ontario government to even acknowledge it. We understand that the rules of Court require the responding party (the government) to respond 'forthwith' and that the absence of any response or delivery of evidence is very unusual.

This is of great concern to the Coalition and to all Ontario doctors because of the importance of the Challenge to the profession and the extent to which it has been presented as a justification for the OMA's recent decisions.

If for some reason, the Court file does not accurately reflect the steps that the OMA has taken to advance the Challenge, please let us know. We had presumed that any steps, including evidence in support of the Challenge and the Ministry's response, would and should be part of the public record and shared with membership.

On behalf of our members we require a response to these questions:

1. Has the OMA entered into any form of 'standstill agreement' or other agreement with the government to delay prosecuting the Challenge? If yes, why has the OMA not notified the membership?
2. Has the Ontario government put in a Notice of Appearance confirming it will respond to the OMA Charter Challenge?
3. What communications have there been with the Ontario government about the Charter Challenge and bringing it to a ruling from the Court?
4. Have the affidavits of Drs. Kapur and Tandan, and Messrs. Kantarovic and Roszuk been completed and served on the government? If they have not, why have they not? If they have, where can members see a copy?
5. If affidavits have been submitted, has the Ontario government responded? If it has, why have copies of its responses not been provided to OMA members and made a part of the public record?
6. What requests have been made of the government for judicial case management so that a timely schedule can be set for the hearing of the Challenge? Please provide a copy of a schedule if one has been set.
7. What is the OMA's schedule for the completion of the Challenge?
8. Why is information about the Charter Challenge not more prominently displayed on the OMA website?
9. To date, how much has the OMA spent on the Charter Challenge both in terms of external legal counsel and other related expert advice?

10. What law firm(s) is the OMA using to represent the Association membership in the execution of this legal action?

OMA President Walley's September 19th Communiqué

The Coalition has reviewed the OMA's response, which was prepared by the OMA legal department to Mr. Lisus' August 2016 report. We do not intend to engage in a debate but wish to make it clear we do not accept the rationalisations and justifications particularly the tap dancing around the still secret April agreement pursuant to which the OMA resumed negotiations without binding arbitration.

While we do not share the OMA Legal Department's characterisation of Mr. Lisus' report as 'selective and adversarial', we are not surprised that they would express this opinion given that a number of the legal steps taken during the course of the proceedings (including the form of proxy invalidated by the Court as sneaky, unfair and unbalanced, the finding that the OMA executive abused its authority, and the prohibition on the OMA receiving proxy tallies in advance of the meeting) were made or approved by the OMA's legal department.

While the OMA is entitled to its views, we wish to convey our members' concerns that, after promising an independent review, the OMA chose instead to conduct a self-review carried out by the very same individuals whose decisions are in issue. Specifically, we are referring to the detailed response/rebuttal to the Coalition's report in August 2016, as well as the provision of explanations for the OMA's conduct to-date (such as negotiating in secret and the refusal to disclose the April 2016 Agreement). The OMA has wholly accepted the conclusions of its own reviewers and publicly endorsed them in advance of its promised 'independent' review.

In these circumstances, our members find it very difficult to believe that PriceWaterhouseCoopers, or anyone else engaged, paid by and reporting to the OMA, will be prepared to differ in any material respect from the opinions and justifications that have been pre-emptively reached by the OMA legal department, endorsed by management and communicated to membership.

It is indeed regrettable that the promise of an independent review and an important opportunity for transparency, renewal and accountability has been so fundamentally compromised.

Appointment of PriceWaterhouseCoopers as Independent Reviewer

In addition to the above serious process concerns, members have raised questions about the appointment of PWC as reviewer. Last month we asked for input in the selection of an independent reviewer to ensure true transparency and accountability. Our requests were ignored. Without any input from membership, we learned yesterday that PWC has been engaged to conduct the independent review.

PWC is not independent. It has been engaged multiple times by the OMA to provide consulting services in the past resulting in reports that have been viewed by large segments of the medical population as being inaccurate and/or controversial. Some current PWC personnel have been involved in prior PSA negotiations on behalf of the Ministry (most recently in 2012), and who have authored reports, which members have

strongly disagreed with. PWC's current health group lead consultant has advocated for the reduction of physician fees and the tendering of physician services. The OMA is well aware of those physician concerns.

In addition, PWC has a consulting relationship with the Ontario government. PWC is not an independent reviewer. There is also a concern amongst doctors that the engagement of PWC is part of an after-the-fact effort to justify the OMA's continuing commitment to the rejected tPSA, similar to Monday's after-the-fact criticism of Professor Carr's report.

1. Please advise how much the OMA has allocated to spend on this "independent PWC review"?
2. What kind of process did the OMA engage in to determine what constituted an independent review?
3. What factors contributed to the selection of PWC as independent reviewer in light of its prior involvement?
4. What is the mandate of PWC and why has it not been shared with the membership?

OMA's Cost for the PSA Campaign

Members have expressed great concern about the zeal with which the OMA approached the tPSA Yes Campaign, its communications strategy and its refusal to share counter positions from Section leaders, the Coalition of Ontario Doctors and Concerned Ontario Doctors. The OMA's Vote Yes activities, all funded by members' Randed dues, were widely viewed as being the most extensive and expensive PSA campaign ever undertaken.

1. Please disclose the total cost of the OMA's Yes Campaign, including a breakdown of its use of external consulting firms and other resources, advertising and other related expenditures.
2. Has the OMA Board considered Dr. James Swan's written and verbal requests that consideration be given to cover some of the costs of the No Campaign, which, delivered important balance and ultimately expressed the views of the membership. Will any funding be provided?

We would be grateful if you would answer the questions in this letter by Wednesday, September 28th.

Yours sincerely,

Charles Peniston MD
Jim Swan, MD
Chris Giorshev, MD
Kulvinder Gill, MD
David Adam, MD,
David Jacobs, MD
Doug Mark, MD
Sharad Rai, MD
Michael Murray, MD
Iain Murray, MD
Christian Rabbat, MD

OMA Section on Cardio-Vascular Surgery
OMA Section Cardiology & Ontario Assoc of Cardiology
OMA Section Chronic Pain
Concerned Ontario Doctors
Dermatology Association of Ontario
OMA Section Diagnostic Imaging
DoctorsOntario
Doctors for Justice
OMA Section Emergency Medicine
OMA Section Gastroenterology & Ontario Assoc of
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Keith Meloff, MD
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