

COALITION OF ONTARIO DOCTORS

September 30, 2016

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

Thank you for your response to the Coalition's letter of last week. The OMA would better serve its members' interests if it formally recognized that the Coalition and Concerned Ontario Doctors represent thousands of Ontario doctors who are deeply concerned about our ability to provide timely and adequate care for our patients. The concerns we raise and the principles we are fighting for are of great importance to all physicians, our patients and the broader public.

The Coalition is glad to see that affidavits in support of the Charter Challenge were delivered to the Ontario government at the end of April so that at least the first step has been taken to advance the case. However, members are very concerned that it took six (6) months to deliver these and that a further five (5) months have passed with no response from the government and no timetable set for one. We will not further debate the timelines for this kind of case other than to say we have it on very good legal authority that taking more than a year to complete the first round of evidence is well outside the norm. The estimate of three years to obtain a ruling from the court is also well outside the norm of 18 months for a case of this type. And, contrary to what you say in your letter, case management judges are not appointed at the end of the process but rather at the beginning in order to ensure that a case proceeds smoothly and expeditiously through the system to a hearing on the merits. The Coalition's proceedings commenced this past summer in response to the OMA's efforts to push through the 2016 tPSA. That incident provides an excellent example of how quickly a hearing can be obtained and conducted if a party wishes to advance a case efficiently and promptly. In the tPSA proceeding, the judge was appointed at the very outset to ensure the case moved quickly. Similar efforts to ensure the expeditious progress of the Charter Challenge should have been, but were regrettably not, taken by the OMA or its counsel. The reason for this unnecessary delay and why it has not been explained or disclosed to OMA members remains an outstanding and vexing concern.

You are also incorrect to say that it is common for public interest litigation of this kind to be conducted in confidence with the record released just seven (7) days before the hearing. It is highly unorthodox for evidence in a public interest case to be kept from the public and interested parties to prevent it being 'dissected', whatever that means. Transparency is important. This is why the OMA rigorously, and appropriately, publicised its commencement of the Challenge in the media last year. However, when it signed the April Agreement to resume negotiations in secret and abandon its insistence on binding arbitration, the OMA appears to have agreed with the government to keep the Charter Challenge 'confidential' as well. We note that you have not responded to our

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request for disclosure of the April Agreement, and I would now ask that this document be provided without any further delay. Please confirm that you will provide this secret April agreement.

We did not agree with the tPSA being negotiated in secret and we do not agree with the Charter Challenge being conducted confidentially. Ontario's doctors have nothing to fear or hide in our request for binding arbitration. Members and the public understand our position and the importance of binding arbitration. You also admit that the evidence will be disclosed seven (7) days before the hearing at some unspecified date in 2018. Members are tired of having information of great importance to them and their patients withheld and released on a need-to-know basis with limited time to understand and respond to it. Members are tired of being told that openness and transparency are to be avoided. It is most unfortunate that the OMA and government appear to have decided to conduct this case in secret and disclose the evidence just days before the hearing. This secretive approach was the root cause of the divisive events of this past summer. Members are every bit as capable as the OMA leadership of absorbing, evaluating and understanding information critical to their livelihoods and professional responsibilities, and it is unacceptable that the OMA persists in its efforts to prevent its own members from having transparency.

You have, in your letter, dodged the issue of PWC's independence by instead addressing the issue of conflict of interest. We have never alleged that PWC has a conflict of interest with the OMA. PWC has a very close business relationship with the OMA. The OMA is a longstanding client of PWC and, that being the case, PWC is not independent. It certainly isn't going to publicly disagree in any material way with the conclusions and opinions of OMA legal department and management expressed in your letter of last week. As an example of OMA's prior ties to PWC, we note that in April 2015, PWC was the sponsor of the OMA's speech to the Economic Club of Canada; and was engaged to carry out a physician overhead costs study that failed to obtain a statistically reliable sample yet proceeded to produce a report that was viewed as being both an inaccurate and controversial document that was then knowingly used to produce other inaccurate reports and findings that negatively impacts thousands of doctors.

There remains a deep concern among physicians about the biased views that Mr. Falk, PWC's most senior health consultant, harbours towards physicians and the impact of how those known views will impact the findings. Furthermore, and contrary to the suggestion in your letter, no special health expertise is required to review the OMA's decision to negotiate in secret, exclude Section heads, drop the demand for binding arbitration, pursue the Yes campaign in the way it did and censor efforts by Section heads to communicate with members. It seems the OMA intends to use PWC's so-called "Independent Review" as a retrospective justification for its negotiation and support of the tPSA. In this regard, we note that you have ignored the request to disclose the PWC terms of reference, which further reinforces our concerns about PWC's lack of independence and the OMA's lack of transparency with its own members. We are more concerned than ever that PWC's report will be used to be nothing more than a whitewash of OMA actions and behaviour.

You have not indicated what the PWC Independent Reviewer will cost OMA members.

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We are requesting that the total cost of the PWC project be disclosed to the Coalition and OMA membership.

Finally, your refusal to disclose the cost of the Yes campaign is noted. Certainly, there was an amount paid to Navigator for advertising/robo-calls/social media campaign costs, Computershare, and the OMA's legal advisors for the meeting and proxy process. These amounts are all readily identifiable and will have been the subject of invoices that are currently in your possession. There is no reason that the total amount spent cannot be promptly determined and disclosed. Members of the OMA whose dues were used to fund these expenditures are entitled to know the amounts that were spent on this unsuccessful campaign to influence OMA members to support the tPSA.

In summary, we view your September 26th letter as unfortunate and unproductive. We had hoped it would be constructive and harken a new and more open discussion. Our members have asked for very basic information but the OMA seems intent on maintaining secrecy in order, one presumes, to prevent members from obtaining the full picture. It is time for members to have a direct say in these issues.

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
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