



April 20, 2018

**OPEN LETTER TO OMA PRESIDENT SHAWN WHATLEY  
RE: OMA CHARTER CHALLENGE**

Dear Dr. Whatley:

Late last week the Coalition checked the court record and was shocked to discover that no further action appears to have occurred with respect to pursuing the OMA's Charter Challenge since its initial October 2015 filing and the OMA's October 2016 assurances to the Coalition that it was being pursued "as quickly as possible".

Since then, the OMA has repeatedly stated publicly that the Charter challenge is an ongoing priority for the organization, has merit and is being pursued vigorously. You are now the third OMA president since the Charter Challenge was announced in October 29, 2015 and yet there is an apparent lack of information available to OMA members as to what exactly is happening. Soon you will be handing the OMA president's reins over to Dr. Alam. Before that happens, we ask the OMA to provide a full divulgence as to what members can expect will happen and when. Hundreds of millions of dollars of illegitimately confiscated members money is at stake.

You will recall Dr. Toth announced the Charter Challenge in October 2015 and it was greeted with strong and broad support from OMA members. We wrote to Dr. Walley in September 2016 inquiring about the status of the Charter Challenge and our deep concern that nothing had happened over the course of almost one year. We pointed out a number of specific things that one would have expected to occur if the Charter Challenge was being actively pursued. Dr. Walley responded saying that we had misinterpreted the OMA's convictions with respect to pursuing the Charter Challenge and made available a letter from the OMA's external legal counsel a couple of days later indicating that they, on behalf of the OMA members, "will continue to take all necessary steps to move the OMA Charter Challenge forward as quickly as possible". No specific answers were provided to the questions contained in the Coalition's September letter. Copies of the correspondence are attached.

Since Dr. Walley's letter, 18 months have passed and there has been little concrete information communicated to the members with respect to the status of the Charter Challenge. On the surface it again appears that nothing has happened. We can appreciate that there may be things happening in the background but frankly our lawyers are at a loss to explain how nothing new is registered on the official court record despite the lengthy passage of time and Dr. Walley's assurances this matter was being actively pursued.

Doctors are asking important questions about the OMA's sincerity and honesty with respect to the handling and pursuit of the Charter Challenge. Those questions include:

# COALITION OF ONTARIO DOCTORS

1. When is the OMA filing documents in court to launch the Challenge so that a judicial decision may be rendered on the important questions contained in the Charter application?
2. Why has the OMA apparently failed to push forward with appropriate legal manoeuvres to expedite the Charter Challenge as promised in the face of continued MOH intransigence towards all Ontario doctors so that we would have had some leverage during the unsuccessful mediation phase of negotiations and more so now that it is openly apparent that the MOH has not changed its hostile approach towards doctors as we begin binding arbitration hearings?
3. The OMA CEO's secret April 2016 agreement with MOH has never been disclosed to doctors despite the former Health Minister's willingness to make it public. There continues to be concern that the former OMA leadership may have signed a deal with the MOH that agreed to drop the Charter Challenge if a PSA could be successfully negotiated. The tPSA was broadly rejected in August 2016. More importantly, we know the failed tPSA contained no binding arbitration powers and no re-payment of unilateral cuts suffered by Ontario doctors as sought in the OMA's Charter Challenge application. To avoid needless speculation, the secret April 2016 agreement must be disclosed and if the speculation is accurate, the OMA must remedy the conditions that permitted this weak position from occurring again.

From our vantage point, it appears that the OMA has allowed this critical litigation to sit dormant. The OMA dropped its previous 2012 Charter Challenge in order to get the Representational Rights agreement from the MOH that later backfired and created the circumstances that placed doctors in the 2014 unilateral cuts mess that continues to today. Many doctors are wondering about the OMA's seriousness about pursuing the Charter Challenge and believe this view is shared by MOH thereby explaining in part their disregard for Ontario doctors.

Failure to expedite the Charter Challenge appears to have hurt doctors because:

1. Ontario doctors have been denied due representation in a timely manner.
2. Ontario doctors have not received potential recoveries of hundreds of millions of dollars from the claim for damages and re-payments of unjustified fee cuts.
3. Doctors have obtained no leverage from the looming prospect of a court decision that censures the Ontario government's behaviour towards doctors.

Please provide Ontario doctors with a fully transparent response to its position on the Charter Challenge and its real position with respect to pursuing the Charter Challenge, including the actual position it may have taken on this matter in the secret April 2016 agreement and any other legal advice regarding the viability of the Charter Challenge.

Sincerely,

Coalition of Ontario Doctors

Attachs.