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October 6, 2016

Via Email

Dr. Virginia Walley
President
Ontario Medical Association
150 Bloor Street West, Suite 900
Toronto, ON M5S 3C1

Dear Dr. Walley:

Re: Ontario Medical Association - *Charter* Challenge

We have reviewed the letter from Mr. Andrew Lokan to the Coalition of Ontario Doctors dated October 5, 2016 and have the following comments concerning the timeframe for the *Charter* challenge and the release of Affidavit materials.

Timeframe for the *Charter* challenge

Litigation is unpredictable, particularly when the issues are complex. The timing of such litigation can be driven by a range of factors over which the applicant has no control, including the scope of the respondent's evidence, the need for reply evidence, cross-examination timetables, interim motions, interventions by third parties, and relevant cases being heard in appellate courts.

While some cases do proceed along the timelines referenced by Mr. Lokan, many recent freedom of association cases have taken much longer. For example, in *Canadian Union of Postal Workers v. Canada (Attorney General)*, 2016 ONSC 418, the Notice of Application was issued in October 2011. However, the case was not heard until four years later in October 2015.

Accordingly, it is very important to be realistic about how long it might take for a case to proceed to a hearing. Of course, we will continue to take all necessary steps to move the OMA's *Charter* challenge forward as quickly as possible.

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Affidavits

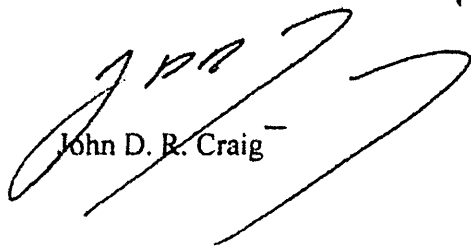
Affidavits are usually filed with the Court only after all parties' affidavits have been served, cross-examinations have been completed, and any relevant motions have been determined. Once those steps are completed, all parties' affidavits, cross-examination transcripts, and any other relevant documents will be filed with the court and will become part of the public record.

All of the OMA's affidavits but one have been served on the Government. They have not yet been filed with the Court. While it is possible for these affidavits to be publicly disclosed, it is rarely in a party's best interests to "litigate in public" at this stage of the proceedings.

In fairness to Mr. Lokan, it is difficult for lawyers to opine on cases in which they have not been directly involved.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP



John D. R. Craig