

September 26, 2016

Dr. David Jacobs
c/o Lax O'Sullivan Lisus Gottlieb LLP
Barristers & Solicitors
145 King Street West, Suite 2950
Toronto, ON M5H1J8

Dear Dr. Jacobs:

I am responding to your letter of September 21, 2016.

At the outset, let me note that the OMA received several media enquiries regarding your September 21 letter. I have asked OMA staff to respond to all enquiries with a statement indicating that we would be responding to members, and would have no public response to your letter. I am always pleased to engage with members on issues, but I do believe that these discussions are rarely necessary, or in members' best interests, in the public realm.

The OMA's *Charter* Challenge – Status of the Litigation

Your characterization of the status of our *Charter* challenge is wrong.

The Attorney General has formally confirmed (in writing, as is the practice in such cases) that it has received our Application and will respond to this case. Updates about the *Charter* challenge were provided at the Fall 2015 and Spring 2016 Council meetings by our counsel, John Craig and Chris Piggott of Fasken Martineau. At that time, our counsel estimated the hearing would likely occur in early 2018. This is consistent with the Ontario Superior Court of Justice's current timelines for disposing of similarly complex freedom of association cases. Another update will be provided at the Fall 2016 Council meeting.

Six affidavits with a combined total of 1,720 pages in length have already been served upon the Attorney General's office thus far. These are as follows:

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1. Affidavit of Peter Fraser, affirmed April 28, 2016 – 249 pages
2. Affidavit of Darrel Weinkauf, affirmed April 28, 2016 – 627 pages
3. Affidavit of Dr. Atul Kapur, affirmed April 28, 2016 – 184 pages
4. Affidavit of Jasmin Kantarevic, Ph. D., affirmed April 28, 2016 – 194 pages
5. Affidavit of Ada Maxwell-Alleyne, affirmed April 28, 2016 – 188 pages
6. Affidavit of Owen Adams, Ph. D., affirmed April 26, 2016 – 58 pages

One affidavit remains outstanding - it details the government's actions since the commencement of unilateral action, including its introduction of Bill 210 in the Legislature. We needed to await the results of the tPSA vote last month before finalizing this document. This affidavit will be served shortly to complete the OMA's evidence. None of the affidavits has yet been filed with the Court, but it would be extremely unusual to do so at this point.

We have not, to-date, released these affidavits as it will not be in members' best interests to have our case dissected in public before we see the material that now must be prepared by the Attorney General in response.

Once the OMA's final affidavit has been served, the Association will attempt to agree with the Attorney General's counsel on a reasonable timetable for proceeding with the case and, if this cannot be agreed upon, the OMA will apply to court for Case Management. This is standard practice.

It is the practice with court applications, including this *Charter* challenge, to file with the Court the affidavit evidence, along with the application record and factum together, shortly before the hearing. The court rules require this filing "at least seven days before the hearing".

The OMA has provided updates on the nature and status of the *Charter* challenge to Council, physician leaders, and members on several occasions, including at face-to-face meetings with members, the July Physician Leaders' Days, and in the Legal FAQ posted on the OMA website in the "Members Only" area. We will continue to do so.

September 19 Communiqué

I believe that we already have made our relative positions clear on the matter of Mr. Lissus' letter from August 23, 2016 to you and Dr. Gill.

To be clear regarding the PwC report, the OMA Board, informed by input from members, has initiated a number of reviews and other work that it believes are in the best interest of members. The Association will pursue these and ensure that reports on these matters are provided to Council and to members.

Engagement of PwC for an Independent Review

You raise a number of concerns relating to our engagement of PwC to conduct the independent review. First, you have raised this in some of your postings on the internet although you fail to mention it in your letter. I can unequivocally state that Will Falk is not involved in the review being undertaken by PwC for the OMA. Indeed, my understanding is that he is the national leader of the PwC Healthcare Services group, and not a member of its Forensic Services group that has been retained by the OMA.

Second, the reality is that there is no major consulting firm that has not, at some point, been retained by the government or the OMA for some purpose. Simply being retained at some point by government is not a disqualifier to being able to perform competent work for the OMA.

You may rest assured that the OMA is very careful when we make these contracts to ensure that we are bringing the right consultants with the right skills on board. All sides recognize that there are individuals within major consulting firms who have long histories of specific types of work for the Ministry which would mean that they would not be the appropriate people for the OMA to retain for these types of purposes. The value that firms such as PwC bring to engagements such as their current one with the OMA is their reputation for independence. Indeed, this is why these consulting firms grew out of accounting/auditing firms. If you are suggesting that PwC has a specific conflict of interest, I invite you to bring the evidence of this to our attention and the attention of the professional associations which govern firms such as PwC.

I can also assure you that all OMA contracting policies were followed in tendering the PwC contract. In this case, the Board relied on a Request for Proposal (RFP) on a separate matter that had just been started to select PwC, after confirmation that they would be able to quickly undertake the work and report back in time for November Council.

Costs of the tPSA Process / Reimbursement of Your Costs

Part of the work being undertaken by PwC will be to report back on the costs of the activities related to the tPSA, including the substantial costs related to the General

Meeting of Members. This report will be brought to November Council and then made available to members.

As for the request that consideration be given to reimbursement of the costs of the “No Campaign”, the Board has not yet considered this matter. I note that the issue of legal fees was raised by your lawyers before Mr. Justice Perell, who declined to award any costs relating to the matter before him. As for any other expenses, any such request is challenging for two principal reasons:

1. First, no estimate of the amounts involved has been provided and it would not be responsible for the Board to agree to consider any policy of reimbursement without a sense of the scope of the liability that it was agreeing to incur; and
2. Second, you have not discontinued your litigation against the OMA relating to the General Meeting of Members, meaning that you are potentially still incurring costs relating to this matter. The Board certainly couldn't agree to an open-ended request for funding.

I invite you to give this further thought and provide further information to the Board so that this request can be considered.

I hope this responds to your concerns.

Yours truly,



Virginia M. Walley, MD FRCPC
President

Copies: Dr. Charles Peniston, Dr. Jim Swan, Dr. Kulvinder Gill, Dr. David Adam, Dr. Doug Mark, Dr. Sharad Rai, Dr. Michael Murray, Dr. Iain Murray, Dr. Christian Rabbat, Dr. Keith Meloff, Dr. Sean Symons, Dr. Christopher O'Brien, Dr. Mark Preditis, Dr. Joan Charboneau, OMA Website