

OMA Section on General Surgery

c/o Ontario Association of General Surgeons
P.O. Box 192, Station Main, Peterborough ON K9J 6Y8
Phone: 705-745-5621
Fax: 705-745-0478

Attn. Ontario General Surgeons
From: Section on General Surgery
Date: December 14, 2018
Re: OMA and Gov't Arbitration Update

NEW: Dec.14
Gov't will resume arbitration
with OMA. Rescheduled
for Dec.18-21, 2018

Dear Colleagues,

The government has signaled its intent to withdraw from arbitration. In the opinion of OMA lawyers, this is illegal. Hearings on this issue are scheduled to begin this Saturday (Dec.15-16 and 18-19). The arguments from both sides are in the attached letters.

This is very frustrating. Less than 5% of physicians voted for the OSA in what was effectively little more than a straw poll. It was not a binding referendum and has absolutely no impact on the representation rights agreement enshrined in law. It is almost certainly a delaying tactic, but it will likely take months to get sorted out through the courts. It also signals that this government will likely stop at nothing to prevent a fair agreement, and theoretically, it does have the right to legislate away any binding arbitration agreement it didn't like, as we don't yet have the protections that we hope the charter challenge is still going to provide us. The charter challenge is currently tied up in legal arguments about the timing of hearings, and any decision is still likely years away.

The OMA has put out an urgent call to action. **Please send a letter to your MPP immediately** using this link: <https://www.votervoicenet/mobile/ONMA/campaigns/62004/respond> . You can use the customizable template or write your own original letter. The letter will be automatically addressed to your local MPP by entering your postal code. You could also request a meeting with your MPP by emailing publicaffairs@oma.org.

In addition, if you're interested in attending the scheduled hearings as a show of strength to oppose the government's actions, you're welcome to attend starting this weekend at the Chelsea Hotel, Gerrard Room, 33 Gerrard St. W, Toronto (Dec.15-16 and 18-19). <https://www.oma.org/sections/billings-and-agreement/agreement-centre/negotiations/>

This means that the issue of job action will rear its ugly head, and we will have to make some decisions about what we are prepared to do. We will likely have to do something to make an impact. It is clear from the government's letter that we will not know until after the new year, and it would be prudent to delay until after Christmas anyway to get maximum traction from any job action.

We will be circulating an official poll of all members with regards to what job actions they are prepared to take early in the new year, but prior to that we would solicit feedback on this issue through a straw poll and comments section on the OAGS homepage: <http://www.oags.org/> .

Respectfully

Chris Vinden, Section Chair
Section on General Surgery

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Hicks Morley Hamilton Stewart Storie LLP
77 King St. W., 39th Floor, Box 371, TD Centre
Toronto, ON M5K 1K8
Tel: 416.362.1011 Fax: 416.362.9680

CRAIG RIX
craig-rix@hicksmorley.com
Direct: 416.864.7284
Cell: 416.576.7284

Toronto
Waterloo
London
Kingston
Ottawa

File No. 11948-2
December 10, 2018

SENT BY EMAIL

Mr. Howard Goldblatt
Goldblatt Partners LLP
20 Dundas Street West
Suite 1039
Toronto, ON M5G 2C2

Dear Mr. Goldblatt:

Re: Interest Arbitration between the MOHLTC and the OMA

I am writing to respond to your letter dated December 4, 2018 to Mr. Kaplan, the chair of the arbitration panel. Your letter asserted that the arbitration process should continue despite the letter dated November 30, 2018 from Dr. Jacobs on behalf of the Ontario Specialists Association (OSA). For ease of reference, I enclose a letter I have sent today on behalf of the Ministry of Health and Long-Term Care (MOHLTC) to Mr. Kaplan.

There is clearly a public dispute in the profession about whether the OMA is the exclusive representative of physicians in Ontario. As you know, there has been a vote by certain specialists to separate from the OMA. Those specialist sections amount to approximately 10% of the medical profession and approximately 17% of billings within the physician services budget. The MOHLTC lacks confidence that the OMA can deliver on the outcome of any arbitration decision. Given the significance of the importance of the issues in the arbitration, the MOHLTC cannot ignore this matter. The MOHLTC cannot agree to the continuation of the arbitration proceedings.

As I have come to understand in the course of my retainer on this file, the relationship between the OMA and government has been particularly difficult since 2012. The MOHLTC was disappointed that the OMA was not able to deliver on the savings expected in the 2012 Physician Services Agreement (PSA) despite the OMA having agreed to them and despite Government giving the OMA the representation rights and negotiation process that the OMA demanded in those negotiations.

Then the parties tried to negotiate a new PSA in 2014. The agreed upon conciliator, former Chief Justice Warren Winkler Q.C., rendered a report that agreed with the MOHLTC's position. Despite further negotiations and additional proposed funding by the MOHLTC, the OMA rejected the MOHLTC's offer and refused to negotiate. As the MOHLTC proceeded to implement the offer as it was entitled to do, the OMA's response was to refuse to engage in consultations, to refuse to negotiate and to commence litigation instead.



Eventually, the OMA came back to the negotiating table in 2016 and a tentative PSA was achieved. That agreement was a substantial financial improvement for the OMA over the MOHLTC's 2014 proposals. But even then the OMA could not ratify the proposed agreement, and the OMA's board was thrown into turmoil with resignations, new elections and acrimony.

The MOHLTC then agreed in 2017 to a binding arbitration framework that the OMA demanded. The parties used that process but could not reach a negotiated agreement and mediation by Mr. Kaplan also failed. The parties began arbitration in May 2018 but when a new government was elected in June 2018 they once again tried to reach a negotiated agreement. Despite a new offer by the government, the OMA could not come to an agreement and arbitration resumed in October 2018.

Considering the above history, the recent public dispute raises a significant doubt in the profession whether the OMA is the exclusive representative of physicians and calls out for consultation and resolution of these issues.

The MOHLTC believes that the issue of who represents physicians needs to be resolved. The MOHLTC wants to have a broader dialogue with the medical profession and various organizations within the medical profession, including the OMA, to discuss representation and compensation issues, among other things.

The MOHLTC will be in touch with the OMA early in the new year to initiate that consultation.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Craig S. Rix".

Craig S. Rix

CSR/lr
Encl.

c: Robert Reynolds
Bob Bass
Lynn Guerriero



Howard Goldblatt
Direct Line: 416.979.6411
Fax: 416.591.7333
hgoldblatt@goldblattpartners.com

Steven M. Barrett
Direct Line: 416.979.6422
Fax: 416.591.7333
sbarrett@sgmlaw.com
Our File No. 16-1698

December 11, 2018

Via E-mail

Craig Rix
Hicks Morley Hamilton, LLP
Barristers and Solicitors
77 King St. W. 39th Floor
Box 371 TD Centre
Toronto ON
M5K 1K8

Dear Mr. Rix:

Re: Ontario Medical Association and MOHLTC Interest Arbitration

We are writing in response to your letter of December 10, 2018

As you know, we have written to the Kaplan Board of Arbitration opposing the MOHLTC advice that it does not wish to continue with the arbitration proceedings with the OMA.

In that letter, we emphasized that the Ministry, as a party to the arbitration proceedings with the OMA, and to the Binding Arbitration Framework to which it voluntarily agreed and which is governed by the *Arbitration Act, 1991*, cannot unilaterally terminate the arbitration proceedings.

Indeed, as we also emphasized, the Ministry's suggestion that it can unilaterally discontinue these proceedings is unprecedented, is an affront to the rule of law (which insists that the government is not above the law and must comply with its legal and contractual commitments), and is inconsistent with its obligations under the Binding Arbitration Framework and Representation Rights Agreement between the OMA and the Government of Ontario.

Your letter also seeks to somehow blame the OMA and the medical profession for the Government's illegal and unethical conduct in purporting to terminate the binding arbitration process, suggesting that the Government "lacks confidence" in the OMA's capacity to "deliver on the outcome of any arbitration decision". However, your depiction of the history of the relationship between the OMA and the MOHLTC is both truncated and inaccurate. The OMA has fully outlined the history of the Ministry's arbitrary singling out of physicians for unilateral across the board and targeted cuts since 2015 in its briefs to the Kaplan board of arbitration, and this need not be recounted here.

However, after this period of acrimony, both the previous and current government signalled their desire to enter into a new, constructive and mutually respectful relationship with Ontario's physicians and the OMA, most significantly through replacing unilateral government action with a more respectful fair and independent binding arbitration process.

You also refer to the recent internal poll taken by a minority of specialist sections concerning representation by the OMA. In fact, only half of the membership of these sections voted and the total number of votes in support of the OSA poll represents less than 5% of the medical profession. This is no basis for questioning the OMA as representing physicians in Ontario. Moreover, as you well know, this poll has no legal impact on the government's obligation to continue and respect the binding arbitration process, especially since hearings have been ongoing since May, 2018, and are scheduled to conclude this month.

Finally, as to your suggestion that the Ministry "wants to have a broader dialogue... to discuss representation and compensation issues", this ignores the reality that there is a binding process already in place which deals with both representation and compensation. The proposed "dialogue" will be understood by the medical profession and the public for what it is, namely, nothing but an attempt by the government to pull the plug on a fair and independent arbitration process intended to determine fair treatment and compensation for Ontario's physicians.

Constructive cooperation between government and the medical profession has never been more critical to bringing about necessary improvements to our health care system. However, the government's decision to return to unilateral action against the medical profession, and to ignore its legal and moral obligation to participate in a fair and independent binding arbitration process, undermines the mutual respect that it is the foundation of any meaningful cooperation and partnership.

We would urge your client to reconsider its actions.

Yours very truly,



Howard Goldblatt
Steven M. Barrett
HG:ds/cope 343

c.c. Robert J. Reynolds
Allan O'Dette
Adam Farber
Catherine Dowdall

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