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Despite Being Denied Basic Democratic Dispute Resolution, Doctors Need to Keep Fighting for Fair Treatment

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The Ontario healthcare world is abuzz about the latest development in the ongoing battle between the Ontario Medical Association (OMA), its members, particularly those who are opposed to the tentative Patient Services Agreement (PSA), and the provincial government.

Yesterday, the Ontario Superior Court of Justice issued Justice Paul Perell's complete ruling on the court challenge that the Ontario Association of Radiologists (OAR) had launched against the OMA for the way in which it had called the General Meeting, scheduled to take place on August 14, 2016.

More specifically, the OAR requested interlocutory relief on the following:

1) an Order directing the OMA and Mr. (Tom) Magyarody to deliver a new notice of the general meeting (which is scheduled for August 14, 2016) in the form attached to the Applicants' July 22, 2016 Notice of Motion as Schedule "A";
2) an Order directing the OMA to deliver a form of proxy that allows members to direct their proxyholder's vote on all of the resolutions set out in the Applicants' form of notice (i.e., the aforesaid Schedule "A");
3) an Order directing the OMA to provide a membership list that includes, in addition to the information already provided about names, addresses, and email addresses, information about the members' phone numbers including cellular phone numbers; and
4) an Order appointing a neutral chair to preside over the meeting of the members scheduled for August 14, 2016.

Justice Perell dismissed the first, third, and fourth request but granted the second. If we are keeping score as you do in war, then it appears as though the OMA emerged victorious. OMA 3, doctors 1. This is certainly how the OMA has chosen to frame it.

However, if you look beyond the numbers and focus on Justice Perell's reasoning and reprimanding tone towards the OMA, there's no question that this could be considered a victory for the opposing doctors, even if just a small one. As the National Post's Terence Corcoran writes, Justice Perell's decision "has the potential to undermine the credibility of the Ontario Medical Association".

In his ruling, Justice Perell says "in my opinion, the Executive Committee (of the OMA) has abused the authority provided to it…" Furthermore, he characterizes the way in which the

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proxy vote was prepared as “unfair and confusing if not somewhat sneaky” and “is a catalyst for a governance meltdown at the upcoming general meeting.”

He goes on to say “the propriety of the proxy form is not a trivial matter in corporate law. The proxy system is a fundamental instrument of shareholder or member participation in the affairs of the corporation, be it a business corporation, a not-for-profit organization, a non-governmental organization, or an association like the OMA that plays an extremely important role in civil society.”

As a result of this ruling, the OMA has been ordered to reissue a new proxy form that includes all three resolutions for members to vote on:

1) Resolution to ratify the 2016 Physician Services Agreement (as defined in the Notice of Meeting).
2) Resolution that in the future the Directors and/or Council should not negotiate an agreement with the Ministry that does not include a right to refer disputes concerning implementation of the agreement to binding arbitration.
3) Resolution that in all future negotiations between the Association and the Ministry every OMA Section Chair should be kept fully apprised throughout the negotiations of the ongoing discussions including the issues, the proposed terms and the status and that each should be given timely and meaningful opportunities to provide input on such issues and terms as the discussions evolve, and again before the Association agrees to a form of Agreement.

While this ruling immediately satisfies the OAR’s request regarding the proxy form, I would go one step further and ask: why not have every Section Chair be part of the bargaining team? They are the ones who know exactly what issues and challenges each medical specialty faces and what is required for specialists to do their jobs properly. They also understand how Ontario’s changing demographics will impact service and care in the future.

Regardless of who can be considered the winner and loser in this case, this ruling needs to be treated as a serious wake-up call signaling that there is something very wrong with this system. The very fact that a profession must litigate against its own bargaining unit to ensure that they get a fair and unbiased voting process is shocking and appalling. And quite frankly, the government should be embarrassed that they have allowed this to happen.

Ever since the OMA was mandated by the government to act as the bargaining agent for Ontario doctors, this profession has been subjected to undemocratic and disrespectful disregard by both the government and the OMA, which is supposed to be fighting for them from their corner, not fighting them in a courtroom.

In the normal course of action, it is acceptable for a union to urge its members to support a deal that it feels is in their best interest but when there is a significant portion of the membership that has legitimate concerns, then it should be taken to a general meeting and the union should let its members “vote their conscience” instead of trying to silence them. Or in the case of the OMA, push them to vote yes with convoluted instructions, aggressive PR

tactics such as robocalls, and rigging votes.

When you consider that our physicians spend decades on education and training, graduate with mountains of debt, and dedicate their lives to saving others, yet are being denied access to basic democratic rights such as choosing their own bargaining agent or negotiating with provisions for binding arbitration, then sadly, there is no question who the losers are.

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