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BY EMAIL

Dr. Samantha Hill
Allan O'Dette
Ontario Medical Association
150 Bloor Street West, Suite 900
Toronto, Ontario M5S 3C1

Dear Dr. Hill and Mr. O'Dette:

November Council Meeting – Proposed Relativity Advisory Committee Motion

We are writing to you further to our letter dated October 30, 2020.

We understand that the Relativity Advisory Committee will be leading a 2-hour session at the OMA's upcoming Fall Council on November 28, 2020. We are deeply concerned that the OMA intends to use the outcome of the discussion at that session as a pretense to proceed with the Statistics Canada Overhead Study (the "**Study**") despite the ongoing investigations by the federal Privacy Commissioner, Canada Revenue Agency ("**CRA**") and Statistics Canada ("**StatsCan**"), and despite the concerns raised at the OSA-OMA meeting held November 5, 2020.

On behalf of the OSA, we strongly object to any attempt by the OMA to proceed with the Study or to solicit members' consent to the Study at Council. Council is not the proper venue for advising members about the Study or for soliciting their consent to it.

OMA Breaches of Its Privacy Policy

The OMA has committed multiple breaches of its own privacy policy (the "**Policy**") by pursuing the Study without advance notice to or consent from its members. These breaches engage PIPEDA rules concerning disclosure, gathering, and use of personal information.

Improper Gathering of Personal Information

The Policy states that it gathers its members' personal information for a variety of uses, including membership communications and "internal uses". While the OMA has tried to shelter under the "internal uses" umbrella to justify its conduct, using a member's personal information — not to mention their non-member professional corporation's information — to gather financial or tax data for a statistical study is not an "internal use". The OMA admits

it intends to use the personal information it is gathering in connection with its relativity discussions with the Ministry of Health and Long Term Care.

The OMA cannot rely on the doctrine of implied consent when it has already collected, used and disclosed its members' personal information in a manner that was beyond members' reasonable contemplation at the time they provided the information to the OMA.

Inadequate Disclosure to Members of OMA Activities

The OMA is required to provide proper and informed disclosure to its members concerning its gathering and use of their personal information. It must solicit members' meaningful and informed consent as required in the applicable privacy legislation. Failure to obtain proper consent cannot be remedied by the OMA's Council or a "Town Hall" meeting about the Study.

The Council cannot authorize the Study through a motion. When it comes to members' personal information, Council does not have the authority to provide the necessary consent. Consent can only be provided by individual members through a direct process that engages each member directly.

Given that the OMA has already breached its Policy and PIPEDA in numerous ways to date, the only way it can possibly proceed further with the Study is by obtaining members' express consent to opt in to the Study.

Undisclosed Use of Member's Personal Information

By involving StatsCan and the CRA in the Study, the OMA is using third parties to get sensitive financial information about its members indirectly that it could not properly seek out directly. OMA will ultimately use this information for a commercial purpose, which is contrary to its Privacy Policy and to the PIPEDA disclosure principles.

Moreover, the OMA misstated the purpose of the Study to the Privacy Commissioner, CRA and StatsCan. The OMA seeks to shelter under s. 7(2)(c) of PIPEDA to justify its conduct. That section only allows an organization to **use** personal information without consent for a "scholarly or statistical purpose". It does not permit the organization to **disclose** its members' personal information for a scholarly or statistical purpose to third parties without consent as per PIPEDA, s. 7(3)(f). By its own admission, the personal information that the OMA is collecting, using and disclosing for the Study is intended for a commercial purpose, namely, for its relativity discussions with the Ministry of Health and Long Term Care. OMA did not reference PIPEDA, s. 7(3)(f) or explain its intended disclosure of the study's results to a third party when communicating with CRA, StatsCan, or the Privacy Commissioner. No explanation has been given for this misrepresentation of the Study's true purpose and intended use.

Risk of Public Disclosure of Personal Information

If the OMA uses its members' personal information to negotiate with the Ministry, there is a real risk that the information will become available to the public. Doctors may become subject to public investigations into their office overhead costs in a manner similar to the public investigations concerning OHIP fees that the OMA fought so hard to keep private.

Despite the OMA's suggestion that it is authorized to use its members' personal information to further its negotiations with the Ministry, it has not indicated what steps it

has taken to ensure that the Study's results are not shared publicly pursuant to a future *FIPPA* request, or that the results will not lead to disaggregation and re-identification of personal financial information.

Given these risks, the OMA should immediately confirm that no information has been gathered and shared with any third parties.

Exclusion of Objecting Members' Information

We understand that thousands of physicians have expressly objected to the OMA gathering or disclosing their personal information in connection with the Study. The OMA cannot ignore this express direction from its members to exclude their information from the Study. As a result, any study that proceeds (if it proceeds, which is an open question) will be inherently unreliable as the data upon which it is based will be incomplete. We understand that a previous attempt at a similar study was terminated for this same reason.

In conclusion, the OMA's breaches of its members' privacy cannot be remedied at Council. The OMA Board should confirm, clearly and without reservation, that the OMA will not pursue the Study until the Privacy Commissioner has publicly reported the results of its investigation. The OMA should acknowledge that its conduct to date breached the Policy, and it must take all available steps to remedy those breaches, beginning by committing to an "opt-in" only process for seeking members' consent to gather and disclose their personal information via the Study.

Yours truly,



Andrew Winton

copy to: Jasmine Landau, Lax O'Sullivan Lisus Gottlieb LLP
Dr. Timothy Nicholas, Chair, Ontario Medical Association
Dr. Adam Kassam, President-Elect, Ontario Medical Association
Dr. David Jacobs, OSA Chair